Part 4G

Contract Procedure Rules – The Procurement Act 2023

These Rules apply to procurements commenced on or after 24/2/2025 under the Procurement Act. Appended to these Rules are the Contract Procedure Rules for procurements undertaken under the Public Contract Regulations 2015.

Further guidance for staff on the application of these rules can be found in the Councils Procurement Toolkit.

Dated 7th January 2026 v2

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GLOSSARY

In these Contract Procedure Rules, the following terms shall have the meanings set out below.

Term	Meaning
Appropriate Chief Officer	means the Chief Officer responsible for the function to which the Contract relates except that, where another Chief Officer is responsible for the letting of the Contract, it shall mean that Chief Officer in consultation with the Chief Officer on whose behalf the Contract is to be let. Refer to the following for the list of Chief Officers: https://www.leicestershire.gov.uk/about-the-council/how-the-council-works/leader-and-cabinet/chief-officers-of-the-council In the case of ESPO the Chief Officer is Director of ESPO.
Associated Person	means a person that the supplier is relying on to satisfy the conditions of participation, but not a person who is to act as guarantor (see section 22(8) and 22(9) of the Act).
Below Threshold Contract (Regulated)	means a Contract for the supply, for pecuniary interest, of goods, services or works to the Council; a Framework; or a Concession Contract, that has an Estimated Value of less than the Relevant Procurement Threshold for the type of contract. A notifiable below-threshold contract is a regulated below threshold contract if its awarded value is £30,000 including VAT (£25,000 excluding VAT) or more. A "regulated below-threshold contract" (s.84 Procurement Act) does not apply to: a) An Exempted contract. b) A Concession Contract; or c) A Utilities Contract
Below Threshold Contract Details Notice (Regulated)	means the notice that must be published as soon as reasonably practicable after entering a Regulated Below Threshold Contract. This is in accordance with Section 87 of the Procurement Act.
Below Threshold Tender Notice (Regulated)	means the notice that must be published if advertising for the purpose of inviting Tenders for Regulated Below Threshold Contracts. This in accordance with Section 87 of the Procurement Act.
Best Value	means the duty which Part 1 of the Local Government Act 1999 places on local authorities to secure continuous improvement in the way functions are exercised, considering a combination of economy, efficiency, and effectiveness.

Term	Meaning
Cabinet	means the Council's Executive with functions set out in Article 7 and Part 4D of the Constitution.
Call Off Contract	means Contracts that are awarded under a Framework.
Central Digital Platform	means the system whereby notices, documents and other information required to be published under the Procurement Act is to be made available
Chief Finance Officer	means the officer appointed pursuant to Section 151 of the Local Government Act 1972. The functions of the Chief Finance Officer are set out in Article 12 of Part 2 of the Council's Constitution. The Director of Corporate Resources.
Commercial Specialist	means an Officer authorised by the Director of Corporate Resources to manage the procurement of a category or categories of goods, services and/or works. If there is no Commercial Specialist for the goods, services and/or works being procured, the Senior Commercial Specialists or Head of Procurement and Supply Chain Management will adopt this role. In the case of ESPO this means Procurement Officers.
Commissioning Support Unit ("CSU")	means a unit responsible for supporting departments providing the Council with the development of commissioning strategies, service re-design, professional support in relation to the Council's procurement and supplier and contract management. functions. In the case of ESPO this is the Commercial and Procurement Division.
Competitive Flexible Procedure	means any other competitive tendering procedure, not including the Open Procedure, that the Council considers appropriate for the purpose of awarding a public Contract. The competitive flexible procedure allows the Council the freedom to design its own procedure as set out in Section 20 of the Procurement Act.
Competitive Tendering Procedure	means either the Open Procedure or the Competitive Flexible Procedure as defined in the Procurement Act.
Concession Contract	means a contract for the supply, for pecuniary interest, of works or services to the Council, where (i) at least part of the consideration for that supply is a right for the supplier to exploit the works or services; and (ii) under the contract the supplier is exposed to real operating risk as defined in Section 8 of the Procurement Act
Conditions of Participation	means the conditions of participation that the Council may set in relation to the award of a Public Contract in accordance with Section 19 of the Procurement Act as described in Rule 15.

Term	Meaning
Constitution	means the document which the Council is required to keep pursuant to Section 9P of the Local Government Act 2000 which contains a copy of the Council's standing orders, its code of conduct, details of how the Council operates; how it reaches decisions as well as the procedures that officers are required to follow. The Constitution is a statutory document
Contract	means any contract between two or more parties for the execution of works or the supply of goods and/or services and "contracts" shall be interpreted accordingly.
Contract Award Notice	means a notice that must be published in accordance with Section 50 of the Procurement Act.
Contract Change Notice	means a notice that must be published before a Contract is modified in accordance with Section 75 of the Procurement Act.
Contract Details Notices	means a notice published confirming that a Contract has been entered into in accordance with Section 53 of the Procurement Act.
Contract Extension	means an extension to the duration of the Contract as described in Rule 45.
Contract Extension Form	means a form that must be completed, approved, and retained in accordance with Rule 45 before an extension can be completed. In the case of ESPO this is the Procurement Control Record.
Contract Manager	means an Officer responsible for the administration and management of the Contract.
Contract Modification	means a modification to a Contract or Public Contract in accordance with Rule 48.
Contract Modification Form	means the form that must be completed, approved, and retained in accordance with Rule 48 before a modification can be done. In the case of ESPO this is the Contract Change Control Form.
Contract Termination Notice	means a notice that must be published to notify that a contract has been cancelled, terminated or expired in accordance with Section 80 of the Procurement Act
Contracts Register	means a register of (current) Contracts, on the Councils electronic tendering system.
Covered Procurement	means the award, entry into and management of a Contract which is entered into by the Council with a value above the relevant Procurement Threshold and that is not an Exempted Contract under the Procurement Act
Convertible Contract	means a Contract that, because of the value of a modification, will take the value of the Contract over the relevant

Term	Meaning
	Procurement Threshold, such that the contract will become a public contract.
Corporate Contract	means any Contract, Framework or other arrangement approved for use in sourcing a particular requirement approved for use as a Contract for use across the whole Council by CSU.
Corporate Governance Committee	means the Committee with the delegated function (as set out in Part Section 3 B of the Council's Constitution) of the promotion and maintenance of high standards in relation to the operation of the Council's Local Code of Governance.
Corporate Procurement Board	means a governance body established to oversee and approve significant procurement activity. In the case of ESPO this is the contracts panel.
Council	means Leicestershire County Council including ESPO.
Direct Award	means when a public contract is awarded without a competitive tendering procedure and the public contract is placed directly with the supplier of the Councils choosing.
Direct Employee	a person who works as an employee of the Council and is paid a salary by it, rather than being employed through an agency or other third party.
Director of Corporate Resources	means the Council's Chief Finance Officer who is responsible for the Council's Corporate Resources function, as amended sometimes.
Assistant Director of Law and Governance	means the Council's Officer who is responsible for the Council's Legal and Governance function, as amended sometimes.
Dynamic Markets	means a list of qualified suppliers who have met the conditions of membership of the dynamic market and who are eligible to participate in future procurements.
Electronic Tendering System	means an electronic tendering system approved in accordance with Rule 54.
ESPO	means Eastern Shires Purchasing Organisation.
Estimated Value	means the value as estimated under Rule 10.
E-Tender	means a Tender that has been submitted using an Electronic Tendering System.
Exception	means an exception where in limited circumstances the departure from the rules may be considered as detailed in Rule 57.
Exception Form	means the form to be submitted where an Exception is requested in accordance with Rule 57.

Term	Meaning
Excluded Supplier	means if any exclusion ground applies to either the supplier or an associated person (see the references to 'associated person' in section 57 of the Procurement Act) and if the circumstances giving rise to the ground are continuing or likely to occur again.
Executive	See definition of Cabinet above.
Exemption/Exemption Contract	means the requirement may be exempt from the regulations set out in the Procurement Act as detailed in Rule 4.
Exemption Form	means the form to be submitted where an Exemption is requested in accordance with Rule 4.
Financial Procedure Rules	means the Councils Financial Procedure Rules as set out in Part 4F of the Constitution.
Framework	means a contract between the Council and one or more suppliers that provides for the future award of Contracts by the Council or other contracting authorities to the supplier or suppliers as defined in Chapter 4 of the Procurement Act.
Invitation to Tender (ITT)	means the document(s) containing information about the Competitive Tendering Procedure (along with other appropriate information) as issued to the Tenderers to invite the submission of Tenders.
Irregular Tender	means a tender which the Council may be entitled to reject (including for reasons set out in Section 19 of the Procurement Act) or the Council's own rules or policies. Grounds for exclusion may include inter alia: - (a) If a tenderer does not comply with the requirements of the procurement documents; or (b) If a tender is received late; or (c) If there is evidence of collusion or corruption.
Key Decision	means a decision as defined in Rule 8 of the Executive Procedure Rules (Part 4D) of this Constitution. Without limitation, key decisions include such matters as reports in connection with the annual revenue budget or capital programme; reports about actions having significant effects on local communities or reports dealing with significant reductions in services. In the case of ESPO only if a decision does not fall within Appendix 4 to Schedule 1: Functions of, and Delegations to the Director of ESPO. The decision can be escalated to the Director of ESPO, the Chief Officers Group or Management Committee.
Light Touch Contract	means a contract for certain social, health, education and other public services and are subject to more flexible procurement rules. Light Touch Contracts are services provided directly to

Term	Meaning
	individuals or groups of people. Light Touch Contract is defined in Section 9 of the Act. Schedule 1 to the Act specifies which services fall under a Light Touch Contract.
National Procurement Policy Statement	means the statutory statement set by the Cabinet Office of the Government to communicate the wider policy objectives to which it expects public procurement to contribute as may be amended.
Novation	means the method by which the parties to an existing contract 'transfer' the rights and obligations of that contract to a third party.
Officer	means an employee of the Council.
Open Framework	means a scheme of Frameworks that provides for the award of successive Frameworks on substantially the same terms as defined in Section 49 of the Procurement Act.
Open Procedure	means a single stage Competitive Tendering Procedure as provided for under Section 20 of the Procurement Act.
Person	means legal persons *(which, without limitation, includes corporate bodies corporations sole)* and natural persons *(which, without limitation, includes individuals, sole proprietors, partnerships, and unincorporated associations).*
Pipeline Notice	means a notice that lists the Councils planned public procurements which must be published in accordance with Section 93 of the Procurement Act.
Planned Procurement Notice	means a notice that may be published to inform the market that the Council intends to publish a Tender Notice in accordance with Section 15 of the Procurement Act.
Post Tender Negotiations	means discussions that may occur after the submission of a tender proposal and before the awarding of a contract as detailed in Rule 30.
Preliminary Market Engagement Notice	means a notice published to inform the market that a pre-market engagement exercise will be undertaken in accordance with Section 17 of the Procurement Act.
Procurement Act (the Act)	means the Procurement Act 2023 which comes into force on the 24 February 2025.
Procurement Initiation Document (PID)	means a form which is completed and submitted by departments/service areas with the purpose of seeking approval to start a procurement process. In the case of ESPO this is the Procurement Control Record or the Internal Procurement Request Form, as applicable.
Procurement Termination Notice	means a notice to be published after publication of a Tender

Term	Meaning
	Notice or Transparency Notice where the Council has decided not to award or continue with the contract and to terminate the procurement.
Procurement Threshold	means the respective procurement thresholds that apply from 1 January annually for Services, Goods, Works, Light-Touch, Concession and Utilities Contracts referred to in the Schedule 1 to the Procurement Act as may be amended from time to time, usually every two years. Threshold values as of January 1st, 2026, including VAT Goods & Services = £207,720 (£173,100 excluding VAT) Works = £5,193,000 (£4,327,000 excluding VAT) Light Touch = £663,540 (£552.950 excluding VAT)
Procuring Officer	means any Officer, acting under the delegated powers of the Appropriate Chief Officer, who is responsible for the procurement of works, goods, and/or services.
Provider Selection Regime	means the Health Care Services (Provider Selection Regime) Regulations 2023 set for procuring Health Care Services as may be amended from time to time.
Public Contract	means a: a) Contract for the supply, for pecuniary interest, of goods services or works to the Council. b) Framework. c) Concession Contract. which has an Estimated Value of no less than the applicable Procurement Threshold and is not an Exempted Contract
Quotation	means an offer to sell works, goods and/or services at a stated price under specified conditions. A Quotation may or may not be written. Request for Quotation is used for below threshold procurements and not above threshold tenders.
Regulations	means the Procurement Regulations 2024 as may be amended from time to time. References to “Regulation” followed by a number in these Rules should be interpreted accordingly.
Relevant Procurement Threshold(s)	means the applicable financial thresholds which are referred to in Section 3 and set out Schedule 1 of the Procurement Act and which amounts may from time to time be increased or revised
Request for Quotation (RFQ)	means a document or documents containing the specification, and proposed terms and conditions issued to potential suppliers to solicit written Quotations for below threshold

