CONTRACT PROCEDURE RULES

1. INTRODUCTION

1.1 These Contract Procedure Rules set out the rules that apply to all Officers, Members and agents acting on behalf of the Council, involved in procurement and contract management. The rules must be read in conjunction with relevant laws, regulations and policies/procedures including the Councils' Financial Procedure Rules.

1.2 These Contract Procedure Rules form part of the Council's Constitution

1.3 These Rules seek to protect the Council's reputation by minimising the risk of allegations of unfair process, dishonesty, and failure to meet legal obligations. If in doubt and/or if advice on these Rules / associated legislative requirements (such as the Procurement Act 2023) is required, please contact the Procurement & Contracts service.

1.4 Should a conflict be found between these Rules and the law, the order of precedence shall be the law and then these Rules.

1.5 All thresholds referred to in these Rules are inclusive of VAT.

1.6 In the case of a breach to these Contract Procedure Rules, the Responsible Officer must inform the Head of Procurement & Contracts detailing the nature of the breach and any management action taken to address the issues arising from the breach. The Procurement & Contracts service will maintain a record of all such breaches which will be reported to the Senior Leadership Team periodically.

2. BASIC PRINCIPLES

2.1 All procurement procedures must

2.1.1 deliver value for money by awarding contracts that have the most advantageous contribution to delivering the Council's objectives,
2.1.2 maximise public benefit
2.1.3 be consistent with the highest standards of integrity,
2.1.4 operate in a transparent manner,
2.1.5 ensure fairness in allocating public contracts including managing conflicts of interest,
2.1.6 comply with all legal requirements including but not limited to the Procurement Act 2023 and the Procurement Regulations 2024.*,
2.1.7 support all relevant Council priorities and policies, including the Medium-Term Financial Plan.

**Where a procurement / contract was started under the Public Contract Regulations 2015, that procurement or contract continues to be governed by those Regulations until the contract expiry date.*

NB: These Rules shall be applied to the contracting activities of any partnership for which the Council is the accountable body unless the Council expressly agrees otherwise *(see the Delegations to Officers for details of Officers who may action this rule).*

2.2 Procurements must also have regard to the National Procurement Policy Statement which sets out the national priorities for procurement.

3. RELEVANT CONTRACTS

3.1 All Relevant Contracts must comply with these Contract Procedure Rules. A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works, supplies, goods, materials, or services.

3.2 Relevant Contracts do not include:

3.2.1 contracts of employment which make an individual a direct employee of the authority,

3.2.2 agreements regarding the acquisition, disposal, or transfer of land (to which the Financial Procedure Rules apply),

3.2.3 the payment of grants to third parties

3.2.4 The lending or borrowing of money by the Council.

3.2.5 Contracts between Local Authorities as defined by Schedule 2, Paragraph 2 of the Procurement Act 2023

3.2.6 Contracts between Local Authorities as defined by Clause 1 of the Local Authorities (Goods and Services) Act 1970.

3.2.7 Section 75 NHS Act 2006 arrangements (although details must be recorded on the Council's Contract Register).

Please note, the Council cannot simply choose to treat a project as a Grant in order to avoid complying with these Contract Procedure Rules. Grants will have different conditions with regards to procurement.

Generally, procurement is required when the Council is acquiring goods, services, or works to meet its own needs, and it retains control over the specification and delivery of those services. A grant is awarded to support an activity that aligns with the Council's objectives but is initiated and delivered by the recipient, who retains a degree of autonomy over the process.

Where there is any clarity required, please contact the Procurement & Contracts service.

4. OFFICER RESPONSIBILITIES

4.1 Responsible Officers

4.1.1 Officers will:

(a) comply with these Contract Procedure Rules (CPRs),
(b) comply with the Council's Constitution,
(c) have the appropriate authorisation to procure, complying with the Delegations to Officers;
(d) declare both, prior to the commencement of the procurement process and throughout the procurement process / contract, any personal interest / conflict of interest they may have in that process;
(e) ensure all tenders/quotations are kept confidential;
(f) ensure a written contract is issued and signed by both parties, or a purchase order is issued before the supply of goods, services or carrying out of works begin;

(g) where appropriate ensure that the contracts for which they are responsible are effectively managed (ensuring a named Contract Manager is allocated to the relevant contract) and monitored ensuring the contract delivers as intended.
(h) ensure a review of each contract is carried out at an appropriate stage;
(i) comply with all legal requirements; and
(j) ensure contracts with a value over £6,000 are recorded on the Contracts Register as held and maintained by the Procurement and Contracts Service;

Officers must ensure that any agents, consultants, and contractual partners acting on their behalf also comply.

4.1.2 Officers must:

(a) keep any necessary records (such as a record of decisions made or minutes from any meetings) required by these Contract Procedure Rules,
(b) take all necessary procurement, legal, financial, and professional advice, taking into account the requirements of these Contract Procedure Rules,
(c) prior to letting a contract on behalf of the Council, check whether:
    (i) the Contracts Register lists an appropriate contract in place for the Council, or:
    (ii) an appropriate national, regional, or other collaborative contract is already in place.

