# Contract Procedure Rules

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**QUICK REFERENCE GUIDE TO THE CONTRACT PROCEDURE RULES**

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| **Total Contract Value** | **Process** | **Advertising** | **Authority**  | **Signature** | **Relevant Part**  |
| £0.00 - £10,000 | Ensure a budget is allocated. Chief Officer need not obtain quotations. Contracts in writing and a Purchase Order must be raised for every contract | None | Chief Officer | Chief Officer or officer authorised by him/her in writing | 5.1.19.5.1 |
| £10,000 - £50,000 | **3 Written Quotations** (unless using a framework or a dynamic market) Procurement and Projects Officer or Corporate Resources Director notified.  | All Contracts over £30,000 (inclusive of VAT) must be published on the Central Digital Platform”  | Chief Officer (ODR at award stage) | Chief Officer or officer authorised by him/her in writing | 5.1.29.5.1 |
| £50,000 to below Thresholds(and “frameworks”) | Instruct the preferred procurement provider to obtain at least **3 tenders in writing** (unless using a framework or where using the CCS assisted procurement service)Procurement and Projects Officer or Corporate Resources Director notified. | All Contracts must be published on the Central Digital Platform  | Chief Officer/Executive Lead Member (ODR [capital spend up to £1m] or EDR at award stage dependent on non-key/key decision\*) | Signed and Sealed (refer to Legal Services) | 5.1.39.4.1 |

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| Above thresholds | Instruct the preferred procurement provider to obtain **Competitive Tenders** (e.g. Competitive Flexible/Open procedure [unless using a framework or where using the CCS assisted procurement service])Procurement and Projects Officer or Corporate Resources Director notified.  | published on the Central Digital Platform  | Chief Officer/Executive Lead Member (ODR or EDR at award stage dependent on non-key/key decision\*) | Signed and Sealed (refer to Legal Services) | 5.1.49.4.1 |
| Former Part B Services – Social and Other Specific Services (excludes NHS Contracts) **below** threshold | Competitive Tenders must be sought (e.g., Competitive Flexible/Open procedure [unless using a framework])Procurement and Projects Officer or Corporate Resources Director notified. | published on the Central Digital Platform  | Chief Officer/Executive Lead Member (ODR or EDR at award stage dependent on non-key/key decision\*) | Signed and Sealed (refer to Legal Services) | 5.1.6 |
| Former Part B Services – Social and Other Specific Services (excludes NHS Contracts) **above** threshold | Competitive Tenders must be sought (e.g., Competitive Flexible/Open procedure [unless using a framework])Procurement and Projects Officer or Corporate Resources Director notified. | published on the Central Digital Platform  | Chief Officer/Executive Lead Member (ODR or EDR at award stage dependent on non-key/key decision\*) | Signed and Sealed (refer to Legal Services) | 5.1.6 |
| **Frameworks:** |  |  |  |  |  |
| Frameworks  | Ensure VFM (3.11)Process as set out in Framework Agreement - Must Instruct the preferred procurement provider if above thresholds or use the CCS assisted procurement service **Call-off contract must not be longer than the framework allows (3.15)** | Published on the Central Digital Platform”  | Chief Officer/Executive Lead Member (ODR or EDR at award stage dependent on non-key/key decision\*) | Chief Officer (or officer authorised by him/her in writing) if under £50,000Signed and Sealed if over £50,000 (refer to Legal Services) | 39.4.1 |

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| --- | --- | --- | --- | --- | --- |
| **Exceptions:** |  |  |  |  |  |
| Exceptions - Urgency | A direct award may only be used in exceptional cases and the Chief Executive Officer, Executive Director or Corporate Resources Director is to certify that contract is required so urgently as to preclude the invitation of tenders. The appropriate Executive Lead Member shall be kept informed of such decisions and a record of the decision shall be retained by the Chief Executive Officer, Executive Director or Corporate Resources Director and a copy sent to the Procurement and Projects Officer or Corporate Resources Director. | Details of the direct award must be published on the Central Digital Platform | Chief Executive Officer/ Executive Director/ Corporate Resources Director/ Executive Lead Member (ODR or EDR at process stage dependent on non-key/key decision\*)Executive Lead Member to be notified | See above re contract value | 17.6.1 |
| Exceptions - Specialist | An exception will be sought from the Executive Lead Member or Cabinet to either deal with a single contractor or to vary the quotation/tender requirements. | Details of the direct award must be published on the Central Digital Platform | Executive Lead Member/Cabinet(EDR at process stage regardless of whether non-key/key decision\*) | See above re contract value | 17.6.2 |