Term	Meaning
	procurements.
Rules	means these Contract Procedure Rules, as may be amended from time to time.
Sensitive Commercial Information	means (a) constitutes a trade secret, or (b) would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.
Social Value	means how what is proposed to be procured might improve the economic, social, and environmental well-being of the people and areas of the non-metropolitan parts of Leicestershire. This definition shall be construed in keeping with the requirements of Section 1 of the Public Services (Social Value) Act 2012.
Standard Terms and Conditions	means standard contractual terms used by the Council, including those attached to procurement orders or orders generated by 'line of business' systems, those included in Request for Quotation templates, and standard industry terms.
Standing List	means a list of approved contractors or suppliers qualified for invitation to tender for works or services the rules for which are further described in Rule 47.
Standstill	means a period of eight working days between the Council announcing its intention to enter into a contract (by publishing the contract award notice) and actually entering into that contract; the Council cannot enter into the contract during the standstill period as detailed in Section 51 of the Procurement Act
Strategic Plan	means the strategy document that explains how the Council will improve the quality of life for the people of Leicestershire and make Leicestershire the best possible place to live and work for everyone.
Supplier	means a person or organisation that provides something needed such as a product or service to the Council, this includes contractors and consultants. Suppliers may at times be referred to suppliers contracted to LCC and 'potential suppliers' - i.e. bidders and the wider supply market.
Supplier Code of Conduct	means the Council's Supplier Code of Conduct which sets out principles to help suppliers understand the standards and behaviours expected when working with the Council. A copy of which can be found at – https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2018/11/27/supplier-code-of-conduct.pdf
Supplier Relationship Manager	means an officer of the Council whose role is to support the management of complex relationships with external suppliers

Term	Meaning
	and vendors. In the case of ESPO this is the relevant Procuring Officer.
Technical Guidance	means the Technical Guidance intended to help with interpretation and understanding of the Procurement Act, published by the Government Commercial Function. Further details can be found at – https://www.gov.uk/government/collections/procurement-act-2023-guidance-documents
Tender	means a formal offer from a Tenderer as a response to an Invitation to Tender. It shall include all documents comprising the submission including pricing, technical specification and method statements and information about the Tenderer. A written Quotation is also a Tender. The term "Tender" also includes an E-Tender except where the context implies otherwise.
Tender Notice	means a notice published in accordance with Section 21 of the Procurement Act to advertise and commence a Competitive Tendering Procedure, this includes both Open and Competitive Flexible procedures.
Tenderer(s)	means the Person or Persons invited to participate in a procurement process.
Transitional Regulations	means the rules that determine how procurements awarded under the previous legislation continue to be managed alongside the introduction of the Procurement Act. The Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024)
Transparency Notice	means a notice published to alert the market that the Council intends to make an award without competition in accordance with Section 44 of the Procurement Act before directly awarding a Contract under Section 41 or Section 43
Utilities Contracts	means a Contract for the supply of goods, services, or works wholly or mainly for the purpose of utility activity.

Part 4 G - Contract Procedure Rules

Please note that capitalised terms have specific meanings (as per the definitions section) and should be referred to for full understanding.
Guidance supporting this document can be found
https://leics.sharepoint.com/sites/procurementandcontracts

INTRODUCTION

RULE 1. *Compliance*

1.1 These Rules apply where the Council proposes to procure goods, services, or works. Failure to follow these Rules may result in disciplinary action.

1.2 Where a procurement under these rules relates to a Key Decision, such a procurement must be taken to the Executive for approval.

1.3 All Officers seeking to procure goods, services or works on behalf of the Council will need to familiarise themselves with and comply with these Rules and any other policies/guidance, legislation (including but not limited to the Procurement Act) and the National Procurement Policy Statement (NPPS).

1.4 Each Officer is responsible for ensuring they are familiar with and act in accordance with these Rules.

1.5 If there is any doubt as to the application of these Rules, advice should be sought as appropriate.

RULE 2. *Delegation*

2.1 Appropriate Chief Officers may delegate responsibilities under these Rules in accordance with Rule 6 of Section D (General scheme of delegation to Heads of Departments) of Part 3 (Responsibility for Functions) of the Constitution.

RULE 3. *Application*

3.1 These Rules apply to situations where the Council commences a procurement for the provision of works, goods, or services on or after 24 February 2025 under the Procurement Act. The procurements that were procured prior to the implementation of the Procurement Act will continue to be managed under the PCR 2015 Contract Procedure Rules. Contract Procedure Rules that will apply to such procurements are appended to these Rules.

3.2 Throughout these Rules, references are made to the Procurement Act 2023 (the Act) which will apply to Covered Procurements that commence after the entry into force of the Procurement Act on 24 February 2025. Procurements commenced under previous legislation (the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, and Utilities Contracts Regulations 2016) must continue to be procured and managed under the applicable legislation or as required under the Transitional Regulations. Officers should seek advice from the Commissioning Support Unit (as appropriate) as to the applicable procurement regime and applicable contract procedure rules that governs a particular public contract.

RULE 4. *Exempted Contracts*

4.1 When entering an Exempt Contract, the Council is not subject to the rules governing Covered Procurements and as such the Council is broadly free to conduct a procurement as it considers most appropriate. However, even in the case of Exempt Contracts, the Council is legally required to comply with National Public Policy Statements and the Council expects Officers to deal with Exempt Contracts on that basis.

4.2 Exempted Contracts (as defined in Part 2 of Schedule 2 to the Procurement Act) include (but are not limited to) the following arrangements:

a) Contracts solely for the acquisition or disposal of any interest in land.

b) Contracts for the lending or borrowing of money.

c) Contracts of employment (making an individual a Direct Employee of the Council).

d) Contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of the Financial Services and Market Act 2000 (Markets in Financial Instruments) Regulation 2017 – UK Statutory Instruments 2017 No. 701.

e) A contract for the provision of exempt legal services to the Council. Not all legal services are exempt, only those legal services that are related to judicial or other dispute resolution proceedings, notary services and legal services that must be carried out by a particular person under an order of court or tribunal enactment are exempt under the Procurement Act;

f) Horizontal and vertical agreements between contracting authorities. Horizontal – cooperative agreements between different public authorities to achieve common goals (referred to as Hamburg contracts). Vertical – contracts between the Council and an entity it controls, essentially allowing for in house procurement (referred to as Teckal contracts).

g) Contracts for the acquisition, development, production or co-production of material intended for broadcast or contracts for the broadcast to the general public of material supplied by the supplier; this includes contracts for creating, acquiring, producing television programs, radio shows, film or other content intended for broadcasting.

h) Contracts for facilitating the provision of electronic communications to the general public or Contracts to provide, maintain or use a public electronic communication network.

i) Contracts for the provision of arbitration, mediation or conciliation services.

j) Contracts for the provision by an organization not run for profit in respect of emergency services.

k) Contracts for public passenger transport concession services that are to be awarded in accordance with the public service obligations regulations as defined in section 136(11) of the Railways Act 1993.

l) Contracts for research and development services that (i) are intended to be for or result in a benefit to the public; and (ii) the Contract does not provide for the provision of goods or works.

m) Contracts awarded under procedures set out in international agreements.

n) Contracts that the Council considers, in the interest of national security, should not be subject to this Act or a part of this Act.

o) Contracts for carrying out, facilitating or supporting intelligence services.

p) Certain types of Defence and Security Contracts, Utilities Contracts (for the purchase of water, fuel for energy production, energy and resale of lease goods or services by utility companies except by central purchasing authorities) and Concession Contracts.

q) Contracts for the supply of goods, services or works to the Common Council of the City of London other than for the purposes of its functions as a local authority, police authority or port health authority.

4.3 The sale of Council assets is not part of these Rules. Officers should refer to the Financial Procedural Rules. The sale of an asset, which is part of a contract, should be transacted separately i.e. LCC invoice for the sale value agreed.

4.4 All contracts that are deemed as Exempt Contracts under a), e), f) and l) need to be approved by the completion of an Exemption Form by an Appropriate Chief Officer in consultation with a Commercial Specialist.

PROCUREMENT PRINCIPLES

RULE 5. *General Requirements*

5.1 Every Contract, Public Contract or official order for works, goods or services made by the Council shall be for the purpose of implementing the Council's policies and must be made in accordance with the Council's duty of Best Value and in line with the Finance Procedure Rules and the Council's Strategic Plan.

Social Value

5.2 Where the Council proposes to enter into any Contract with an Estimated Value equal to or greater than £50,000 excluding VAT, it shall before commencing the procurement, consider the Social Value (if any) of the proposed procurement. Social Value will be addressed and managed by contract management of the relevant contract. The Council will seek to ensure that Social Value is enshrined in such a Contract in at least one of the following two ways: -

a) As award criteria linked to the Council's Social Value Policy Statement and the Council's Strategic Plan.

b) As Outcomes built into the specification or Contract.

5.3 Where Social Value has not been considered within either the award criteria or specification, the reason shall be recorded and forwarded for approval to the relevant Commercial Specialist.

Provider Selection Regime

5.4 Where the Provider Selection Regime applies, Social Value will need to be considered regardless of the Estimated Value of the Contract.

Use of Corporate Contracts

5.5 The Procuring Officer must ensure that whenever Corporate Contracts have been approved and deemed suitable by a Commercial Specialist that goods, services are ordered via that Corporate Contract by raising a purchase order.

5.6 The Procuring Officer may not procure outside of the Corporate Contract unless it is agreed by the Commercial Specialist that better value for money can be clearly demonstrated outside of

these approved Corporate Contracts.

5.7 Where the Estimated Value of a Contract (or Public Contract) to be awarded under a Corporate Contract exceeds £30,000 including VAT (£25,000 excluding VAT), the Procuring Officer must approve the award with a Commercial Specialist before completing the award. The Procuring Officer must consider what risks the contract presents ahead of any procurement process, considerations must include those relating to Health and Safety, Business Continuity, compliance with the Modern Slavery Act 2015 and Information Security.

Applicable Laws

5.8 Procedures set out in the relevant Acts of Parliament and UK legislation (including for the avoidance of doubt (but not limited to) the Procurement Act and the Provider Selection Regime must be complied with.

Budgets

5.9 The Procuring Officer must ensure that sufficient budget provision has been agreed with the budget holder prior to any procurement process being undertaken.

Procurement Act

5.10 The Council must not carry out a Covered Procurement except in accordance with the Procurement Act. As such, a public contract may not be entered into unless it is awarded in accordance with the Procurement Act.

5.11 In conducting a Covered Procurement, the Council must have regard to the importance of:

a) Delivering value for money.

b) Maximising public benefit.

c) Sharing information for the purpose of allowing suppliers and others to understand the Council's procurement policies and decisions.

d) Acting, and being seen to act, with integrity.

5.12 In carrying out Covered Procurements as per section 12 of the Act, the following must apply:

a) The Council must treat suppliers the same unless a difference between the suppliers justifies different treatment.

b) If the Council 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 or disadvantage.

Supplier Code of Conduct

5.13 The Council's Supplier Code of Conduct must apply to all procurement process and be incorporated in all supplier Contracts.

Term of Contract

5.14 Subject to the provisions of Rule 19.3 Contracts shall not be longer than 5 years (including extensions) in duration or of indeterminate length without the prior written approval of the Director of Corporate Resources, such approval to be obtained prior to the commencement of the Procurement Exercise.

RULE 6. *Financial Thresholds and Delegation*

6.1 Financial limits and thresholds within these Rules may be varied by the Corporate Governance Committee.

6.2 Arrangements for the delegation of functions to Officers within these Rules may be varied by the Chief Executive.

6.3 Financial thresholds and delegations are set out in the Finance Procedure Rules and the Procure to Pay Policy.

PRELIMINARY PROCUREMENT STEPS – PLANNING STAGE

RULE 7. *Pipeline Notices*

7.1 Pipeline Notices must be published within 56 days of the 1st April (by the 26th of May) in accordance with Section 93 of the Procurement Act.

7.2 An individual notice on the Central Digital platform, setting out specified information about any proposed public contract with a value of more than £2,000,000 including VAT must be made.

7.3 The pipeline notice should include individual details relating to each relevant upcoming procurement likely to occur within the 18-month period it covers.

RULE 8. *Planned Procurement Notices*

8.1 The Council may consider whether to publish a Planned Procurement Notice to provide suppliers with advance notice of an upcoming Competitive Tendering Procedure.

8.2 A Planned Procurement Notice is intended to give as much advance information to the market as possible to allow interested suppliers to appropriately plan for future opportunities.

RULE 9. *Preliminary Market Engagement*

9.1 Before commencing a Competitive Tendering Procedure, the Council may engage with suppliers and other persons for the purposes of:

9.1.1 developing the Council's requirements and approach to the procurement.
9.1.2 designing a procedure, conditions of participation or award criteria.
9.1.3 preparing the tender notice and associated tender documents.
9.1.4 identifying suppliers that may be able to supply the goods, services or works required.
9.1.5 identifying likely contractual terms.
9.1.6 building capacity among suppliers in relation to the contract being awarded.

Such engagement will be considered "Preliminary Market Engagement." When conducting Preliminary Market Engagement the Commissioning Support Unit must be consulted.