    Where the Council already has an appropriate contract in place, then this must be used unless it can be established that the contract does not fully meet the Council's specific requirements in this particular case, and this is agreed following consultation with the Procurement & Contracts Service.

    Where an appropriate national, regional, or collaborative contract is available, consideration should be given to using this, provided the contract offers value for money.

(d) ensure that when any employee, either of the Council or of a service provider, may be affected by any transfer arrangement, then any Transfer of Undertaking (Protection of Employment) issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise.

4.1.3 Failure to comply with any of the provisions of these Contract Procedure Rules, the Council's Constitution or any legal requirements may be brought to the attention of the Monitoring Officer, Head of Internal Audit, or other relevant Officers as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken.

4.1.4 A contract may be let through any framework agreement to which the Council has access. Where the contract to be let is subject to the Procurement Act 2023, or any other relevant UK Legislation, use of such framework agreement shall be subject to compliance with those regulations *(see the Delegations to Officers for details of Officers who may action this rule).*

4.2 **Chief Officer/Deputy Chief Officers**

4.2.1 Chief Officer/Deputy Chief Officers will:

(a) ensure their Service complies fully and are familiar with the requirements of these Contract Procedure Rules.
(b) ensure compliance with English Law and UK legislation and Council policy.
(c) ensure value for money and optimise risk allocation in all procurement matters.
(d) ensure compliance with any guidelines issued in respect of these Contract Procedure Rules.
(e) take immediate action in the event of a breach of the Contract Procedure Rules or any Code of Practice within their directorate or service area.
(f) ensure that all existing and new contracts anticipated during the forthcoming financial year are clearly itemised in the Budget supporting documentation.
(g) ensure original contract documents with a total value over £6,000 are forwarded to the Procurement and Contracts Service for safekeeping.
(h) ensure effective contract management, contract reviews and monitoring during the lifetime of all contracts in their areas.
(i) seek and act upon advice from the Procurement and Contracts Service where necessary to ensure compliance with these responsibilities.

5. CONFLICTS OF INTEREST

5.1 Officers must take all reasonable steps to identify and keep under review any conflicts of interest or potential conflicts of interest. This obligation starts when the need for the procurement is first identified and continues until the termination of the contract.

5.2 Officers must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage. If the Officer deems that that advantage or disadvantage cannot be avoided, they must contact the Procurement & Contracts service before progressing further with the procurement.

5.3 Where the procurement is valued over the Procurement Act 2023 thresholds a conflicts assessment must be prepared by the Officer in conjunction with the Procurement & Contracts service. The Procurement & Contracts service have a template document for Officers to complete, which includes the provision for details of all conflicts or potential conflicts of interest and any mitigating steps that the Council has taken or will take.

5.4 This conflicts assessment must be kept under review and revised as necessary during the procurement and contract term.

5.5 Any Officer or Member who fails to declare a conflict of interest may be subject to disciplinary proceedings and risks being prosecuted under the Bribery Act 2010.

6. PRE-MARKET ENGAGEMENT

6.1 When Officers are undertaking pre-market engagement, they must ensure it is utilised for the following purposes:

6.1.1 Developing the Council's requirements and approach to the procurement.

6.1.2 Designing a procurement procedure, conditions of participation or award criteria.

6.1.3 Preparing the tender notice and associated tender documents, including the proposed terms and conditions.

6.1.4 Understanding market conditions and identifying potential suppliers.

6.1.5 Understanding the resourcing limitations and capacity requirements of suppliers in relation to the procurement process and anticipated timetable.

6.2 Suppliers must not be put at an unfair advantage, or disadvantage, when undertaking pre-market engagement. If an Officer deems that a supplier has been put at an unfair advantage, or disadvantage, they must contact the Procurement & Contracts service before progressing further with the procurement.

6.3 When engaging with potential suppliers, the Council may use any advice in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

6.4 The Council shall take appropriate measures to ensure that competition is not distorted by the participation of a candidate or tenderer who has provided any advice by ensuring all other candidates and tenderers are provided with all of the information the advising candidate or tenderer has received or given and that all candidates or tenderers are given sufficient time to respond to the tender or quote.

6.5 When undertaking any pre-market engagement activities above £60,000, the Officer responsible must seek advice from the Procurement & Contracts Service.

7. EXEMPTIONS

7.1 Except where the Procurement Act 2023 thresholds are exceeded, the Cabinet/Executive has the power to waive any requirements within these Contract Procedure Rules for specific projects. An exemption under this Rule 7 allows a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with Rule 13.

7.2 These Contract Procedure Rules may be exempted where the circumstances meet any of the following criteria within 7.3. An exemption form must be completed and sent to the Head of Procurement & Contracts in the first instance to allow comments which will assist with the approval or rejection of the exemption.