**N.B. Contracts must not be broken down into smaller or separate Contracts to avoid compliance with the rules**

**\*NOTES:**

1. If an Executive Decision Record (EDR) is being used to record the decision, then officers need to ensure that the report item (to approve the award) is included on the Forward Plan at the commencement of the procurement process (or in good time) for either a key or non-key decision. This will ensure that the requisite 28-day notice period can be observed (for a key or exempt decision), prior to approval being sought to award the contract from either the Executive Lead Member or Chief Officer.

2. Please note for Exceptions to Contract Procedure Rules 17.6.1 and 17.6.2 (Urgency and Specialist Contractor), this will require approval being sought earlier at the process stage either due to urgency or to deal with a single contractor/vary the quotation/tender requirements.

1. **COMPLIANCE**
	1. The purpose of these Contract Procedure Rules is to safeguard the interests of the Council, its employees (“Officers”), or any person acting on behalf of the Council, to set clear rules for the purchase of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach or challenge.
	2. The Local Government Act 1972 requires the Council to have standing orders for how it enters into Contracts. These Contract Procedure Rules are the standing orders required by the 1972 Act. They form part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for entering into Contracts on behalf of the Council.
	3. Accordingly, these Contract Procedure Rules must be followed by every Officer and any person acting on behalf of the Council (including consultants) every time there is a requirement of the Council to procure work, goods, materials or services under a contract regardless of value. All necessary legal, financial and professional advice must be taken by such Officers or by such persons to ensure compliance with these Contract Procedure Rules, the Council’s Financial Regulations and all relevant UK legislation. Failure to comply with these Contract Procedure Rules may result in disciplinary action and legal proceedings against Officers and other persons concerned.
	4. Each Chief Officer is responsible for ensuring that his/her directorate complies with these Contract Procedure Rules, the Council’s Financial Regulations and all relevant UK legislation. To plan the procurement of and manage Contracts within his/her Directorate to ensure that Contracts:
* Secure Best Value;
* Are operated effectively, efficiently and economically;
* Are operated within the terms of the Contracts themselves, so that the Council is not at risk of being in breach of Contract;
* To provide timely details to the Finance Team of Contracts entered into by his/her Directorate for inclusion into the Council’s Contracts Register. Contracts for less than £10,000 need not be recorded in the Register.
* To keep adequate records to show compliance with Contract Procedure Rules, Financial Regulations, and all relevant UK legislation in his/her Directorate.

Another Chief Officer or an Officer within his/her own Directorate may be authorised via written delegation to carry out the Chief Officer’s duties in respect of a particular Contract or Contracts generally.

* 1. These Contracts Procedure Rules do not apply to:
		1. Contracts for the purchase or sale of any interest in land (including leasehold interests).
		2. Contracts for the appointment of individual Members of Staff, including Members of Staff sourced through employment agencies under a Corporate Contract (Corporate Contract means a Contract for the supply of works, goods or services to the Council as a whole rather than for an individual service area).
		3. Grant agreements, either where the Council is giving or receiving a grant save that where any grant agreement has a value of £50,000 or more the provisions of paragraph 9.4 in relation to signing the grant agreement shall apply.
		4. Supply of works, goods and services bythe Council.
		5. If a Contract is being procured in collaboration with other local authorities, the Contract Procedure Rules of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own Contract Procedure Rules.
		6. These Contract Procedure Rules do not apply to:
1. The obtaining of specialist legal services as an adjunct to the general provision of such services to the Council the obtaining of which shall be made by the Executive Director of Governance but who shall still ensure the price obtained is not in excess of the market price and represents value for money and that the spirit of the rules are complied with as far as possible subject to the specialism of service or that a Framework Agreement is used;

and;