9.2 When carrying out Preliminary Market Engagement the Council must take steps to ensure that:

a) suppliers participating in the Preliminary Market Engagement are not put at an unfair advantage; and

b) competition in relation to the award of the public contract is not otherwise distorted.

9.3 If the Council considers that:

a) a supplier's participation in Preliminary Market Engagement has put the supplier at an unfair advantage in relation to the award of a public contract; and

b) the advantage cannot be avoided.

that supplier must be treated as an Excluded Supplier for the purposes of (i) assessing tenders under section 19 of the Procurement Act; or (ii) awarding a contract under Section 41 or 43 of the Procurement Act and excluded from participating in, or progressing as part of, any Competitive Tendering Procedure.

Preliminary Market Engagement Notice

9.4 In carrying out Preliminary Market Engagement the Council must either:

9.4.1 publish a Preliminary Market Engagement notice before publishing a Tender Notice; or

9.4.2 provide reasons for not publishing a Preliminary Market Engagement notice in the Tender Notice.

9.4.3 preliminary market engagement could include (but not limited to) requests for information, supplier questionnaires and surveys, to understand their capabilities and any potential barriers to procurement; and meet-the-buyer events etc.

PRELIMINARY PROCUREMENT CONSIDERATIONS/PLANNING STAGE

RULE 10. *Calculating the Estimated Value of Contracts*

10.1 Before any procurement process is begun the Procuring Officer must calculate the Estimated Value of a Contract in accordance with Section 4 and Schedule 3 of the Procurement Act. Determining an Estimated Value for a contract enables the Council to determine whether the proposed procurement will be above or below the relevant threshold and in turn determine which procedures should be followed.

10.2 The Estimated Value for the Procurement must not be artificially subdivided to circumvent the application of these Rules or the Procurement Act.

10.3 The Estimated Value of Contracts must be calculated in accordance with paragraph 1 of Schedule 3 to the Procurement Act.

10.4 Rules 10.5–10.7 (below) covers Contracts for goods, services, works and Utilities Contracts.

10.5 The Estimated Value shall be calculated as the maximum amount the Council could expect to pay under the Contract, including where applicable, amounts already paid. The Estimated Value shall be inclusive of VAT.

10.6 The estimated amount the Council could expect to pay includes (but is not limited to) the following:

10.6.1 the value of any goods, services or works provided by the Council under the Contract other than for payment; for example, if the Council is giving something to the contractor as part of the agreement (materials, equipment, staff time etc), this needs to be factored into the estimated contract value.

10.6.2 amounts that would be payable if all options in the Contract to supply additional goods, services or works were exercised.

10.6.3 amounts that would be payable if all options in the Contract to extend or renew the term of the Contract were exercised.

10.6.4 amounts representing premiums, fees, commissions, inflationary uplifts, gain shares or interest that could be payable under the Contract; and

10.6.5 amounts representing prizes or payments that could be payable to participants in the procurement.

10.7 In calculating the Estimated Value, the Council must consider all the facts material to the estimate and available to the Council at the time it makes the estimate.

Estimating for Framework Contracts

10.8 The Council must estimate the value of a Framework as the sum of the Estimated Values of all the Contracts that are or may be awarded in accordance with the Framework during its entire term.

10.9 For open frameworks the Council must estimate the total value as the combined value of all individual frameworks awarded under the scheme, including future anticipated re openings of the framework.

Estimating for Concession Contracts

10.10 The Estimated Value of Concession Contracts is to be calculated in accordance with paragraph 3 of Schedule 3 to the Procurement Act.

10.11 The Council must calculate the Estimated Value of a Concession Contract as the maximum amount the supplier could expect to receive under or in connection with the Contract including, where applicable, amounts already received.

10.12 The amount a supplier could expect to receive includes (but is not limited to) the following:

a) amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the works or services to which the contract relates (whether from the Council or otherwise).

b) the value of any goods, services or works provided by the council under the contract other than for payment amounts that would be receivable if an option in the contract to supply additional services or works were exercised.

c) amounts that would be receivable if an option in the contract to extend or renew the term of the contract were exercised.

d) amounts representing premiums, fees, commissions, or interest that could be receivable under the contract.

e) amounts received on the sale of assets held by the supplier under the contract.

Estimating for Mixed Procurement Contracts

10.13 Where a Contract comprises of a mixture of services, works or goods, consideration will need to be given to Section 5 of the Procurement Act as to the classification of that Contract and advice sought from the CSU as appropriate.

Estimating for Mixed Category Contracts

10.14 Where a Contract involves different categories or types of Contracts, e.g, Concession Contracts, Light Touch Contracts etc. the classification of that Contract will need to be considered in accordance with Section 10 of the Procurement Act and advice sought from the CSU as appropriate.

Anti-avoidance of estimating

10.15 The Council must calculate the Estimated Value of each of the Contracts in accordance with paragraph 4 of Schedule 3 to the Procurement Act as including the value of all of the Contracts unless it has a good reason for not doing so. This would apply where:

10.15.1 the Council calculates the Estimated Value of two or more Contracts; and

10.15.2 the goods, services or works to be supplied under the Contracts could reasonably be supplied under a single Contract.

Inability to calculate the Estimated Value of a Contract

10.16 Where it is not possible to calculate the Estimated Value of a Contract (in accordance with this Rule), e.g., where the duration of a Contract is unknown, that Contract is to be treated as exceeding the Threshold amount for that type of Contract.

10.17 Where the Estimated Value (calculated in accordance with this Rule) is £6,000 including VAT (£5,000 excluding VAT) or more the Procuring Officer must notify in writing, via completion of a PID, the appropriate Commercial Specialist of the Estimated Value before proceeding. A written record of that Estimated Value must then be kept on file by the Procuring Officer.

RULE 11. *Procurement Approach*

11.1 The Estimated Value of a Contract inclusive of VAT (calculated in accordance with Rule 10) will dictate the procurement approach to be followed as set out below:

Estimated Value including VAT	Route to Market	Procurement Process	Advertising Requirements	Award Requirements	Documentation
£0 - £6,000 £5, 000 excluding VAT	Request for Quote	Obtain a minimum of one oral/written Quotation	None	None	Record details of the contract on the Contracts Register.
£6,001 – £29,999 £5,001 - £24,999 excluding VAT	Request for Quote	Complete a PID and secure approvals before commencing (Not applicable to ESPO). Obtain a minimum of 3 written Quotations.	None When inviting quotations officers should consider the benefits of including a local supplier or SME	None	Record details of the contract on the Contracts Register including a copy of the PID, Request for Quotation issued by the Procuring

Estimated Value including VAT	Route to Market	Procurement Process	Advertising Requirements	Award Requirements	Documentation
		If this is not possible, approval must be sought from CSU to continue.	in the request for quotation.		Officer and Quotations received.
£30,000 – Relevant Procurement Threshold £25,000 excluding VAT	Framework: Call off with or without further competitive selection process	Complete a PID and secure approvals before commencing. Invite tenders from particular or pre-selected suppliers, i.e., a Framework.	No notice required. Undertake via the Councils electronic tendering system.	Below Threshold Contract Details Notice.	Record details of the contract on the Contracts Register including a copy of the PID, call off documents issued by the Procuring Officer and Quotations received.
£30,000 – Relevant Procurement Threshold £25,000 excluding VAT	Open Market	Complete a PID and secure approvals before commencing. Advertising more widely for the award of a below-threshold contract. Seek written Quotations (to be based on a Request for Quotation document where practical)	Below Threshold Tender Notice required before publishing/advertising elsewhere.	Below Threshold Contract Details Notice	Record details of the contract on the Contracts Register including a copy of the PID, Request for Quotation issued by the Procuring Officer and Quotations received.
Contracts of any value for independent day or residential school placements for children with Special Educational Needs	Request for Quote	Complete a PID and secure approvals before commencing.	When inviting quotations officers should consider the benefits of including a local supplier in the invitation to quote where appropriate or applicable to the Contract.	Contract Details Notice	Record details of the contract on the Contracts Register including a copy of the PID, Request for Quotation issued by the Procuring Officer and Quotations received.
Light Touch Contract – below light touch	Request for Quote	Complete a PID and secure approvals before commencing.	When inviting quotations officers should consider the benefits of	Contract Details Notice	Record details of the contract on the Contracts Register

Estimated Value including VAT	Route to Market	Procurement Process	Advertising Requirements	Award Requirements	Documentation
Procurement Threshold		Obtain a minimum of 3 Quotations (to be based on the request for Quotation document where practical). If this is not possible, approval must be sought from CSU to continue.	including a local supplier in the invitation to quote where appropriate or applicable to the Contract.		including a copy of the PID, Request for Quotation issued by the Procuring Officer and Quotations received.
Contracts or Frameworks of any value for Healthcare Services falling within the Provider Selection Regime	Direct Award Process A	Complete a PID and secure approvals before commencing. Approval must be sought from the Head of Procurement & Supply Chain Management. Procuring Officer must seek the advice of a Commercial Specialist on a suitable Process to follow under these Regulations.	None	Confirmation of Award Notice	Record details of the contract on the Contracts Register including a copy of the PID, clear records detailing the decision-making process and rationale for direct award process A, as set out in the Regulations.
Contracts or Frameworks of any value for Healthcare Services falling within the Provider Selection Regime	Direct Award Process B	Complete a PID and secure approvals before commencing. Approval must be sought from the Head of Procurement & Supply Chain Management. Procuring Officer must seek the advice of a Commercial Specialist on a suitable Process to follow under these Regulations.	None	Confirmation of Award Notice	Record details of the contract on the Contracts Register including a copy of the PID, clear records detailing the decision-making process and rationale for direct award process B, as set out in the Regulations.
Contracts or Frameworks of any value for Healthcare Services falling within	Direct Award Process C	Complete a PID and secure approvals before commencing. Approval must be sought from the Head of Procurement	Intention to award notice. Complete Standstill	Confirmation of Award Notice	Record details of the contract on the Contracts Register including a copy of the PID, clear

Estimated Value including VAT	Route to Market	Procurement Process	Advertising Requirements	Award Requirements	Documentation
the Provider Selection Regime		& Supply Chain Management. Procuring Officer must seek the advice of a Commercial Specialist on a suitable Process to follow under these Regulations.			records detailing the decision-making process and rationale for direct award process C, as set out in the Regulations.
Contracts or Frameworks of any value for Healthcare Services falling within the Provider Selection Regime	Most Suitable Provider Process	Complete a PID and secure approvals before commencing. Approval must be sought from the Head of Procurement & Supply Chain Management. Procuring Officer must seek the advice of a Commercial Specialist on a suitable Process to follow under these Regulations.	Intended approach notice Intention to award notice.	Confirmation of Award Notice	Record details of the contract on the Contracts Register including a copy of the PID, clear records detailing the decision-making process and rationale for most suitable provider process, as set out in the Regulations.
Contracts or Frameworks of any value for Healthcare Services falling within the Provider Selection Regime.	Competitive Process	Complete a PID and secure approvals before commencing. Approval must be sought from the Head of Procurement & Supply Chain Management. Procuring Officer must seek the advice of a Commercial Specialist on a suitable Process to follow under these Regulations.	Publication of Tender Notice to advertise Competitive Tendering Intention to award notice.	Confirmation of Award Notice	Record details of the contract on the Contracts Register including a copy of the PID, clear records detailing the decision-making process and rationale for competitive process, as set out in the Regulations.
Relevant Procurement Threshold and above	Framework: Call off with or without further competitive	Complete a PID and secure approvals before commencing. Invite tenders from particular or pre-	None Undertake via the Councils electronic	Contract Award Notice Assessment Summary	Record details of the contract on the Contracts Register including a copy of the PID, all

Estimated Value including VAT	Route to Market	Procurement Process	Advertising Requirements	Award Requirements	Documentation
	selection process	selected suppliers, i.e., a Framework.	tendering system.	Voluntary Standstill Contract Details Notice If contract is over £5,000,000 - a copy of the Contract and the key performance indicators must be published (not required for Light Touch).	tender documents, responses, evaluation, moderation, award letters and contract.
Relevant Procurement Threshold and above	Open Market Tender	Complete a PID and secure approvals before commencing. Competitive Tendering Procedure, quotations sought via Invitation to Tender (ITT) in accordance with Procurement Act (refer to Commissioning Support Unit)	Publication of Tender Notice to advertise Competitive Tendering. Undertake via the Councils electronic tendering system.	Contract Award Notice Assessment Summary Standstill Contract Details Notice If contract is over £5,000,000 - a copy of the Contract and the key performance indicators must be published (not required for Light Touch) Direct Award Notice only (where Light Touch and user choice)	Record details of the contract on the Contracts Register including a copy of the PID, all tender documents, responses, evaluation, moderation, award letters and contract.
Relevant Procurement Threshold and above	Dynamic Markets	Complete a PID and secure approvals before commencing.	None	Contract Award Notice	Record details of the contract on the Contracts Register

Estimated Value including VAT	Route to Market	Procurement Process	Advertising Requirements	Award Requirements	Documentation
			Undertake via the Councils electronic tendering system.	Assessment Summary Voluntary Standstill Contract Details Notice If contract is over £5, 000,000 - a copy of the Contract and the key performance indicators must be published (not required for Light Touch).	including a copy of the PID, all tender documents, responses, evaluation, moderation, award letters and contract.