7.3 The Head of Procurement & Contracts will then pass this through to the Section 151 Officer, the Chief Executive, the Portfolio Holder for the relevant area, and the Portfolio Holder for Finance for approval / sign-off. This process must be followed in advance of the award of contract, and in compliance with the criteria set out in the Delegations to Officers. Please see the circumstances for an exemption below:

7.3.1 for works, supplies, or services which are either patented or of such special character that it is not possible to obtain competitive prices.
7.3.2 for supplies purchased or sold in a public market or auction.
7.3.3 with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the contract to cover this additional requirement that does not breach legal requirements such as the Procurement Act 2023.
7.3.4 involving such urgency that it is not possible to comply with the Contract Procedure Rules and there is a significant risk to the council of not acting with urgency.
7.3.5 for the purchase of a work of art or museum specimen, or to meet the specific requirements of an arts or cultural event which cannot be procured competitively due to the nature of the requirement.

7.3.6 in relation to time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this.

7.3.7 where relevant legislation not otherwise referred to in these Contract Procedure Rules prevents the usual procurement process from being followed.

7.3.8 goods, works or services contracts may be awarded directly to a legal person where that legal person meets the criteria as set out in Schedule 2, Paragraph 2 of the Procurement Act 2023. (formerly known as "Teckal" companies);

7.3.9 where building development opportunities are available to the Council, and have been proven to be financially viable, and the value is under the Procurement Act 2023 Thresholds for Works (as per Appendix 2 – Procurement Act 2023 Thresholds.

7.3.10 where an existing contract is being re-procured and there are delays to that procurement process which means that the new contract cannot start at the expiry of the existing contract (this exemption cannot be for longer than 6-months and cannot make the contract a “convertible contract” under the Procurement Act 2023 by exceeding the applicable threshold).

7.4 Every exemption must be recorded on the Council’s Procurement Exemption Form at Appendix 1 to these Contract Procedure Rules and the form will be recorded on a master register to be maintained by the Procurement & Contracts Service.

7.5 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services, the Chief Officer/Deputy Chief Officer may approve the exemption but must prepare a report for the next meeting of the Cabinet/Executive to support the action taken.

7.6 The Procurement & Contracts service must monitor the use of all exemptions.

8. RECORDS

8.1 The Procurement Act 2023 requires contracting authorities to maintain the following comprehensive records of procurement activities:

8.1.1 sufficient documentation to justify decisions at all stages of the procurement process

8.1.2 contract details including value

8.1.3 selection decision

8.1.4 justification for use of the selected procedure

8.1.5 names of bidding organisations, both successful and unsuccessful

8.1.6 reasons for selection

8.1.7 reasons for abandoning a procedure

8.1A Most contracts and extensions to contracts will be awarded by Officers making a decision under delegated authority (see Delegations to Officers). All such Officer decisions must be published unless the decision is administrative, minor, or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-in. Where Call-in applies, the winning contractor must be advised that the award of contract is subject to Call-in and will not be confirmed until the Call-in period has expired.

8.2 For contracts up to £60,000 the following records must be kept:

8.2.1 invitations to quote (where applicable)

8.2.2 all tenders/quotes returned;

8.2.3 notification to the successful, and unsuccessful (where applicable) bidders of the outcome of the quotation exercise
8.2.4 the contract;
8.2.5 a written record of:
(a) any exemptions and reasons for it; and
(b) the reasons if the lowest price is not accepted

8.3 For contracts where the total value is greater than £60,000.00 but less than £120,000.00 for works, supplies of goods materials or services, the Procurement and Contracts Service must be made aware of any procurement requirements at the earliest opportunity to assist with this process. Where formal advertising via a Request for Quotation is recommended by these rules, the Council's e-Tendering portal should be used. The following records must be kept:

8.3.1 invitations to quote/tender;
8.3.2 all communication with suppliers;
8.3.3 all tenders/quotes returned;
8.3.4 a completed evaluation sheet with scores and comments justifying the score awarded, where a formal process is used;
8.3.5 a decision log, including details of why a bidder has been selected, where an informal process is used;
8.3.6 assessment summaries / feedback to the unsuccessful bidders;
8.3.7 all communications with the successful contractor;
8.3.8 the contract;
8.3.9 a written record of:
(a) any exemptions and reasons for it; and
(b) the reasons if the lowest price is not accepted
8.3.10 written records of communications with the successful contractor.

8.4 Where the total value exceeds £120,000.00 for works, supplies of goods, materials or services, the Officer must record the same details as in Rule 8.3 above and any further records as advised by the Procurement & Contracts Service.

8.5 Written records required by this Rule 8 must be kept for six years (twelve years if the contract is under seal) after the final settlement of the contract. All documents which relate to unsuccessful candidates (tender responses, feedback letters etc.) must be kept for 12 months from award of contract provided there is no dispute about the award or where there is a dispute, once the dispute is resolved, 12 months from resolution of the dispute.