1. The obtaining of financial services in connection with the issue of sale, purchase or transfer of securities or other financial instruments and central bank services the obtaining of which shall be made by the Corporate Resources Director.
	1. Every Council employee (“Officer”) must ensure that they are aware of and observe the provisions of the Council’s Code of Conduct for Employees. If an Officer has an interest, financial or otherwise, in a Contract or proposed Contract, he/she must declare it in writing to the Chief Officer as soon as he/she becomes aware of the interest. An elected Member must register any contractual interests in accordance with the Member’s Code of Conduct. An elected Member or Officer who has an interest in a Contract must not take part in the procurement or management of that Contract.
	2. Chief Officers shall ensure that the Council complies with the statutory obligation to secure Best Value and that the Council complies with other legislation for the time being in force. The Chief Officer responsible for each Contract must record an estimated value for the Contract before any offers are sought. The value of a Contract is the total amount that the Council expects to pay or receive for the Contract, including any Contract extension period. This may be a lump sum e.g. £250,000 or a periodic payment e.g. £50,000 per year for a 5 year Contract = £250,000.
	3. If a Chief Officer wishes to nominate a particular sub-Contractor to a main Contractor, the procedures in these Contract Procedure Rules must be followed to select the sub-Contractor as well as the main Contractor.
	4. Before beginning the commissioning process for the supply of any services Chief Officers must consider whether the Public Services (Social Value) Act 2012 applies to the services. this applies to all amounts over £ 50,000 (ADC Social Value Policy, and the National Procurement Policy), Chief Officers must make the following considerations at the pre-procurement stage:
		1. How what is proposed to be procured might improve the economic, social and environmental well-being of the “relevant area”;
		2. How in conducting a procurement process the Council might act with a view to securing that improvement; and
		3. Whether to undertake a consultation on these matters.
	5. If there is a Corporate Contract for the supply of any works, goods or services, the Chief Officer must buy through that Contract, rather than awarding a separate Contract for his/her own Directorate. The Procurement and Project Officer or the Corporate Resources Director’s advice should be sought on these matters.
	6. Section 13 of the Procurement Act 2023 (the “Act”) provides that a contracting authority must have regard to the national procurement policy statement. (NPPS) Contracting authorities are required to have regard to the policy objectives contained within the NPPS that is current at the time they are carrying out a procurement.
	7. Section 13(10) of the Act sets out that the statutory duty to have regard to the NPPS does not apply to:

a. private utilities;

b. contracts awarded under a framework;

c. contracts awarded under a dynamic market;

d. procurements under devolved Welsh or transferred Northern Irish procurement arrangements; or e. devolved Welsh authorities or transferred Northern Irish authorities

1. **BEST VALUE**
	1. Best Value requires the Council to make proper arrangements for securing continuous improvement in the economy, efficiency and effectiveness in the use of its resources and is the optimum combination of whole life costs and benefits to meet customer requirements.
	2. Best Value requires the Council to identify those quotations and tenders which will secure the best balance of price against quality over the whole life of the Contract.
	3. The best and most widely accepted way of securing the necessary transparency in the evaluation of all the price and quality factors contained in quotations and tenders received is to adopt a robust points system which provides a pre-disclosed maximum number of points for price and for each factor in quality. The Procurement Act 2023 provides for the contracting authority to award a public contract to the supplier that submits the most advantageous tender in a competitive tendering procedure.
	4. Chief Officers shall seek advice from the preferred procurement provider about the Quotation/Tender Evaluation Models to ensure compliance with the requirements of these Contract Procedure Rules especially where any Contract has a procurement requirement falling within the UK Procurement Legislation regime or whose aggregate value is likely to exceed the relevant threshold figure for the time being in force.
	5. Chief Officers shall adopt the Quotation/Tender Evaluation Models recommended by the preferred procurement provider to ensure compliance with the requirements of these Contract Procedure Rules where any Contract does not have a procurement requirement falling within the UK Procurement Legislation regime or, if it does, whose value, or (if made up of a series of related Contracts) whose aggregate value is not likely to exceed the relevant threshold figure for the time being in force.
	6. Make or Buy

2.6.1 Where the Council has chosen to develop and sustain internal expertise in an area then it is likely that using the internal provision will secure Best Value. As a minimum dialogue should be had between the purchasing section and the internal provider before any decision is made to procure externally.