Additional Requirements

11.2 Details of oral Quotations must be confirmed in writing.

11.3 All procurements proposed over £6,000 including VAT (£5,000 excluding VAT) must be approved before any procurement activity, by the CSU through use of the PID.

11.4 All procurements regardless of value must have an approved Purchase Order in place before commencement of work.

11.5 The CSU shall advise the Procuring Officer on the appropriate route to market which may include the use of Frameworks or a Corporate Contract prior to the procurement process beginning.

11.6 When the Corporate Contract is a Framework, the Procuring Officer must comply with Rule 19 after consulting with a relevant Commercial Specialist on the suitability of the Framework intended for use.

RULE 12. *Consideration of Lots*

12.1 Before commencing a procurement process the Council must consider whether the goods, works or services could reasonably be supplied under more than one Contract to benefit Small to Medium sized Enterprises (SMEs) and reduce risk and if those Contracts could appropriately be awarded by reference to lots.

12.2 The Act makes provision in relation to lots at Section 18 (Duty to consider lots), Section 20 (Competitive tendering procedures) and Section 23 (Award criteria).

12.3 The Procuring Officer must provide reasons within the Procurement Initiation Document (PID) for not splitting a procurement into lots for all contracts other than light touch contracts, the reasons must also be provided in the Tender Notice.

REGULATED BELOW THRESHOLD CONTRACTS

RULE 13. *Regulated Below Threshold Contract Requirements*

(over £30,000 including VAT/ £25,000 excluding VAT but below Threshold).

General

13.1 A Regulated Below Threshold Contract is a Contract which does not meet the relevant Procurement Threshold as defined by the Procurement Act.

13.2 The Council must conduct procurements for Regulated Below Threshold Contracts in accordance with Part 6 of the Procurement Act. The duties to have regard to National Procurement Policy Statements and the duty not to discriminate against a treaty supplier will also apply to Regulated Below Threshold Procurements.

Suitability Assessment

13.3 Where the Council invites the submission of quotations in relation to the award of a Regulated Below Threshold Contract, the Council must ensure that the assessment of the suppliers' suitability to perform the Contract doesn't restrict their ability to submit a quotation. A separate suitability stage before the submission of bids cannot be used to reduce the number of suppliers invited to bid, but this does not prevent the council from asking for this information in a bid and then assessing supplier suitability at award stage.

13.4 There is an exception to Rule 13.3 (above) detailed at section 85 of the Procurement Act to the rule prohibiting a separate suitability stage in relation to a below-threshold works contract if the contract:

13.4.1 has an estimated value of not less than £207,720 including VAT (£173,100 excluding VAT). This is the same as the thresholds for goods and services. This exception is because the works threshold is much higher, and it is appropriate that contracting authorities carrying out procurements for higher value below-threshold works contracts that are still above the goods and services thresholds, can include a separate suitability stage before the award stage, if desired or;

13.4.2 is awarded in accordance with a Framework.

13.5 Based on criteria laid down by the Executive, the Chief Finance Officer will be responsible for evaluating the financial status of Tenderers and suppliers. The Chief Finance Officer is responsible for setting the criteria for evaluating the financial status of Tenderers and Suppliers which Officers will use.

Notices

13.6 The Council must publish a Regulated Below Threshold Tender Notice on the Central Digital Platform if advertising for the purpose of inviting Tenders for Below Threshold Contracts where the Estimated Value of the Contract is no less than £30,000 including VAT (£25,000 excluding VAT).

13.7 The requirement set out in Rule 13.6 (above) does not apply where the Council invites Quotes or Tenders from a closed group of pre-selected suppliers, i.e. via a Framework or from one or more targeted suppliers provided it does not advertise the procurement in any other way.

13.8 The Below Threshold Tender Notice must be published on the Central Digital Platform before being published elsewhere via the Councils Electronic Tendering System.

13.9 Section 87(3) provides that as soon as reasonably practicable after entering into a notifiable below-threshold contract, a Contract Details Notice must be published on the Central Digital Platform via the Councils Electronic Tendering System. This applies to all notifiable below-threshold contracts, and not just those which require the publication of a below-threshold tender notice.

13.10 If a contracts estimated value is below £30,000 including VAT (£25,000 excluding VAT), there is no obligation to publish any notices on the Central Digital Platform.

PUBLIC CONTRACTS

RULE 14. *Competitive Tendering Procedures*

14.1 The Council may wish to engage with suppliers prior to commencing any Competitive Tendering Procedure in accordance with Rule 9.

14.2 All Public Contracts, including Concession Contracts, Light Touch Contracts and Utilities Contracts the value of which is above a Relevant Procurement Threshold must be procured by a Competitive Tendering Procedure using either:

a) Open Procedure; or

b) Competitive Flexible Procedure.

as described in more detail in Section 20 of the Procurement Act.

14.3 The Council is not required to use the above mentioned Competitive Tendering Procedures for a Public Contract as set out below:

a) *Direct award* – where justified under Sections 41 or 43 of the Procurement Act; or

b) *Call Off Contract* - when awarding a Public Contract under a Framework as set out in Section 45 of the Procurement Act.

c) *Provider Selection Regime* – where the applicable procurement must be carried out under the Provider Selection Regime.

RULE 15. *Conditions of Participation*

15.1 The Council may set conditions of participation to perform the Contract under a Competitive Tendering Procedure, in accordance with Section 22 of the Procurement Act which relate to:

a) legal and financial capacity; or

b) technical ability to perform the Public Contract

15.2 Based on criteria laid down by the Executive, the Chief Finance Officer will be responsible for evaluating the financial status of Tenderers and suppliers. The Chief Finance Officer is responsible for setting the criteria for evaluating the financial status of Tenderers and Suppliers which Officers will use.

15.3 Conditions of participation must be a proportionate means of ensuring the relevant capacity or ability, having regard to the nature, complexity and cost of the Public Contract.

15.4 A supplier must meet the conditions of participation in order to be awarded the Public Contract.

15.5 Further details on the rules relating to conditions of participation are set out in Section 22 of the Procurement Act.

RULE 16. *Award Criteria*

16.1 In the case of a procurement process with an Estimated Value of £30,000 including VAT (£25,000 excluding VAT) or more the process for identifying the most advantageous Tender, including selection and award criteria, must be agreed in consultation with the appropriate Commercial Specialist and included in the Request for Quotation/Invitation to Tender and a copy retained on file.

16.2 The Procuring Officer must notify all Tenderers of the award methodology and evaluation criteria being used in the case of the Contract in question. If weightings are to be applied to the award criteria, then the Procuring Officer must ensure that these are also incorporated into the Request for Quotation/Invitation to Tender.

Procurement Act

16.3 A Public Contract may be awarded to a supplier that submits the most advantageous tender in a competitive tendering process which will be considered from the Council's point of view, which:

a) satisfies its requirements; and

b) best satisfies the award criteria.

16.4 The Council will need to consider Section 23 of the Procurement Act in relation to setting award criteria for each competitive tendering process.

16.5 Award criteria for a Competitive Flexible Procedure may be refined in accordance with Section 24 of the Procurement Act and the Council must modify and republish or re-provide the Tender Notice and any associated documents affected by the refinements in accordance with Section 24(4) of the Procurement Act.

Health Care Services (Provider Selection Regime) Regulations 2023

16.6 The Council is required to follow one of the following provider selection processes in awarding contracts for health care services.

a) *Direct award processes (A, B, and C)* – awarding contracts to providers when there is limited or no reason to seek to change from the existing provider; or to assess providers against one another, because:

(i) the existing provider is the only provider that can deliver the health care services direct award process A must be used,

(ii) patients have a choice of providers, and the number of providers is not restricted by the Council direct award process B must be used.

(iii) the existing provider is satisfying its existing contract, will likely satisfy the new contract to a sufficient standard, and the proposed contracting arrangements are not changing considerably direct award process C may be used.

b) *Most suitable provider process* – awarding a contract to providers without running a competitive process, because the Council can identify the most suitable provider.

c) *Competitive process* – running a competitive process to award a contract.

16.7 When procuring under these regulations, the five key criteria as stated within those regulations must all be evaluated. These are:

- Quality and innovation
- Value
- Integration, collaboration, and service sustainability
- Improving access, reducing health inequalities, and facilitating choice; and
- Social value

RULE 17. *Open Procedure*

17.1 Prior to commencing an Open Procedure, the Council may wish to engage with suppliers prior to commencing any Competitive Tendering Procedure in accordance with Rule 9.

17.2 The Open Procedure is a single stage procedure.

17.3 Under the Open Procedure, Procuring Officers must ensure access to Invitations to Tender is available to all suppliers (other than those who are excluded) who respond to the Tender Notice and who meet the requirements stated in the tender documents. Where the opportunity has been advertised via the electronic tendering system the Invitation to Tenders and all supporting documents must be made available in the system for all interested parties to access subject to confidentiality agreement where applicable.

RULE 18. *Competitive Flexible Procedure*

18.1 Prior to commencing a Competitive Flexible Procedure, the Council may wish to engage with suppliers prior to commencing any Competitive Tendering Procedure in accordance with Rule 9.

18.2 The Competitive Flexible Procedure is any other Competitive Tendering Procedure, i.e. multi-staged process that the Council considers appropriate for the purpose of awarding a Public Contract.

18.3 The Council is afforded flexibility as to how to design a Competitive Flexible Procedure but details on how the procedure will be carried out must be set out in the Tender Notice and tender documents. However, when using the Competitive Flexible Procedure, the Council must consider the procurement objectives, such as those relating to time limits and transparency.

18.4 The Competitive Flexible Procedure may allow the Council to reserve the Public Contract to supported employment providers and public service mutual in certain circumstances. See Sections 32 – 33 Procurement Act.

18.5 Before allowing a supplier to participate in a Competitive Flexible Procedure the Council must determine whether the supplier is excluded or excludable in accordance with Section 27 of the Procurement Act. Where an excluded or excludable supplier is identified there must be consultation with CSU before excluding.

RULE 19. *Frameworks*

19.1 Frameworks can be established either under the Open Procedure or the Competitive Flexible Procedure.

19.2 Frameworks are governed by Chapter 4 of the Procurement Act.

19.3 Frameworks must not be awarded for more than four years unless:

a) It is a utilities Framework;

b) It is an Open Framework (see below);

c) It is a Light Touch Framework;

d) It is considered that due to the nature of the goods, services or works to be supplied that a longer term is required.

The justifications for awarding for more than four years in any of the above scenarios must be detailed and approved within the Procurement Initiation Document, authorisation must also be sought from the Chief Finance Officer

19.4 Call Off Contracts may be awarded following a competitive selection process in accordance with Section 45(3) of the Procurement Act

19.5 Alternatively, Call Off Contracts may be awarded without competition, with prior approval from Commercial Specialist, (in accordance with Section 45(4)) of the Procurement Act to suppliers:

a) in circumstances where only one supplier is party to the Framework; or

b) where the Framework sets out:

(i) the core terms of the public contract; and

(ii) an objective mechanism for supplier selection.

19.6 Call Off Contracts are to be awarded in accordance with the terms of the Framework and are not subject to the Competitive Tendering Procedures.

<u>Open Frameworks</u>

19.7 An Open Framework is a scheme of Frameworks that provides for the award of successive Frameworks on substantially the same terms.

19.8 Open Frameworks must provide:

a) for the re-opening of a Framework at least once during—

(i) the period of three years beginning with the day of the award of the first framework in the scheme, and

(ii) each period of five years beginning with the day of the award of the second framework in the scheme;

b) for the expiry of one framework on the award of the next;

c) for the final framework to expire at the end of the period of eight years beginning with the day on which the first framework under the scheme is awarded.

19.9 The rules governing Frameworks are set out in Section 45-49 of the Procurement Act.

19.10 Each Call Off Contract awarded under a Framework must be included on the Contracts Register within 30 days of award as per Rule 36.

RULE 20. *Dynamic Markets*

20.1 The Council may wish to establish arrangements (Dynamic Markets) for the purpose of awarding Public Contracts by reference to suppliers' participation in those arrangements which must remain open for new suppliers to join at any time.

20.2 The Open Procedure or direct award route cannot be used to award a Public Contract under a Dynamic Market

20.3 Dynamic Markets are not permitted for below threshold calls offs.

20.4 Procuring Officers must only establish Dynamic Markets with the prior written approval of a Senior Commercial Specialist and the Director of Corporate Resources and in accordance with the requirements of the Procurement Act and these Rules where appropriate.

20.5 Sections 34 – 40 of the Procurement Act sets out the rules relevant to Dynamic Markets.

RULE 21. *Direct Awards*

21.1 In limited circumstances, the Council may directly award a Public Contract to a supplier without conducting a Competitive Tendering Procedure or compliant Framework call off as more particularly described in Sections 41 – 44 of the Procurement Act and set out in Rule 21.4. This is classed as permitted Direct Awards.