8.6 Prospective candidates must be notified simultaneously in writing and as soon as possible of any contracting decision. If a candidate requests in writing the reasons for a contracting decision, the officer must give the reasons in writing within 15 days of the request.

8.7 The Freedom of Information Act 2000 gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Council will, as a general rule, allow public access to recorded information where possible and the contractor shall agree to the Council making any disclosures in accordance with the Act.

9. **RISK MANAGEMENT / ASSESSMENT**

9.1 Officers must create a robust risk assessment as part of the procurement planning process for all contracts valued over £120,000 in conjunction with the Procurement & Contracts service.

9.2 The risk assessment must be reviewed and updated regularly during the procurement process and throughout the contract term.

9.3 Where key risks are identified at the pre-procurement stage which may lead to a future contract modification, these risks must be stated clearly in the tender notice and in relevant procurement documents.

10. ADVERTISING

The Contracts and Procurement Service will ensure that the minimum advertising requirements in the Procurement Act 2023 and as outlined in Rule 8 are met.

11. FRAMEWORKS

11.1 Framework has the same meaning as in the Procurement Act 2023. "..a contract between a Contracting Authority and one or more supplier(s) that provides for the future award of contracts by the authority to the supplier(s)."

11.2 Contracts based on Frameworks may be awarded in one of two ways, as follows:

11.2.1 Where the terms of the agreement are sufficiently precise to cover the particular call-off, by applying the terms laid down in the Framework Agreement without re-opening competition (Direct Award), or

11.2.2 Where the terms laid down in the Framework Agreement are not precise or complete enough for the particular call-off, by holding a further competition in accordance with the following procedure (Further Competition):

(a) Inviting the organisations within the Framework that are capable of executing the subject of the contract, to submit bids, with an appropriate time limit for responses, considering factors such as the complexity of the subject of the contract,

(b) Awarding each contract to the bidding organisation who has submitted the most advantageous tender on the basis of the relevant Award Criteria set out in the Framework.

11.3 The term of a Framework must not exceed four years when utilising a Closed Framework, or eight years when utilising an Open Framework, as defined in the Procurement Act 2023.

11.4 A contract of any value can be procured through a framework. If the proposed contract value is over £60,000, the Procurement & Contracts service must be consulted before the procurement is started.

11.5 A framework is considered a compliant procurement route when:

11.5.1 It has been entered into by the Council in compliance with these Rules, or

11.5.2 Another contracting authority, purchasing consortium or central government organisation has tendered the framework in compliance with the relevant

procurement legislation and the Council is named as a potential user of the arrangement (e.g., ESPO / CCS).

11.5.3 When using a framework as per 11.5.2, officers must ensure that all of the necessary documentation is completed. Officers must consult with the Procurement & Contracts service before entering into a call-off contract as per 11.5.2.

11.6 Officers must carry out due diligence checks at contract award to evidence fulfilment of any conditions of participation and that there are no grounds for exclusion.

11.7 Approval to procure and award must be in compliance with the Delegations to Officers.

11.8 Most contracts will then be awarded by Officers making a decision under delegated authority. All such Officer decisions must be published unless the decision is administrative, minor, or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-in. Where Call-in applies the winning contractor must be advised that the award of contract will not be confirmed until the Call-in period has expired.

12. DYNAMIC MARKETS

12.1 A dynamic market as defined in the Procurement Act 2023 is an open list of qualified suppliers eligible to participate in future procurements (via Further Competition only). Suppliers can join the dynamic market at any time if they meet the specified conditions, enabling the ability to streamline a procurement process by allowing continuous admission of suppliers.

12.2 Officers must ensure that there is no existing Council contract, framework or Dynamic Market available before undertaking an alternative procurement.

12.3 Only procurements valued over the relevant UK Procurement threshold may be procured via a Dynamic Market.

12.4 A dynamic market is considered a compliant procurement route when:

12.4.1 It has been entered into by the Council in compliance with these Rules, or

12.4.2 Another contracting authority, purchasing consortium or central government has tendered the framework in compliance with the relevant procurement legislation and the Council is named as a potential user of the arrangement (e.g., ESPO / CCS).

12.5 Officers must seek advice and support from the Procurement & Contracts service whenever they wish to establish or use a Dynamic Market.

13. PROCUREMENT THRESHOLDS

13.1 Officers must establish the total value of the procurement including whole life costs, incorporating any potential extension periods which may be awarded. Where the

Procurement Act 2023 rules apply, Officers must also ascertain the value of a contract in accordance with those rules.

13.2 Contracts must not be artificially under / over-estimated or divided into two or more separate contracts where the effect is to avoid the application of the thresholds below.

13.3 Where the estimated total value is within the values in the table below, the corresponding tendering procedure must be followed. (see the Delegations to Officers for details of Officers who may actions this rule).