2.6.2 For the majority of services provided in-house, a significant level of their overall costs are fixed or will only change if there is a considerable change in levels of delivery (cost such as supervision/management, investment in ICT, buildings or machinery and their contribution to overheads). Therefore an internal provider is likely to be able to provide a service at a cheaper overall cost to the Council than an external provider.

2.6.3 Arrangements for internal provision should be periodically reviewed to ensure that they do not become out-of-date and continue to be the most suitable arrangements, taking into account, for example, that:

* requirements change over time and my no longer be reflected in the agreed service (e.g. in terms of quality, quantity or range of options offered);
* innovations or alternatives may have been developed since the original agreement;
* new entrants to a market could potentially be cheaper than the in-house alternative.

The regularity of these reviews will depend upon the degree of change in the market, the degree of change in the requirements and the flexibility of the existing agreement.

2.6.4 An externally provided solution may provide better Value for Money for the Council because:

* the extra cost required to provide the service internally is less than the price available externally (including any potential TUPE costs if currently provided externally, and/or break costs in the terms of PFI contracts);
* there is insufficient capacity (including any necessary specialism) to provide the service in-house;
* the quality that can be offered internally does not meet the needs of the internal customer.

2.6.5 The following should not be used for contracting out (or not using internal services) include:

* unsolved management problems (including issues of ‘long-standing resentment or mistrust of one group of staff by another’);
* ability to transfer risk (as this will be built into prices);
* a legacy of capital starvation (as prudential borrowing can rectify this).(Standing Guide to the Commissioning of Local Authority Work and Services, CIPFA’s 2013/4)

2.6.6 The expectation is that in most cases, the service managers from the customer and provider sections will discuss and agree if any of the criteria in 2.6.4 are met and thus if it is appropriate to externally procure. If the parties cannot agree it should be referred to the Procurement and Projects Officer.

2.6.7 Chief Officers are responsible for checking whether in-house provision is an alternative before commencing purchasing or tendering activities.

2.6.8 The Procurement and Projects Officer is responsible for periodically reviewing internal arrangements to ensure that they continue to provide the most suitable solution to meet their requirements.

1. **PARTNERING/FRAMEWORK AGREEMENTS**

3.1 Chief Officers shall adopt an integrated approach to procurement by actively considering whether the use of partnering or framework agreements is an appropriate form of service delivery for any of their services.

3.2 The overriding ethos of partnering is to provide a formal legally binding relationship that allows each party to a project to form a partnering team to work together to deliver the project in line with the principles of Best Value.

3.3 The early integration of the partnering team and the procurement process can achieve substantial improvements in the procurement of projects.

3.4 Partnering requires the partners to deal fairly with each other and work together in a spirit of mutual trust, respect, good faith, co-operation and dedication to agreed common goals and an understanding of each other’s expectations and values.

3.5 Partnering is designed to facilitate collaborative working which can be achieved through either project partnering or strategic alliancing, which is the grouping of a number of projects in order to obtain the benefits of long-term relationships.

3.6 Chief Officers shall ensure that the collaborative culture is fully embedded in all procedures, where partnering has been adopted.

3.7 There are various contract options available to provide a contractual arrangement to suit a partnering environment. Advice should be sought from the Procurement and Projects Officer or the Corporate Resources Director.