21.2 If a Direct Award justification applies, the Council may award a Public Contract directly to a supplier that is not an excluded supplier. The Council may award a Contract to a supplier that is an excluded supplier if the Council considers that there is an overriding public interest in awarding the contract to that supplier.

21.3 When making a Direct Award, the Council may carry out a selection process or take other preliminary steps as it considers appropriate for the purpose of awarding a Direct Award Contract.

21.4 To be able to award a contract as a Direct Award the following conditions must be met:

a) **Direct award to protect life** - the Minister of the Crown must consider it necessary in order to protect human, animal or plant life or health, or to protect public order or safety.

b) **Switching to direct award** – the Council can switch to awarding directly to a supplier that is not an excluded supplier if we have invited suppliers to submit tenders or request to participate in a competitive tendering procedure, and we have not received any suitable tenders or requests in response (although NB the Council must consider whether the supplier submitted an unsuitable tender or request); and considers that award under section 19 is not possible in the circumstances. A tender or request is not suitable if the Council considers that it would be disregarded in an assessment of tenders under section 19(3)(a) or (c); or it does not satisfy the Councils requirements or the award criteria when assessed by reference to the assessment methodology; or there is evidence of corruption or collusion between the suppliers or between suppliers and contracting authorities; or it materially breaches a procedural requirement in the tender notice (including in relation to the tender). A breach is material if ignoring it would put the tender at an unfair advantage.

c) **Production of a prototype, or supply of other novel goods or services** - for the purpose of testing the suitability of the goods or services, researching the viability of

producing or supplying the goods or services at scale and developing them for that purpose, or other research, experiment, study or development.

d) **Single suppliers** - due to a particular supplier having intellectual property rights or other exclusive rights, only that supplier can supply the goods, services or works required, and there are no reasonable alternatives to those goods, services or works. Due to an absence of competition for technical reasons, only a particular supplier can supply the goods, services or works required, and there are no reasonable alternatives to those goods, services or works.

e) **Additional or repeat goods, services or works** - a change in supplier would result in the Council receiving goods, services or works that are different from, or incompatible with, the existing goods, services or works, and the difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance. The existing goods, services or works were supplied under a public contract that was awarded in accordance with a competitive tendering procedure within the period of five years ending with the day on which the transparency notice is published, and the tender notice or any tender document in respect of that earlier contract set out—

(i) the Councils intention to carry out a subsequent procurement of similar goods, services or works in reliance on this direct award justification, and any other information specified in regulations under section 95.

f) **Commodities** - the public contract concerns goods purchased on a commodity market.

g) **Advantageous terms on insolvency** - the award of the public contract to a particular supplier will ensure terms particularly advantageous to the Council due to the fact that a supplier, whether or not the one to whom the contract is to be awarded, is undergoing insolvency proceedings.

h) **Urgency** – Where the goods, services or works to be supplied under the public contract are strictly necessary for reasons of extreme and unavoidable urgency, and as a result the public contract cannot be awarded on the basis of a competitive tendering procedure.

Urgency is unavoidable if it is not attributable to any act or omission of the Council and could not have been foreseen by the Council.

i) **User choice contracts** - that are of a kind specified in regulations under section 9 (light touch contracts), that are supplied for the benefit of a particular individual. The individual to whom the services are to be supplied or their carer has expressed a preference as to who should supply the services, or the nature of the services to be supplied is such that only one supplier is capable of providing them, and the Council considers that it is not in the best interests of the individual to award the contract under section 19.

21.5 Prior to directly awarding a Public Contract to a supplier the necessary approvals need to be sought by completing a Direct Award request form which will be approved by Appropriate Chief Officer in consultation with Senior Commercial Specialist and for Directs Awards under a) to h) approval must also be sought from the Corporate Procurement Board, with the exception of Directs Awards under b) switching, where the award is for a light touch contract.

21.6 Prior to directly awarding a Public Contract to a supplier a Transparency Notice must be published to inform the market of the proposed direct award and provide transparency on the rationale for the direct award (does not apply to user choice)

21.7 Where the value of the procurement is estimated below threshold but meets the criteria of 21.4 (a-i) a Direct Award request form may also be submitted, which will be approved by Appropriate Chief Officer in consultation with Senior Commercial Specialist. Where the criteria of Rule 21.4(a-i) have not been met, then the direct award of a below Threshold Contract may be considered for approval under Rule 57.

RULE 22. *Tender Notices and Tender Documents*

Tender Notice

22.1 The Council must publish a Tender Notice as follows:

22.1.1 *Open Procedure* – inviting suppliers to submit a tender; or

22.1.2 *Competitive Flexible Procedure:*

(i) inviting suppliers to submit a request to participate in the procedure; or

(ii) where no such invitation is made, inviting suppliers to submit their first, or only, tender as part of the procedure.

22.2 The Tender Notice must comply with the requirements of Section 21 of the Procurement Act.

Tender Documents

22.3 The Council is required to provide any tender documents in accordance with the Tender Notice.

22.4 Suppliers are not to be invited to submit Tenders as part of a Competitive Tendering Procedure unless the Tender Notice or the Tender Documents contain:

a) information sufficient to allow suppliers to prepare a Tender; and

b) details of the goods, services or works required.

22.5 In setting out its requirements, the Council must be satisfied that they are:

a) sufficiently clear and specific; and

b) do not breach the rules concerning technical specifications (set out in Section 56 of the Procurement Act).

GENERAL

RULE 23. *Electronic Tendering System*

23.1 All procurement processes equal to or greater than £30,000 including VAT (£25,000 excluding VAT) shall be handled via an Electronic Tendering System where possible. Only in exceptional cases may a procurement process be undertaken not using an Electronic Tendering System. Paper Tenders must be submitted to, addressed to and opened by the Chief Executive (or an officer authorised by the Chief Executive to undertake this task). Where the Estimated value is below £30,000 including VAT (£25,000 excluding VAT), the quotations may be returned directly to the Procuring Officer.

23.2 Where an Electronic Tendering System is not available and paper Tenders are to be received by the Chief Executive, the Procuring Officer must send to the Chief Executive a note of the subject and the closing date and time and (where appropriate) a list of those invited to Tender together with the Estimated Value before the closing date for receipt of Tenders.

RULE 24. *Central Digital Platform*

24.1 Under the Procurement Act the Council will be required to publish a variety of notices on the Central Digital Platform. This replaces the requirements under the Public Contracts Regulations 2015 to publish on the Find a Tender Service and Contracts Finder platforms. The Central Digital Platform should be accessible via the Councils Electronic Tendering System.

RULE 25. *Time Limits*

25.1 When setting time limits for Competitive Tendering Procedures, the Council must, where relevant, have regard to:

a) the nature and complexity of the contract being awarded;

b) the need for site visits, physical inspections and other practical steps;

c) the need for sub-contracting;

d) the nature and complexity of any modification of the tender notice or

e) any associated tender documents;

f) the importance of avoiding unnecessary delay.

25.2 For below threshold procurements there is no set time limit, but all of the same considerations listed under 25.1 should be taken into account.

25.3 Section 54 of the Procurement Act sets out the minimum time limits to be set in different circumstances.

RULE 26. *Invitations to Tender*

26.1 Every Invitation to Tender must specify the latest day and hour and the place appointed for the receipt of Tenders and must state the effect of Rule 27.

26.2 Procuring Officers must give all Tenderers the same information about the procurement process and in particular information relating to the Tender process, specification, award criteria, award methodology and applicable terms and conditions of the Contract or Framework.

26.3 Procuring Officers must also give all Tenderers the same information relating to questions, answers and clarifications raised during the procurement process unless considered to be confidential or commercially sensitive.

RULE 27. *Receipt and Opening of Tenders*

27.1 Rules 27.2 – 27.6 apply only to Tenders where the Estimated Value is equal to or greater than the relevant Procurement Threshold and the Tender is not an E-Tender. Rule 27.7 applies to E-Tenders only.

27.2 On receipt of non-electronic Tenders, envelopes containing the Tenders must be date and time stamped by the Chief Executive and shall remain in his or her custody until they are opened.

27.3 The Chief Executive must keep a record of all non-electronic Tenders received.

27.4 Tenders must be opened at one time in the presence of not less than two Officers one of whom is not involved in the procurement process and who is designated by the Chief Executive. Each Officer must initial each Tender once opened which must also be date stamped.

27.5 Particulars of all Tenders opened must be entered by the Chief Executive upon the record which must be signed by the Officers present at the opening, together with a note of all Irregular Tenders.

27.6 The Chief Executive must forthwith send a copy of the record to the appropriate Procuring Officer (with the Tenders) and must retain a copy him or her self.

27.7 E-Tenders must be opened in accordance with the requirements of the Electronic Tendering System used.

RULE 28. *Errors or Discrepancies in Tenders*

28.1 Tenderers are not allowed to alter their Tenders after opening save in accordance with this Rule or Rule 31.

28.2 Where it is suspected that there has been an error in a Tender and following the closing date for receipt of Tenders but before acceptance of any Tender discussions may take place with Tenderers in order to:

a) ensure that the Tender is constructed correctly; or

b) ensure that the Tenderer has fully understood the specification; or

c) seek clarification from Tenderers of cost, quality and performance indicators.

28.3 Advice should be sought from the Commissioning Support Unit about whether to seek clarification from Tenderers before any discussions take place with Tenderers in accordance with this Rule. Such clarification will be considered on a case by case basis.

28.4 A written note of the discussions must be made to record the suspected error, date, time, detail of the discussion and any agreement reached.

RULE 29. *Specifications*

29.1 Specifications must set out a clear and comprehensive description of the requirements for a procurement process with regards to the goods, services or works required.

29.2 Public Contracts falling within the scope of the Procurement Act will need to adhere to Section 56 of the Procurement Act which sets out the rules concerning Specifications.

29.3 The Specification should not refer to design, a particular licensing model or a description of characteristics in circumstances where they could appropriately refer to performance or technical functions.

29.4 References to UK standards should not be made unless:

a) The standard adopts internationally recognised equivalents; or

b) There is no internationally recognised standard.

29.5 Unless the Council considers it necessary to make its requirements understood, references should not be made to a particular:

a) Trademark, trade name, patent, design or type;

b) Place of origin;

c) Producer or supplier.

RULE 30. *Discussions and Post Tender Negotiations*

30.1 Advice should be sought from the CSU before any discussions take place with Tenderers in accordance with post tender negotiations.

RULE 31. *Supplier Exclusions and Debarment*

31.1 There may be a number of different circumstances where suppliers are not permitted to participate in a Covered Procurement, to have their Tender considered or be awarded a Public Contract.

31.2 “Excluded” and “excludable” suppliers are defined in Section 57 and 58 of the Procurement Act.

31.3 An “excluded supplier” is a supplier (or an associated person) to which a mandatory exclusion ground applies; and

a) the circumstances giving rise to the application of that exclusion ground are continuing or likely to occur again; or

b) the supplier (or associated person) is on the debarment list by virtue of a mandatory exclusion ground.

31.4 An “excludable supplier” is a supplier (or associated person) to which a discretionary exclusion ground applies; and

a) the circumstances giving rise to the application of that exclusion ground are continuing or likely to occur again; or

b) the supplier (or associated person) is on the debarment list by virtue of a discretionary exclusion ground.

31.5 The mandatory and discretionary exclusion grounds are contained in Schedule 6 and 7 to the Procurement Act.

31.6 The way in which the exclusion grounds must be considered and applied in different procurement procedures is set out in Sections 26 and 27 of the Procurement Act. Sections 28 and 29 of the Procurement Act also set out excluding suppliers with references to a connected person, associated person or subcontractors and on a discretionary basis for national security reasons.

31.7 Where a supplier is a “excluded” or “excludable” supplier by virtue of an “associated person” being an “excluded” or “excludable” supplier, the Council must, before disregarding a Tender:

i. Notify the supplier of its intention to disregard; and

ii. Give the supplier reasonable opportunity to replace the "associated person".

31.8 "Associated person" is defined in Section 26(4) of the Procurement Act.

31.9 Prior to making a decision to exclude a supplier advice should be sought from a Commercial Specialist and if allowing a bid from a supplier under discretionary exclusion approval must be sought from the Assistant Director of Law and Governance and the Director of Corporate Resources.

31.10 Where the Council excludes a supplier (or associated person) it will need to act in accordance with Sections 58 & 59 of the Procurement Act.

Debarment

31.11 Suppliers may be entered onto a published debarment list as a result of past behaviour or circumstances that may mean it is not or may not be able to participate in Covered Procurement or be awarded Public Contracts. A minister of the crown decides if a supplier is placed on the debarment list.

31.12 The Council must check the debarment list in each procurement and where a supplier is on the debarment list in relation to a mandatory exclusion ground, the Council must not allow the supplier to bid in a Competitive Flexible Procedure or be awarded a Public Contract in any Competitive Tendering Procedure or by way of a direct award and must disregard any Tender or Quotation submitted by them save for the following exceptions:

a) where a supplier is on the debarment list on national security grounds for a particular type of contract, as the debarment does not affect their eligibility to bid for other types of contracts; or

b) procurements by direct award where there is an overriding public interest in awarding the contract to that supplier. This includes cases where there is an extreme and unavoidable urgency.