Procurement Values (exclusive of VAT)	**Procurement Values (inclusive of VAT)**	**Tendering Procedure**
£0 to £6,250	£0 to £7,500	**One written quote - this should be a local provider wherever possible. A purchase order must be raised.**
£6,250.01 - £12,500	£7,500.01 - £15,000	**Two written quotes – one should be a local provider wherever possible. A purchase order must be raised.**
£12,500.01 - £50,000	£15,000.01 - £60,000	**At least three written quotes shall be sought. Local providers must be given an opportunity to provide a quote, wherever possible. A purchase order must be raised**
£50,000 - £100,000	£60,000.01 - £120,000	**At least three written quotations shall be sought. A Request for Quotation via the e-Tendering Portal is recommended. The Procurement & Contracts service must be involved. Where a formal Request for Quotation process is not utilised, the Procurement & Contracts service must agree the alternative process (e.g., retrieving quotations from suppliers via email etc.). Local providers must be given an opportunity to provide a quote, wherever possible. A purchase order must be raised.**
£100,000.01 up to Procurement Act 2023 thresholds	£120,000.01 up to Procurement Act 2023 thresholds	**Open tender via the E-Tendering Portal & a below-threshold notice published on Find a Tender. Social value must be considered as part of the specification / award criteria. A purchase order must be raised**
Above Procurement Act 2023 thresholds	Above Procurement Act 2023 thresholds	**UK Public Procurement Procedure – via E-Tendering Portal & Find a Tender notice. Social value must be considered as part of the specification / award criteria. A purchase order must be raised**

* As per Appendix 2 – Above Procurement Act 2023 thresholds*

13.4 Written quotations must include the following information as a minimum:

13.4.1 Details of the goods, services or works to be supplied;

13.4.2 Where and when the delivery is to take place (where applicable);

13.4.3 The total value of the contract; and

13.4.4 The terms and conditions to apply including the price and payment terms

13.5 Officers must provide contractual details to the Procurement & Contracts service for contracts over £6,000 so that the contract can be added to the Council's Contracts Register.

13.6 Officers must provide contractual details to the Procurement & Contracts service for contracts £30,000 & above where the Procurement & Contracts service have not been involved in the procurement. This must be provided for within 30 days of contract award to allow a Contract Details Notice to be published.

13.7 Officers must contact the Procurement & Contracts service for any procurement requirements £60,000.01 & above. For spend of £60,000 and below, Officers can procure without the need to involve the Procurement & Contracts service, following the procurement thresholds above. Where there are any queries, the Procurement & Contracts service should be contacted to avoid non-compliance.

13.8 Where the Procurement Act 2023 thresholds apply, Officers must consult the Procurement & Contracts service to determine the procedure for conducting the procurement exercise.

13.9 Where it can be determined that there are insufficient suitably qualified candidates to meet the threshold requirements as per the table above, all suitably qualified candidates must be invited. (see the Delegations to Officers for details of Officers who may action this rule.)

13.10 Where services are currently purchased internally, i.e., from within the Council, for internal provision, the requirement to obtain other quotations or tenders does not apply. However, the purchaser may choose to seek alternative quotations/tenders for the purpose of market testing.

14. **EVALUATING TENDERS** *(see the Delegations to Officers for details of Officers who may action this rule):*

14.1 In any procurement exercise the successful bid should be the one which:

14.1.1 Offers the most advantageous proposal based on the award criteria.

14.1.2 Such criteria may include:

(a) Quality including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental, and innovative characteristics and trading and its conditions;

(b) After-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

(c) Price / Commercial approach

(d) Social Value / sustainability commitments

14.2 Evaluation must be conducted in accordance with the published criteria. Evaluators must undertake evaluations individually initially followed by moderation to reach an agreed tender score.

14.3 All criteria must relate to the subject matter of the contract, must be objectively quantifiable and non-discriminatory.

14.4 The procurement documentation must clearly explain the basis of the decision to bidding organisations, making clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, whether the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

15. **INVITATION TO TENDER / REQUEST FOR QUOTATION** *(see the Delegations to Officers for details of Officers who may action this rule)*

15.1 Invitations to Tender/Requests for Quotation must be issued in accordance with the requirements of these Contract Procedure Rules.

15.2 All Invitations to Tender shall include the following:

15.2.1 A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers, together with the terms and conditions of contract that will apply.

15.2.2 A requirement for candidates to declare that the tender content, price or any other figure or particulars concerning the tender submitted by the candidate has not been disclosed by the candidate to any other party (except where such disclosure is made in confidence for a necessary purpose).

15.2.3 A requirement for candidates to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion.

15.2.4 Notification that tenders are submitted to the Council on the basis that they are compiled at the candidate's expense.

15.2.5 A description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and the percentage weighting of each criterion in the evaluation.

15.2.6 The method by which arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa.

15.3 The Invitation to Tender or Requests for Quotation must state that the Council is not bound to accept any tender or quotation.

15.4 All candidates invited to tender, or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis. Where a candidate asks a clarification question regarding the tender or quote, the question and the answer will be provided to all candidates.