3.8 Framework agreements established in pursuance of the UK Procurement Legislation and any re-enactment(s) of them by other contracting authorities are recommended where it is possible for the Council to access such frameworks and where such use will ensure compliance with the requirements of these Contract Procedure Rules. The selection of a framework that is to be used must be approved subject to the recommendation from the preferred procurement provider to ensure best value and compliance with the Procurement Act 2023.

* 1. Chief Officers shall ensure that the details of every partnering contract and framework agreement option is referred to Legal Services for a consideration of the suitability of the arrangement concerned and the Council’s legal liability before such arrangement is concluded.
	2. Legal Services or the Procurement and Project Officer must be consulted before joining or buying from a new Framework Agreement where the expenditure will be more than the Threshold except for Works Contracts. It must be confirmed by the lead authority and owner of the framework that it is open and available to the Council. Frameworks and Dynamic Markets that are developed exclusively for the use of the Council must be managed by the preferred procurement provider and approved by the Executive Director Governance.

3.11 A Chief Officer may, subject to complying with UK Procurement Legislation regime requirements, authorise participation in a Framework Agreement, where it can be shown that the framework:

* Offers value for money; and/or
* Offers savings in the costs of procurement.

3.12 To select a Supplier for a specific Contract under a multi-Supplier framework agreement or to conduct a mini competition, the Chief Officer, in consultation with the preferred procurement provider, must follow the procedure set out in that Framework Agreement. Where the contract value is £50,000 or above, it must be done in consultation with the preferred procurement provider.

3.13 Advice must be sought on whether a standstill period applies to the award process. Successful and unsuccessful Suppliers who participated in a mini-competition must be notified of the decision to award the specific Contract.

3.14 Call off contracts under framework agreements of £50,000 or more must be executed as deeds, by affixing the Council’s Common Seal.

3.15 A call off contract under a Framework Agreement must not be for longer than the framework allows.

**4** **SELECTION OF SUPPLIERS**

4.1 Chief Officers shall ensure compliance with the Council’s Corporate Procurement Contracts currently in force to procure work, goods, materials or services. These are arrangements established by the Corporate Resources Director.

4.1.1 Chief Officers shall ensure that quotations and tenders be invited by the use of one of the following approaches:

UK Public Procurement

4.1.1.1 The UK public procurement legislation regime is mandatory for any Contract which has a procurement requirement falling within the UK Procurement Legislation regime and, if so, whose value, or (if made up of a series of related Contracts), whose aggregate value is likely to exceed the relevant threshold figure for the time being in force;

Approved Lists;

4.1.1.2 Chief Officers should not use approved lists of contractors without first obtaining advice from Legal Services or the Procurement and Projects Officer;

4.1.1.3 Joint procurement arrangements / frameworks / purchasing consortia arrangements established by other contracting authorities;

4.1.1.4 Office of Government Commerce (OGC) Buying Solutions framework contracts or other such like contracts;

4.1.1.5 Suitable suppliers derived from a competitive selection process conducted in consultation with the preferred procurement provider and where necessary, the Procurement and Projects Officer.

4.1.2 Chief Officers should adopt a collaborative approach to procurement, where appropriate, through the use of partnering as described in paragraph 3 of these Contract Procedure Rules. A partner is obtained through a competitive selection process which can be demonstrated by using any of the arrangements set-out in paragraph 4.3.1 of these Contract Procedure Rules.

4.2 **Public Procurement including Framework Agreements**

4.2.1 Chief Officers shall ensure that all procurement complies with the requirements of the UK Procurement Legislation and any re-enactment(s).

4.2.2 Chief Officers, in conjunction with the preferred procurement provider, shall ensure that the appropriate advertisements are placed on the Central Digital Platform. The Procurement and Projects Officer shall ensure the process related to the publishing of notices is maintained.

4.2.3 Suppliers expressing an interest in being invited to tender in response to a notice or an advertisement must complete a supplier questionnaire (SQ), in a form approved by the preferred procurement provider. SQs must be evaluated separately from, and before, any tenders are evaluated. Any SQ that is received after the latest date specified for return must not be considered.