31.13 We should not continue to work with a supplier who is on the debarment list, so we must check if the supplier is on the debarment list not only before tendering or during contract award but also as part of contract management. Follow guidance for early termination Rule 51.

31.14 The debarment provisions are set out in Sections 59 – 66 of the Procurement Act.

RULE 32. *Modifications to Competitive Tendering Procedures*

32.1 Section 31 of the Procurement Act permits making changes to the terms of a Covered Procurement as defined in Section 31(7).

32.2 Where a modification to a Competitive Tendering Procedure is made, the Council is required to revise and republish or re-provide the Tender Notice and any associated tender documents affected by the modifications or time limit revisions in accordance with Section 31(5) of the Procurement Act.

32.3 Advice must be sought from a [Commercial Specialist] prior to seeking to modify a procurement in accordance with Section 31 of the Procurement Act.

AWARD OF CONTRACT

RULE 33. *Acceptance of Tenders*

33.1 A Tender can only be accepted in accordance with the initial award methodology and evaluation criteria as set out in Rule 15.

33.2 Any evaluation sheets must be maintained on file in accordance with Rule 51.

33.3 Any offer or bid with an Estimated Value of below £30,000 including VAT (£25,000 excluding VAT) (where a Request for Quotation or an Invitation to Tender is not used) may only be accepted with the prior written approval of the appropriate Commercial Specialist.

33.4 If the Quotation/Tender to be accepted exceeds the budget which was agreed in accordance with Rule 5.9 the Procuring Officer must ensure that sufficient funds are available and approved by the appropriate budget holder, Appropriate Chief Officer or Chief Executive prior to accepting the Quotation/Tender.

33.5 If the Quotation/Tender to be accepted exceeds the threshold of the procurement process used, meaning that a different procurement process should have applied the Procuring Officer must seek approval from the Commercial Specialist and Corporate Procurement Board if the threshold that has been exceeded is the Procurement Threshold, prior to accepting and proceeding.

33.6 Where the Procuring Officer/Council considers a Quotation/Tender submitted to be abnormally low the Council shall require the Tenderer to explain in writing the price or costs proposed and may only reject the Tender where the explanation is unsatisfactory. Where a Public Contract falling within the scope of the Procurement Act is concerned, the Council shall consider an abnormally low Tender in accordance with Section 19 of the Procurement Act.

33.7 Where there is only one Quotation/Tender submitted, the Procuring Officer must be able to satisfy themselves that value for money is being achieved, and all risks have been considered before awarding the contract.

33.8 Subject to Rule 1, the Appropriate Chief Officer shall have the authority to accept a Tender but in any particular circumstance may decline to give approval and refer the decision to the Chief Executive to determine.

RULE 34. *Contract Award Notice*

34.1 The Procuring Officer must notify the successful Tenderer of the acceptance of their Quotation or Tender and for all procurement processes with an Estimated Value of £6,000 including VAT (£5,000 excluding VAT) or more this notification must be in writing.

34.2 In the case where the Estimated Value is £30,000 including VAT (£25,000 excluding VAT) or more the Procuring Officer must notify in writing all Tenderers who submitted a Quotation or Tender of the decision as soon as possible after the decision has been made.

34.3 Where a Contract with an Estimated Value of £30,000 including VAT (£25,000 excluding VAT) or more is awarded, the Council must publish a Contract Award Notice on the Central Digital Platform as required by the Procurement Act.

34.4 In the case where the Estimated Value is equal to or greater than the relevant Procurement Threshold the following additional Rules shall apply:

Procurement Act

Contract Award Report

34.5 Prior to notifying suppliers of the outcome of the Contract Award a Contract award Report must be completed and authorised by the Appropriate Chief Officer.

34.6 The Contract Award Report must be provided in accordance with the requirements set out in Section 98 of the Procurement Act.

Assessment Summary

34.7 Before publishing a Contract Award Notice in respect of a contract awarded under a Competitive Tendering Procedure, the Council must provide an Assessment Summary to each supplier that submitted an assessed Tender in accordance with Section 50 of the Procurement Act.

34.8 The Assessment Summary must be provided in accordance with the requirements set out in Regulation 31 of the Procurement Act.

Contract Award Notice

34.9 Prior to entering into a Contract, the Council must publish a Contract Award Notice on the Central Digital Platform as set out in Section 50 of the Procurement Act.

34.10 A Public Contract shall not be entered into before:

a) The end of the mandatory standstill period; or

b) If later, the end of another standstill period provided for in the Contract Award Notice.

34.11 The requirement to publish a Contract Award Notice does not apply to Below Threshold Contracts, Dynamic Market establishments or direct award: user choice contracts.

Standstill Period

34.12 The mandatory standstill period is the period of eight working days beginning with the day on which a Contract Award Notice is published in respect of the Contract.

34.13 A standstill period does not apply in relation to Contracts that fall within Section 51(3) of the Procurement Act which includes (but is not limited to) Contracts, however a voluntary standstill should be used where possible:

a) awarded under Section 41 by reference to paragraph 13 of Schedule 5 to the Procurement Act (direct award: extreme and unavoidable urgency);

b) awarded under Section 41 by reference to Section 42 of the Procurement Act (direct award to protect life etc);

c) awarded in accordance with a Framework;

d) awarded by reference to a Dynamic Market;

e) a Light Touch Contract.

34.14 The Procuring Officer must notify the appropriate Commercial Specialist in writing of any Contract (including Framework Call Off Contracts) that has been awarded with an Estimated Value of £6,000 including VAT (£5,000 excluding VAT) or more.

Provider Selection Regime

34.15 In the case of procurements falling under the Provider Selection Regime the relevant notification to awards must be adhered to dependent on the route to market deemed most appropriate in accordance with the Provider Selection Regime.

RULE 35. *Procurement Termination Notice*

35.1 Where the Council does not award a Public Contract after the contract award decision has been made before the Public Contract is entered into, a Procurement Termination Notice would need to be published in the Central Digital Platform.

35.2 Section 55 of the Procurement Act sets out when the Procurement Termination Notice must be published and Regulation 37 sets out what information must be included within it.

RULE 36. *Contract Details Notice*

36.1 Following publication of a Contract Award Notice and observation of a standstill period (as applicable) a Contract Details Notice must be published in the Central Digital Platform to inform the market that the Public Contract has been entered into.

36.2 A Contract Details Notice must be published within 30 days of the Public Contract being entered into, except in relation to Light Touch Contracts where the timeframe is 120 days under Section 53 of the Procurement Act.

36.3 Section 87 of the Procurement Act requires publication of a Contract Details Notice as soon as reasonably practicable after entering into a notifiable Below Threshold Contract.

36.4 The obligation to publish a Contracts Details Notice does not apply to direct award: user choice contracts – see Schedule 5 paragraph 15 of the Procurement Act.

36.5 Regulations 32-35 set out the information to be included in a Contract Details Notice.

36.6 The Council must act in accordance with Section 52 of the Procurement Act in relation to key performance indicators (where applicable), as set out in Rule 38.

MANAGEMENT OF CONTRACTS

RULE 37. *Implied Contract Terms and Payments*

37.1 Public Contracts falling within the scope of the Procurement Act have various implied terms as set out in Section 67, 68, 78 and 79 of the Procurement Act.

Section	Implied Term
67	The Council must accept and process for payment any electronic invoice issued to the Council for payment under the contract.

Section	Implied Term
	The Council requires the following to be able to meet this implied term, so Contract Managers need to work with Suppliers to ensure: (a) supplier invoice is submitted in the required electronic form, and (b) supplier invoice is not disputed by the Council.
68	Any sum due to be paid under the public contract by the Council must be paid before the end of the period of 30 days beginning with— (a) the day on which an invoice is received by the Council in respect of the sum, or (b) if later, the day on which the payment falls due in accordance with the invoice. The term in subsection does not apply if the Council— (a) considers the invoice invalid, or (b) disputes the invoice. On receiving an invoice from a payee, the Council must notify the payee without undue delay if— (a) it considers the invoice invalid, or (b) it disputes the invoice.
78	If a termination ground applies, be terminated by the Council in accordance with this section. Each of the following circumstances is a termination ground— (a) the Council considers that the contract was awarded or modified in material breach of this Act or regulations made under it; (b) a supplier has, since the award of the contract, become an excluded supplier or excludable supplier (including by reference to an associated person); (c) a supplier (other than an associated person) to which the supplier is sub-contracting the performance of all or part of the public contract is an excluded or excludable supplier. Before terminating a contract the Council must (a) notify the supplier of its intention to terminate, (b) specify which termination ground applies and why the Council has decided to terminate the contract, (c) give the supplier reasonable opportunity to make representations about— (i) whether a termination ground applies, and

Section	Implied Term
	(ii) the Council's decision to terminate.
79	If terminating a contract in accordance with this section, based on the discretionary or mandatory exclusion grounds relating to national security. Relevant contracting authorities are defined in section 79(3) as any Council other than: (a). a Minister of the Crown or a government department. (b). the Corporate Officer of the House of Commons; or (c). the Corporate Officer of the House of Lords.

37.2 The Council will also need to publish information about payments under Public Contracts in accordance with Section 69 and 70 of the Procurement Act this is completed by the Finance Department.

RULE 38. *Assessment of Contract Performance*

38.1 Where the Council has set key performance indicators (KPI's) in accordance with Section 52(1) of the Procurement Act, the Contract Manager must in accordance with Section 71 of the Procurement Act it must at least once in every 12-month period during the life-cycle of the Contract and on termination of the Contract:

a) assess performance against the KPI's; and

b) publish information specified in Regulations under Section 95 of the Procurement Act in relation to that assessment, known as a Contract Performance Notice; and

c) record information relating to particular breaches or failure to perform a Contract (except where the breach results in a Contract being terminated in full).

38.2 Within 30 days from the day on which Section 71(5) of the Procurement Act applies in relation to a particular breach or failure to perform, the Council must publish information in accordance with Section 71(5) of the Procurement Act.

38.3 The Council encourages the inclusion of KPIs in light touch contracts where appropriate, to support effective contract management and service delivery. However, there is no statutory requirement under the Procurement Act 2023 for these KPIs to be published.

RULE 39. *Sub-Contracting*

39.1 The Council may direct a supplier to enter into a legally binding sub-contracting arrangement with a sub-contractor in accordance with Section 72 of the Procurement Act.

39.2 The Council must comply with Section 73 of the Procurement Act which contains implied payment terms that are set out in Section 68 of the Procurement Act. Unless the Council disputes an invoice or considers it to be invalid, they must be paid within 30 days (i) on the

day which the invoice is received; or (ii) if later, the day on which the invoices fall due. Any contractual terms which seeks to restrict or override this, will not have effect.

RULE 40. *Internal Annual Reporting*

40.1 The Director of Corporate Resources, in consultation with the Assistant Director of Law and Governance, shall at least once in each financial year submit a report to the Corporate Governance Committee in relation to:

a) the operation of these Rules and proposed revisions to these Rules and/or changes required to accommodate the requirements of UK and EU Retained procurement law as may be necessary from time to time; and

b) providing an annual summary of the number of Contracts awarded using the Provider Selection Regime, in the year to which the summary relates where Direct Award Process A, Direct Award Process B, Direct Award Process C, the Most Suitable Provider Process or the Competitive Process was followed.

Contracts Register

40.2 All Contracts awarded, regardless of value, must be entered onto the Contracts Register within 30 days of the date of the award.

RULE 41. *Prevention of Corruption/Conflict of Interest*

41.1 The Employee Code of Conduct (Part 5b of the Constitution) applies to any procurement process.

Prevention of Corruption

41.2 The Contracts should have a suitable clause included which ensures the Council may terminate and recover losses from our Contract if the Supplier commits an offence under the Bribery Act 2010 or commits fraud.

41.3 The suppliers must comply with the Supplier Code of Conduct and any relevant policies.

41.4 The Council may exclude a supplier from participation in a procurement procedure where they have established that supplier is an excluded or excludable supplier as defined in Section 57 of the Procurement Act and Rule 31.

Conflicts of Interest

41.5 Officers are referred to the Employee Code of Conduct regarding conflicts of interest.

41.6 Additionally, the Council is under a duty to identify and mitigate conflicts of interest arising where a procurement falls within the scope of the Procurement Act as set out in Sections 81-83 of the Procurement Act.

41.7 The Council must prepare (and keep under review) a conflicts assessment before publishing a Tender Notice, Transparency Notice or Dynamic Market Notice in relation the procurement/establishment and this must be referenced in those notices (as applicable).

41.8 If the Council is aware of circumstances that it considers are likely to cause a reasonable person to believe there to be a conflict or potential conflict of interest, a conflicts assessment

must also include details of any steps the Council has taken or will take to demonstrate that no such conflict or potential conflicts exists.

41.9 The Council must in accordance with Section 83(5) of the Procurement Act:

a) keep any conflicts assessment under review;

b) revise the assessment as necessary; and

c) when publishing any relevant notice, confirm that a conflicts assessment has been prepared and revised in accordance with Section 83 of the Procurement Act.