15.5 Tenders received after the tender deadline date and time or tenders which are not submitted in accordance with these Rules and any criteria set out in the procurement documentation will be disqualified unless otherwise agreed by the Monitoring Officer

15.6 If there is an obvious ambiguity or error in the tender and that ambiguity or error appears to have a simple explanation, bidders may be invited to correct their tender response.

Advice must be sought from the Procurement & Contracts service before further action is taken.

15.7 Under the Procurement Act 2023, the Council is required to request an explanation of the price or costs proposed in a tender where that price or those costs appear to be ***abnormally low*** in relation to the requirement. If the bidder is unable to demonstrate that the price offered is not abnormally low, its tender may be disregarded. Advice must be sought from the Procurement & Contracts service during this process.

16. SHORTLISTING

Any shortlisting (i.e., supplier selection or conditions of participation) must have regard to the financial standing, legal capacity, and the technical ability of the candidates to deliver the required goods, services or works.

17. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS *(see the Delegations to Officers for details of Officers who may action this rule):*

17.1 Tenders

17.1.1 Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirements.

17.1.2 When advertising a tender for a procurement above the Procurement Act 2023 thresholds, the tenders must be advertised for the minimum number of days as specified in the Procurement Act 2023 legislation.

17.1.3 Tender Contents:

Each tender must contain, where relevant:

(a) An undertaking signed by the tenderer that to the best of their knowledge and belief they have complied with all the relevant provisions of the Health and Safety at Work Act 1974 and regulations made under it or where they have not complied, an explanation of the remedial action they have taken to ensure compliance;

(b) A statement that the tenderer will comply with all current relevant British Standard Specification or Code of Practice or equivalent international standards offering guarantees of safety, reliability, and fitness for purpose;

(c) A statement by the tenderer that they will not try to obtain or receive by whatever means any information which gives or is intended to give the tenderer or another party any unfair advantage over any other tenderer (including the Council's own workforce) in relation to the tendering for and award of any contract;

(d) A statement that the Council shall not be liable for expenses incurred in the preparation of tenders; nor shall the Council be bound to accept the lowest or any tenders submitted; and shall have reserved to them the right to invite fresh tenders should they consider that course desirable.

17.2 Electronic Arrangements

17.2.1 Tenders, Request for Quotations, Framework Further Competition bids and Conditions of Participation stages will be received electronically and will be opened by the Procurement & Contracts service on the e-Tendering portal. The system will not allow any quotations to be opened until the allocated return date / time has passed.

17.3 **Hard Copy Arrangements**

17.3.1 In the limited circumstances where a Quotation, Further Competition bid or Tender cannot be received electronically, the Procurement and Contracts Service will consult with the Monitoring Officer to agree a suitable way to receive the Quotation, Further Competition bid or Tender.

18. CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATIONS

18.1 Seeking clarification of a tender received whether in writing or by way of a meeting is permitted. However, any such clarification must not involve changes to the basic features of the bidding organisation's submission and all tenderers must be treated equally *(see the Delegations to Officers for details of Officers who may action this rule)*.

18.2 Post tender negotiation means negotiations with any tenderer after submission of a tender and before the award of the contract with a view to obtaining an adjustment in price, delivery, or content. *Where the value of the* Tender is above the threshold in the Procurement Act 2023 advice must be sought from the Procurement & Contracts Service. Where post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered *(see the Delegations to Officers for details of Officers who may action this rule)*.

18.3 If post tender negotiations are necessary after a single stage tender or at the final stage of a multiple-stage tender, then such negotiations shall only be undertaken with the tenderer who has previously been identified as submitting the best tender. Tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents. Officers appointed by the Chief Officer/Deputy Chief Officer to carry out post tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

18.4 Post tender negotiation must only be conducted in accordance with guidance given by the Monitoring Officer and the Procurement & Contracts Service.

18.5 The Monitoring Officer and the Procurement & Contracts Service must be consulted and agree:

18.5.1 Wherever it is proposed to enter into post tender negotiation;
18.5.2 About whether negotiation is with all tenderers;
18.5.3 To either accept or reject late submissions before opening any of the responses. Late submissions must only be accepted in exceptional circumstances.

18.6 Negotiations must be conducted by a team of at least two officers, one of whom must be from a section independent to those leading negotiations *(see the Delegations to Officers for details of Officers who may action this rule)*.

19. AWARD OF CONTRACT, AND DEBRIEFING OF ORGANISATIONS

19.1 **Award of Contract and Contract Extensions** *(see the Delegations to Officers for details of Officers who may action this rule):*

19.1.1 The Council is required to notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as timely a fashion as possible.

19.1.2 Where a contract was advertised with an extension option and that extension option forms part of the contract, the decision to extend the contract may be made after ensuring that taking up the extension option delivers value for money.

19.1.3 Decisions on award of contract and contract extensions must be made in accordance with the Delegations to Officers.

19.1.4 For the avoidance of doubt, extensions are not permitted where they are not provided for in the original contract.

19.2 **Assessment Summaries**

19.2.1 Assessment Summaries (detailed feedback) will be sent by the Procurement & Contracts Service, in line with the relevant Officer's evaluation comments.

20. CONTRACT DOCUMENTS

20.1 Format of Contract Documents

20.1.1 Every Relevant Contract/must be in writing and must state clearly:

(a) what is to be supplied (description and quality)
(b) payment provisions (amount and timing and seeking electronic invoices)
(c) when the Council will have the right to terminate the contract
(d) that the contract is subject to the law as to prevention of corruption

The Council's standard terms and conditions must be used where possible.

20.1.2 In addition, every Relevant Contract for purchases over £30,000.00 for works, supplies of goods, materials or services must also as a minimum state clearly:

(a) that the contractor may not assign or sub-contract without prior written consent
(b) any insurance and liability requirements
(c) health and safety requirements
(d) ombudsman requirements
(e) data protection requirements if relevant
(f) that charter standards are to be met if relevant
(g) requirements under all applicable Equality legislation
(h) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, including obligations under the FOI Act 2000 and 2015 Transparency Code
(i) requirements under the Counter-Terrorism and Security Act 2015 and Prevent Strategy where applicable
(j) obligations under the Public Interest Disclosure Act 1998 including employee whistleblowing.
(k) Statement requirements under the Modern Slavery Act 2015.

20.1.3 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Monitoring Officer. An award letter is insufficient.

20.1.4 All contracts must include the following paragraph:

> 'The Contractor recognises that the Council is under a duty to act in a manner which is compatible with the Convention rights as defined by Section 1(1) of the Human Rights Act 1998 ('Convention Rights'). This duty includes a positive obligation on the Council to ensure that contractors providing services on the Council's behalf act in a way which is compatible

with the Convention Rights. The Contractor therefore agrees to provide the Services and comply with its other obligations under this contract in a manner which is compatible with the Convention Rights.'

20.1.5 The Officer responsible for securing the signature of the contractor must ensure that the person signing for the contracting party has authority to bind it.

20.2 **Contract Signature** *(see the Delegations to Officers for details of Officers who may action this rule):*

20.2.1 A contract entered into by or on behalf of the Council must:

(a) Where the contract is in the form of a deed (see below), be made under the Council's seal and attested as required by the Constitution, or:
(b) Where the contract is in signed under hand, it must:
    (i) be signed by at least two officers of the Council authorised as required by the Constitution (see Delegations to Officers), or:

20.2.2 A contract must be in the form of a deed (see below) and sealed where;

(a) The Council wishes to enforce the contract for more than six years after it ends; or
(b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
(c) Where there is any doubt about the authority of the person signing for the contracting party.

A contract in the form of a deed must state in the signature pages that the Contractor and the Council are executing the contract as a deed. Where an Officer is unsure whether a Contract should be signed under hand, or sealed, they must contact the Procurement & Contracts service to seek advice.

20.3 **Legal Services Review of Tenders and Contracts**

20.3.1 To ensure the integrity of the procurement process:

(a) All proposed Invitations to Tender, where they are not in compliance with the Council's harmonised contract documentation or standard terms and conditions issued by a relevant professional body, will be reviewed by the Procurement and Contracts service.
Where the Procurement and Contracts service are unable to advise, it will be escalated to the Deputy Chief Officer with the recommendation that external legal advice is sought.

21. LIQUIDATED DAMAGES, SERVICE CREDITS, BONDS AND PARENT COMPANY GUARANTEES

21.1 Where a bond or guarantee is required to ensure satisfactory contract performance and/or to protect the Council, the requirement must be notified to bidders in the procurement documentation and must be in place no later than four (4) weeks after contract signature.

21.2 Every formal written contract which exceeds £120,000.00 in value and is for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

21.3 Every formal written contract that includes Key Performance Indicators / Service Level Agreements shall consider reasonable service credits to include within the contract where performance / service standards are not being met.

21.4 The Officer must consult the Deputy Chief Officer when a tenderer is a subsidiary of a parent company and the Officer does not think that a parent company guarantee is necessary, and:

21.4.1 The total value exceeds £120,000.00
21.4.2 Award is based on evaluation of the parent company, or
21.4.3 There is some concern about the stability of the supplier.

21.5 The officer must consult the Deputy Chief Officer about whether a bond is needed:

21.5.1 Where the total value exceeds £120,000.00.
21.5.2 Where it is proposed to make stage payments or other payments in advance of receiving the whole of the subject matter of the contract, or
21.5.3 There is some concern about the stability of the supplier.

22. PREVENTION OF CORRUPTION

22.1 Rules and regulations pertaining to the prevention of corruption are outlined in the Council's Financial Procedure Rules and must be adhered to.