41.10 Section 83(5) of the Procurement Act under Rule 42.08 does not apply where:

a) The Council has given notice of a decision not to award a Contract under Section 55 of the Procurement Act;

b) A Contract Termination Notice is published in relation to the procurement; or

c) A Dynamic Market Notice is published in relation to the market ceasing to operate.

RULE 42. *Counter Terrorism and Security Act 2015*

42.1 Where appropriate, the Contract shall make appropriate provision for information sharing between the Contractor and the Council in line with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018, and/or such other measures as are appropriate, such as staff training, to support the Council in meeting its duty under Section 26 of the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism

RULE 43. *Form of Contract*

43.1 A Contract shall be formed:

a) by completion of a formal contract incorporating the Invitation to Tender or Request for Quotation, the Tender and the outcome of any subsequent negotiations and/or discussions; or

b) by placing an order in accordance with Rule 47.

43.2 In determining the terms and conditions of Contract, the Procuring Officer must ensure that appropriate terms and conditions are incorporated in consultation with the Assistant Director of Law and Governance.

43.3 All Contracts must be in writing and where appropriate the Procuring Officer shall:

a) ensure that the Contract includes a definition of the circumstances that will be considered to constitute a default on the terms of the Contract by the supplier. The Contract must provide for notice of default to be given to the supplier and for any resulting losses to be recovered from the supplier if the default is not rectified.

b) decide whether it is necessary to require suppliers to provide a Performance Bond with a third party or a Parent Company Guarantee. The need for this will depend on an assessment of the risk associated with the contract or the supplier.

c) ensure that the contract provides for the supplier to have an insurance policy, which can be inspected during the contract period. The Chief Finance Officer shall be consulted on the insurance requirements.

d) consult the Chief Finance Officer on the appropriate VAT requirements.

43.4 The Procuring Officer shall comply with the UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018 requirements and shall include in the Contract appropriate provisions.

43.5 The Procuring Officer shall ensure the Contract includes a right to audit clause which requires the Contractor to keep full, true and accurate books of account and to preserve and permit the Council access to such records for at least such periods as the Council is itself subject audit or investigation in respect of the Contract.

43.6 The Procuring Officer shall ensure the Supplier Code of Conduct and all other relevant Council policies are included in the Contract.

43.7 Every contract must be signed (by electronic means or otherwise) by the Appropriate Chief Officer or an Officer designated with the appropriate financial authority as set out in the Scheme of Delegation, and in cases determined by the Assistant Director of Law and Governance or where otherwise required in law, shall be under the Common Seal of the County Council in a form prepared or approved by the Assistant Director of Law and Governance.

The scheme of delegation for Contract signing is defined in the table below.

Estimated Value of the Contract (including Extensions)	Designated Officer authorised to sign the Contract
£0 - £24,999	Team Manager (Grade 12-14)
£25,000 - £175,000	Head of Service (Grade 15-17)
£175,001 - £499,999	Assistant Director (Grade 17-19)
£500,000 and above	Director (Grade 18 and above)
Contracts under Seal/by Deed (regardless of value)	Director of Relevant Department and; Assistant Director of Law and Governance

In the case of ESPO:

43.8 Framework agreements and any agreements varying them must be signed (by electronic means or otherwise) by the Appropriate Chief Officer or an Officer designated with the appropriate authority as set out in the Scheme of Delegation, and in cases determined by the Assistant Director of Law and Governance or where otherwise required in law, shall be under the Common Seal of the County Council in a form prepared or approved by the Assistant Director of Law and Governance.

43.9 Every other Contract or order must be signed (by electronic means or otherwise) by the Appropriate Chief Officer or an Officer designated with the appropriate authority as set out in the Director of ESPO's Financial Scheme of Delegation, and in cases determined by the Assistant Director of Law and Governance or where otherwise required in law, shall be under the

Common Seal of the County Council in a form prepared or approved by the Assistant Director of Law and Governance.

RULE 44. *Contract Management*

44.1 The Procuring Officer shall advise the Commissioning Support Unit who shall immediately upon completion of every procurement process;

a) In respect of contracts having a value of less than £30,000 including VAT (£25,000 excluding VAT) and where the Electronic Tendering System has not been used, enter the Contract details in the Council's Contracts Register and set up an appropriate Contract purchase Agreement.

Contracts of whatever value handled via the Electronic Tendering System the Procuring Officer shall ensure that the details of the Contract are published in the Council's Contracts Register.

44.2 All Contracts shall be managed in accordance with the Procurement Act.

44.3 The Procuring Officer or Contract Manager/authorised officer responsible for the management of the Contract shall:

a) Ensure the Contract management is carried out having regard to the procurement objectives set out in Section 12 of the Procurement Act (i) delivering value for money, (ii) maximizing public benefit (iii) sharing information so that suppliers can understand procurement policies and decisions, (iv) been seen to act with integrity.

b) Ensure suppliers are treated the same unless a difference in treatment can be justified, and even then, all reasonable steps must be taken to avoid unfair advantage or disadvantage between suppliers.

c) Obtain prior approval in accordance with Rule 45 and Rule 48 before proceeding to authorise (in writing) any modification/extension to the Contract;

d) Ensure all contract documentation including details and copies of variations and modifications is uploaded to the Councils Electronic Tendering System;

e) Ensure that a record is kept of all certificates and instructions issued under the Contract;

f) Keep documents in support of each payment showing how the payment amount has been valued and maintain a record of all such payments including any professional fees;

g) Prior to the Contract renewal notice period for a Contract, consult the relevant Commercial Specialist to review opportunities for contract modifications or amendments for favourable contract terms;

h) When terminating any Contract and in particular for breach follow the requirements set out in Rule 50

i) Resolve all contractual matters and contractual claims, and issue any final account and final certificate in accordance with the terms of the Contract, taking advice from the Assistant Director of Law and Governance.

j) Ensure Key performance Indicators (KPIs) are reviewed and monitored as set out in Rule 38.

k) Ensure Performance notices are published against the KPIs as set out in Rule 38.

RULE 45. *Contract Extensions*

45.1 A Contract may be extended before the expiry date where the Contract Extension is provided for in accordance with its original terms.

45.2 Prior to any contract extension being agreed the Procuring Officer must ensure that sufficient additional budget provision, as required, has been approved by the budget holder.

45.3 Where the original Contract terms do not provide expressly for a Contract Extension, there will be limited circumstances under a modification (see Rule 49) whereby the above Threshold Contract can still be extended in line with the Procurement Act.

45.4 In all cases, a Contract Extension Form must be completed outlining the full reasons for the request for the Contract Extension.

45.5 The approved Contract Extension Form must be retained in the Electronic Tendering System under the relevant project.

The relevant approvals required for Contract Extensions is set out below:

Type of Contract	Contract Extension Details	Approval Required
45 (a) Below Relevant Procurement Threshold	Extension allowed for within the original tender/contract	Approval needs authorisation from the Chief Officer in consultation with the Commercial Specialist. Where the value exceeds £30,000 including VAT (£25,000 excluding VAT), involvement required of the Supplier Relationship Manager to ensure value for money is attained. Not applicable to ESPO.
45 (b) Below Relevant Procurement Threshold (where the original contract and the extension do not exceed the Relevant Procurement Threshold).	Extension not allowed for in the original contract	Appropriate Chief Officer, in consultation with the Commercial Specialist and Corporate Procurement Board Not applicable to ESPO.
45 (c) Above Relevant Procurement Threshold and Convertible Contracts (where the extension takes the contract above Relevant Procurement Threshold)		Follow modification Rule 48.

RULE 46. *Orders for work, goods and services*

46.1 Orders for work, goods and services must only be placed in accordance with Instruction 8 of the Standard Financial Instructions. and No PO No Pay Policy.

STANDING LISTS

RULE 47. *Standing Lists*

47.1 Standing Lists must not be created or added to without the prior written approval of the Appropriate Chief Officer in consultation with the appropriate Commercial Specialist.

47.2 Procuring Officers must not use a Standing List where the Estimated Value of the Contracts to be awarded using the Standing List is estimated to exceed the relevant Procurement Threshold.

47.3 The Standing List must contain the names of all Persons who are approved and indicate the categories of contract and the values or amounts in respect of those categories for which those Persons are approved.

47.4 At least four weeks before a list is first compiled, the Procuring Officer must publish on a website or portal approved by the Director of Corporate Resources for the purpose of notifying the supply market a notice inviting applications by a specified date for inclusion in it.

47.5 Procuring Officers must renew all Standing Lists at intervals not exceeding four years. At least four weeks before each renewal, each Person whose name appears in the list must be notified by the Procuring Officer of the intention to review the list. If they wish to remain on the list they must re-apply for inclusion. Procuring Officers must ensure that notices inviting applications for inclusion in the list are published in the manner provided by Rule 27(d).

47.6 In cases where the use of a Standing List has been authorised the Procuring Officer must send Invitations to Tender to not less than four of the Persons from among those approved for a contract of the relevant category and amount or value. Where fewer than four Persons are approved for a contract of the relevant category and amount or value Invitations to Tender shall be sent to no fewer than three Persons. Where there are fewer than three Persons the procedure for Standing Lists must not be used unless the appropriate Commercial Specialist advises otherwise.

47.7 Standing Lists must be held within the Councils electronic tendering system and the contracts register.

47.8 The Procuring Officer in consultation with the Commercial Specialist shall determine the criteria for selecting Persons from the list.

47.9 In such circumstances as the Director of Corporate Resources shall determine, Procuring Officers shall provide such information as shall reasonably be necessary of the extent to which Standing Lists have been utilised.

CONTRACT AMENDMENTS

RULE 48. *Modifying a Contract*

48.1 Modifications to Contracts will need to be assessed on a case-by-case basis and appropriate advice should be sought from the CSU where necessary.

Contracts not falling within the Procurement Act

48.2 Any modification to a Contract, for example to deliver additional goods, services or works, including variations to the terms of payment or a variation to provide for an extension requires prior approval. The approval thresholds and required authorities are detailed in the table below. In the event of a contract Novation refer to Rule 50.

Table: 1 – Modifications to Below-Threshold Contracts not governed by the Procurement Act.

Type of Contract	**Relevant Procurement Threshold and Modification Criteria**	**Approval Required**
48(a) Goods and Services	Contract Value including the modification is below the Relevant Procurement Threshold. Value of the modification is under £100,000 excluding VAT and the modification does not take the contract above the Relevant Procurement Threshold, keeping it below threshold.	• Appropriate Chief Officer, in consultation with Commercial Specialist Not applicable to ESPO
48(b) Goods and Services	Contract Value including the modification is below the Relevant Procurement Threshold. Value of the modification is £100,000 excluding VAT or over and the modification does not take the contract above the Relevant Procurement Threshold, keeping it below threshold.	• Appropriate Chief Officer, in consultation with the Commercial Specialist, and • Corporate Procurement Board • Not applicable to ESPO
48(c) Goods and Services	Initially below the Relevant Procurement Threshold, however the proposed modification, regardless of value will result in the new contract value exceeding the Relevant Procurement Threshold, turning it into a Convertible Contract.	Where the modification of the contract exceeds the threshold, turning it into a Convertible Contract, which is governed by the Procurement Act, the process set out in Table 2 must be followed. Modifications to Contracts governed by the Procurement Act.

Type of Contract	Relevant Procurement Threshold and Modification Criteria	Approval Required
48(d) Light Touch	Contract Value including the modification is below Light Touch Contract Procurement Threshold.	• Appropriate Chief Officer, in consultation with the Commercial Specialist. • Not applicable to ESPO
48(e) Works and Concessions	Contract Value including the modification is below the Relevant Procurement Threshold. Value of the modification is 10%, or below, of the contract value and the modification does not take the contract above the Relevant Procurement Threshold, keeping it below threshold.	• Appropriate Chief Officer, in consultation with the Commercial Specialist. • Not applicable to ESPO .
48(f) Works and Concessions	Contract Value including the modification is below the Relevant Procurement Threshold. Value of the modification is more than 10% of the contract value and the modification does not take the contract above the Relevant Procurement Threshold, keeping it below threshold.	• Appropriate Chief Officer, in consultation with the Commercial Specialist, and • Corporate Procurement Board • Not applicable to ESPO

48.3 Contracts not subject to the Procurement Act may only be extended by formal written variation where the modification to the Contract will achieve Best Value and is reasonable in all the relevant circumstances.

Contracts falling within the Procurement Act

48.4 Any modification to a Public Contract must comply with Section 74 of the Procurement Act.

48.5 There are limited circumstances where the Council may modify a Public Contract or a Convertible Contract, that as a result of the modification exceeds the relevant Procurement Thresholds, under the Procurement Act.

48.6 The table below outlines the approvals required for such modifications to a Public Contract or a Convertible Contract.

Table 2: Extensions and Modifications to Contracts governed by the Procurement Act

Modification Type	Conditions for Modifications	Approval Required
48(g) Schedule 8-Permitted	The modification is permitted if it is provided for in the	• Appropriate Chief Officer, in consultation with the Commercial Specialist.