22.2 The following clauses must be put in every written Council contract:

'The Council may terminate this contract and recover all its loss if the Contractor, its employees, or anyone acting on the Contractor's behalf do any of the following things:

22.2.1 Offer, give, or agree to give anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
22.2.2 Commit an offence under the Bribery Act 2010 or Section 117(2) of the 1972 Act; or
22.2.3 Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors, or employees.

Any clause limiting the Contractor's liability shall not apply to this cause.'

22.3 Any suspected irregularity shall be referred to the the Monitoring Officer where necessary. Any examination of contractors' or tenderers' books and records as a result of any such suspected irregularity shall be conducted by the Head of Procurement & Contracts. If, in the investigation of any irregularity, the Monitoring Officer considers that disciplinary procedures may need to be invoked, the appropriate Chief Officer/Deputy Chief Officer shall also be notified.

23. DECLARATION OF INTERESTS

Rules and regulations pertaining to the Declaration of Interests are outlined in the Code of Conduct for Employees within the Constitution and must be adhered to.

24. CONTRACT MANAGEMENT / MONITORING

24.1 All contracts must have an appointed Contract Manager for the entirety of the contract. The responsible Deputy Chief Officer must ensure a Contract Manager is designated prior to award.

24.2 The Contract Manager must monitor the overall performance of the contract in line with the specification, agreed service levels and contract terms.

24.3 The Contract Manager must ensure that they undertake contract management meetings with the supplier in line with the agreed timescales as per the contract.

24.4 The Officer named in the Contract Register will act as the Contract Manager and will be responsible for ensuring the obligations of these Rules. The Procurement & Contacts service are available to be contacted for any contract management support.

25. CONTRACT MODIFICATIONS

25.1 Before modifying a contract, the Procurement & Contracts service must be consulted to ensure the correct modification / variation process is being undertaken.

25.2 If the contract is valued above the Procurement Act 2023 threshold, advice from the Procurement & Contracts service must be sought before a modification is made to understand whether the modification is substantial or not, and whether a Contract Change Notice must be published, as per the Procurement Act 2023.

25.3 A substantial modification is one which would:

25.3.1 Increase or decrease the term of the contract by more than 10% of the maximum term provided for, or

25.3.2 Materially change the scope of the contracts, or

25.3.3 Materially change the economic value of the contract in favour of the supplier.

25.4 A Contract Change Notice would not be required where:

25.4.1 The modification increases or decreases the estimated value of the contract in the case of goods/services by less than 10% or in the case of works by less than 15%, or

25.4.2 The modification increases or decreases the term of the contract by less than 10%.

26. POST CONTRACT MONITORING AND EVALUATION

26.1 During the life of the contract the Contract Manager must monitor in respect of:

26.1.1 performance
26.1.2 compliance with specification and contract
26.1.3 cost
26.1.4 any Best Value requirements
26.1.5 user satisfaction and risk management
26.1.6 social value or any other contractual obligations to deliver additional value arising from the contract

26.2 Where the total value of the contract exceeds £5,000,000, the Contract Manager must assess performance at least once every 12 months. A Contract Performance Notice must be published – the Procurement & Contracts service can do this providing the relevant Officer provides them with the required information.

26.3 If the supplier has breached the contract and the breach results in termination (or partial termination), award of damages, or a settlement agreement between both parties, a Contract Performance Notice must be published within 30 days of the relevant breach.

26.4 Where a contract naturally expires or is terminated, a Contract Termination Notice must be published.

26.5 Where the Total Value of the contract exceeds £1,000,000.00 the Officer must make a written report evaluating the extent to which the purchasing need and contract objectives were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

26.6 For contracts awarded under £120,000, if, at any point during the delivery of the contract, the cost looks likely to exceed £120,000 the Contract Manager must notify the Procurement & Contracts Service who will assess options with the Contract Manage and recommend the best option for that particular project.

27. **INTERNAL PROVIDERS**

Where an in-house Service is bidding in competition for the provision of goods, works or services, care must be taken to ensure a fair process between the in-house provider Service and external bidding organisations.

28. **EXTERNAL BODY GRANT FUNDING**

28.1 Where a procurement process is funded, in whole or part, by grant funding which has been awarded to the Council by an external funding body, the Procurement & Contracts Service must ensure that any rules or conditions imposed by the funding body are adhered to, in addition to the requirements of these Contract Procedure Rules.

28.2 Where there is any conflict between these Contract Procedure Rules and the rules or conditions imposed by the funding body, the stricter requirement should be followed.

29. **REVIEW AND AMENDMENT OF CPR**

These Contract Procedure Rules shall be reviewed and updated, as necessary.

31. **TERMINATION OF CONTRACTS** *(see the Delegations to Officers for details of Officers who may action this rule)*

The Delegations to Officers details which Officers may terminate a contract. Any termination must be strictly in accordance with the terms of the contract and subject to consultation with the Monitoring Officer and Section 151 Officer and in some cases with the relevant Portfolio Holder.