Modification Type	Conditions for Modifications	Approval Required
Modifications- 74(1)(a) of the Procurement Act.	Contract and is within allocated budget.	• In the case of ESPO-approval by Contracts Panel.
48(h) Schedule 8-Permitted Modifications- 74(1)(a) of the Procurement Act.	The modification is permitted as set out in Schedule 8 of the Procurement Act. This includes modifications are that are: • Urgent due to the protection of life. • Caused by circumstances that could not reasonably have been foreseen and doesn't change the nature of the contract and does not increase the contract value by more than 50%. • The materialisation of a known risk (in the tender) and does not increase the contract value by more than 50%. https://www.legislation.gov.uk/ukpga/2023/54/schedule/8	• Appropriate Chief Officer, in consultation with the Commercial Specialist. • In the case of ESPO-approval by Contracts Panel. Where the Commercial Specialist does not support the modification, it is to be escalated to the Assistant Director for Finance. Prior to any modification being agreed which would result in an increase in the Estimated Value of the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.
48(i) Non-Substantial Modifications- 74(1)(b) and 74(3) of the Procurement Act	The modification is not a substantial modification as defined in Section 74(3) of the Procurement Act, if it does not: • increase or decrease the value of the contract by 10% or less for goods and services or 15% or less for works; or • increase or decrease the term of the contract 10% or less of the maximum term provided for on award; or	• Appropriate Chief Officer, in consultation with the Commercial Specialist. • In the case of ESPO-approval by Contracts Panel. Where the Commercial Specialist doesn't support the modification, it is to be escalated to the Assistant Director for Finance. Prior to any modification being agreed which would result in an increase in the Estimated Value of the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.

Modification Type	Conditions for Modifications	Approval Required
	• materially change the scope of the contract; or • materially change the economic balance of the contract in favour of the supplier https://www.legislation.gov.uk/ukpga/2023/54/section/74	
48(j) Below-threshold modification- 74(1)(c) and 74(4) of the Procurement Act	The modification is a below threshold modification to an above threshold contract or convertible contract, as defined in Section 74(4) of the Procurement Act, if it meets the following criteria: • It does not increase or decrease the value of the contract by more than 10% (for goods and services) or 15% (for works). • The cumulative value of all below-threshold modifications does not exceed the relevant threshold for the contract type. • The scope of the contract does not change materially. https://www.legislation.gov.uk/ukpga/2023/54/section/74	• Appropriate Chief Officer, in consultation with the Commercial Specialist. • In the case of ESPO- approval by Contracts Panel. Where the Commercial Specialist doesn't support the modification, it is to be escalated to the Assistant Director for Finance. Prior to any modification being agreed which would result in an increase in the Estimated Value of the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.

Other modifications

48.7 Modifications that do not fall within the above categories are not permitted modifications in the Procurement Act, only in very exceptional circumstances will Table 3 be considered.

Table 3: Modification of Contracts not covered in the above categories

Modification Type	Modification criteria	Approval Required
48(k) Other Modifications (not explicitly covered)	Other modifications that are not explicitly covered by the above categories.	• Appropriate Chief Officer in consultation with Senior Commercial Specialist* and, • Corporate Procurement Board, and • Director of Corporate Resources, and • Assistant Director of Law and Governance Involvement of Supplier Relationship Manager to ensure value for money is attained. • In the case of ESPO, approval by ESPO's Leadership Team.

Provider Selection Regime modifications:

Table 4: Modification of contracts under the Provider Selection Regime

Modification Type	Modification criteria	Approval Required
48(l) Provider Selection Regime (49(d))	Modification of a Provider Selection Regime Contract is permitted if it does not: • exceed £500,000 including VAT– shall be net cumulative of all modifications to the contract. • is 25% greater or lesser the original contract value. • does not alter the overall nature of the original contract.	• Appropriate Chief Officer, in consultation with the Commercial Specialist. Where the Commercial Specialist doesn't support the modification, it is to be escalated to the Assistant Director for Finance. Prior to any modification being agreed which would result in an increase in the Estimated Value of the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.

Contract Change Notice

48.8 Before modifying a public contract or a convertible contract (see section 74(1)), the Council must publish a contract change notice, this is for all modifications under Rule 48.

48.9 Where the contract is over £5,000,0000 including VAT a copy of the modified contract must be published within 90 days of modifying.

48.10 A contract change notice is not required for modifications under Rule 48 (section 75(2) if:

a) the modification increases or decreases the estimated value of the contract by—

(i) in the case of a contract for goods or services, 10% or less,

(ii) in the case of a contract for works, 15% or less, or

b) the modification increases or decreases the term of the contract by 10% or less of the maximum term provided for on award,

c) the Contract was awarded under the Light Touch Regime.

d) below-threshold contracts (unless they are convertible contracts)

Voluntary standstill period on modifications of Contracts

48.11 The Council may not modify a Public Contract or Convertible Contract before the end of any voluntary standstill period provided for in a Contract Change Notice.

48.12 A voluntary standstill period may not be less than eight working days beginning on the day on which the Contract Change Notice is published.

RULE 49. *Novation of Existing Contracts*

49.1 The novation of a Contract to a new supplier irrespective of value requires the prior written approval of the Director of Corporate Resources in consultation with the Assistant Director of Law and Governance. Consideration will also need to be given to the application of the Procurement Act Section 74

49.2 A Contract Change Notice must be published for all Novations apart from those Contracts awarded under the Light Touch Regime.

RULE 50. *Early Termination of Contracts*

50.1 Where a Contract is to be terminated early and there is no provision within the Contract for the termination, Officers shall seek advice from the Commissioning Support Unit and shall seek prior written approval from the Assistant Director of Law and Governance.

50.2 Where a Contract is to be terminated and there is provision for the termination within the Contract Officers shall seek advice from the Commissioning Support Unit, where a termination is for a material breach, under a provision in the Contract Officers shall seek advice from the Assistant Director of Law and Governance

50.3 The Council must publish a Contract Termination Notice in accordance with Section 80 of the Procurement Act through the Councils Electronic Tendering System on the Central Digital Platform.

MISCELLANEOUS PROVISIONS

RULE 51. *General Exemptions from Duties to Publish or Disclose Information*

51.1 The Council is not required to publish or disclose information under the Procurement Act if it is satisfied that withholding the information from publication or other disclosure is necessary for the purpose of safeguarding national security, or the information is sensitive commercial information and there is an overriding public interest in its being withheld from publication or other disclosure in line with the provisions of Section 94 of the Procurement Act.

51.2 If the Council chooses to withhold information under this section, the Council must publish or notify anyone to whom the information would otherwise be provided, CSU must be consulted, and the Assistant Director of Law and Governance must authorise any decision to withhold information from publication.

RULE 52. *Electronic Communications*

52.1 Procurement processes should usually be undertaken by electronic means provided that: -

a) the requirements of these Rules are followed with only such modifications as may be necessary to allow for procurement by such means; and

b) any electronic tendering system has been approved by the Head of Procurement and Supply Chain Management and Director of Corporate Resources in consultation with the Assistant Director of Law and Governance.

52.2 Where a Covered Procurement applies, the Council will need to communicate with suppliers electronically and take all steps to ensure that supplier's participation in the procurement communicate electronically also in accordance with Section 96 of the Procurement Act.

RULE 53. *Information Relating to a Procurement and Record Keeping*

53.1 The Council must keep records of any communication between it and suppliers that is made for the purposes of, or in connection with a Covered Procurement as required under Section 97 of the Procurement Act. The records and any communication must be stored in the Councils Electronic Tendering System.

53.2 Where a procurement falls within the scope of the Procurement Act, the Council will need to keep appropriate records that are sufficient to explain a material decision made in accordance with Section 98 of the Procurement Act. A material decision form must be completed and stored within the Councils Electronic Tendering System, in the case of ESPO the material decision record is referred to as procurement control record.

RULE 54. *Document Retention*

54.1 All Contract records must be retained for at least six years and, any under seal for at least twelve years from expiry of the Contract. Contracts may be kept for longer periods should this be appropriate – for example: works contracts with a longer liability.

54.2 Where the Contract is externally funded any contingent liabilities and/or grant conditions must be taken account of by the length of the retention period.

54.3 Document retention of appropriate timeframes is important in case they are required for any Court proceedings.

RULE 55. *Supervision of Contracts by Third Parties*

55.1 The Procuring Officer shall ensure that it is a condition of any Contract between the Council and any Person (not being an Officer of the Council) who is involved in a procurement process or the management of a Contract on behalf of the Council that in relation to that Contract he must comply with the requirements of these Rules and other reasonable requirements of the Council.

55.2 Such Person must:

a) at any time during the carrying out of the Contract produce to the Appropriate Chief Officer or his representative, Commercial Specialist or Council Auditor on request all records maintained in relation to the Contract; and

b) on completion of the Contract transmit all records to the Appropriate Chief Officer, Commercial Specialist.

RULE 56. *Nominated Sub-Contractors and Suppliers*

56.1 Where a sub-contractor or supplier is to be nominated by the Council to a main contractor, either by tendering or by other means the provisions of these Rules shall have effect. They must comply with the Procurement Act.

56.2 In the scenario where the council has tendered for a Sub Contractor, the terms of an Invitation to Tender under Rule 26 must require an undertaking by the Tenderer that, if selected, they will be willing to enter into a Contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main Contract in relation to the work, goods, services included in the sub-contract.

56.3 Subcontractors either nominated by the Council or the main contractor must be checked to ensure they are not on the debarment list before entering into a contract as set out in Rule 31.

EXCEPTIONS

RULE 57. *Exceptions to the Rules*

57.1 There are limited circumstances whereby Exceptions to these Rules may be permitted. An Exception includes situations where it is proposed to procure goods, services or works that are not in compliance with other provisions within these Rules.

57.2 Approval of all Exception requests is required prior to procuring the relevant goods, services or works and must be made by completion of an Exception Form.

57.3 When considering whether to request an Exception, relevant Procuring Officers should have regard to the following matters before putting forward a request/form for an exception: -

a) That any deviation from the requirements of procurement law and/or these Rules is justified by the likely impact of a failure to approve an exception.

b) That the proposed procurement mechanism is appropriate and will still ensure that the Council obtains good value for money.

c) That the approval of the exception does not conflict with organisational objectives.

d) That, where appropriate, relevant advice (including legal or expert advice) has been obtained.

e) That procurement risks have been identified and mitigated.

f) That plans are in place to bring the Council into a state of compliance at the earliest available opportunity.

g) The Exception Form is an online form (link) and includes the requirements to provide:

(i) the background/context to the situation including value.

(ii) the full reasons for the request.

(iii) the Rule an Exception is sought in respect of.

(iv) the justification for needing an Exception.

(v) the proposal for ensuring an Exception is not required again in the future.

The approvals required for Exceptions are as follows:

Estimated Value of Contract (excluding VAT)	Approval Required from
57 (a) £5,000 – £99,999	• Appropriate Chief Officer in consultation with Commercial Specialist* and • Corporate Procurement Board. Involvement of Supplier Relationship Manager to ensure value for money is attained. In the case of ESPO Corporate Procurement Board is replaced by Contracts Panel.
57 (b) For Goods/Services: £100,000 – up to Relevant Procurement Threshold For Works and Light Touch Contracts: £100,000 - up to £499,999	• Appropriate Chief Officer in consultation with Commercial Specialist*. • Corporate Procurement Board. • Assistant Director for Finance. Involvement of Supplier Relationship Manager to ensure value for money is attained. In the case of ESPO Assistant Director for Finance is replaced by Commercial Financial Controller and Procurement Board is replaced by Contracts Panel.
57 (c) For Works and Light Touch Contracts: £500,000 - up to Relevant Procurement Threshold	• Appropriate Chief Officer in consultation with Senior Commercial Specialist* • Corporate Procurement Board. • Director of Corporate Resources.

Estimated Value of Contract (excluding VAT)	Approval Required from
	Involvement of Supplier Relationship Manager to ensure value for money is attained.
57 (d) Relevant Procurement Threshold and above	• Appropriate Chief Officer in consultation with Senior Commercial Specialist* • Corporate Procurement Board. • Director of Corporate Resources. • Assistant Director of Law and Governance. Involvement of Supplier Relationship Manager to ensure value for money is attained. A lesson learnt, mitigations and action plan must be completed by the department and submitted with the request for Exception. Further clarification in the form of a panel review by the Director of Corporate Resources and Assistant Director of Law and Governance may be necessary. Director of Corporate Resources and Assistant Director of Law and Governance may in consultation with the relevant Lead Member and Lead Member Resources determine that the request requires further consideration and or approval by the Cabinet. The requesting department would be responsible for ensuring Cabinet approval is sought where necessary. In the case of ESPO, approval must be sought from ESPO Management Committee where it is satisfied that an Exception is justified on its merits. In an urgent case the Chief Officer in consultation with the Chairman or Deputy Chairman of the ESPO Management Committee (save where this is not practicable) may direct that an Exception be made subject to this being reported to the next meeting of the ESPO Management Committee.

*Commercial Specialist or Senior Commercial Specialist may at times escalate to Head of Procurement and Supply Chain Management.

[end of Contract Procedure Rules]