**Advisory Note**: The criteria on which SQs are evaluated must be designed to establish the capability of the Supplier to undertake the Contract which will be different from the criteria on which tenders are evaluated. SQ’s will not be allowed for below threshold tenders.

4.2.4 A sufficient number of Suppliers must be invited to tender to ensure genuine competition. The minimum number is five. If there are fewer than five expressions of interest in being invited to tender or fewer than five satisfactory SQs, then the minimum number of Suppliers to be invited to tender may be reduced, with the approval of a Chief Officer(s).

4.2.5 As soon as possible after the SQ shortlisting, the preferred procurement provider must write to any Suppliers who were not selected, with reasons as to why they were not successful. If a Supplier who was not selected asks for further information on why he was unsuccessful, the Chief Officer must make the appropriate arrangements with the preferred procurement provider for feedback to be provided. A vetting process must be undertaken to ensure that the supplier has not been excluded due to a mandatory or discretionary ground

4.3 **Joint Procurement Arrangements / Frameworks/ Purchasing Consortia**

4.3.1 To fulfil their requirements, Chief Officers may use a number of arrangements established outside the Council by other parties, provided that those parties are “contracting authorities” as defined by the Procurement Act 2023 and any re-enactment(s), these arrangements being:

4.3.1.1 Joint procurement arrangements with other local authorities;

4.3.1.2 Framework arrangements established by contracting authorities such

 as the East Midlands Property Alliance (EMPA);

4.3.1.3 Purchasing consortia established by contracting authorities such as

 the Eastern Shires Purchasing Organisation (ESPO).

4.3.2 Any requirement of the Council involving the procurement of work, goods, materials or services via joint procurement arrangements with other local authorities, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, shall be deemed to comply with the corresponding requirements of these Contract Procedure Rules.

4.3.3 Advice from the Procurement and Project Officer/the preferred procurement provider should be sought before using framework arrangements established by contracting authorities.

4.3.4 Chief Officers shall ensure that the proposed terms and conditions that are to apply are adequate and appropriate and where necessary shall refer them to the Legal Services for a consideration of the suitability of the arrangement concerned and of the Council’s legal liability before proceeding with or entering into any arrangement referred to in paragraph 4.3.1 of these Contract Procedure Rules.

4.3.5 Chief Officers shall ensure that the terms and conditions entered into are complied with.

4.4 Vetting of Suppliers

4.4.1 Chief Officers shall ensure that suppliers are vetted for financial stability, technical competence, managerial capability, previous performance for the ability to comply with any national legislation and Council polices and procedures and whether the supplier has not been excluded due to a mandatory or discretionary ground before each Contract is let or before being included into the relevant approved list(s) whichever is the earlier. Where applicable, Chief Officers shall ensure that suppliers meet adequate and appropriate standards of health and safety.

**5.** **INVITATIONS TO SUPPLIERS**

5.1 Procurement of Contracts for work, goods, materials and services (including Contracts involving construction and engineering related work):

5.1.1 Where the estimated value of a Contract over the whole life of the Contract is under **£10,000,** the Chief Officer needs to obtain one quotation and be satisfied that the quotation is value for money. All contracts must be in writing and a purchase order must be raised for every contract

5.1.2 Where the estimated value of a Contract over the whole life of the Contract is between **£10,000 and £50,000**, Chief Officers shall obtain at least **3 written quotations**, except where framework agreements or other arrangements are legally accessible pursuant to paragraph 4 of these Contract Procedure Rules. Chief Officers, however, may elect to seek tenders in lieu of quotations.

5.1.3 Where the estimated value of a Contract over the whole life of the Contract **is between £50,000 and the relevant threshold**, Chief Officers will use the preferred procurement provider to obtain **at least 3 tenders in writing**, except where framework agreements or other arrangements such as dynamic markets are legally accessible pursuant to paragraph 4 of these Contract Procedure Rules.

5.1.4 Where the estimated value of a Contract over the whole life of the Contract exceeds the relevant Threshold, Chief Officers will use the preferred procurement provider obtain **a minimum of 5 tenders in writing.** If there are fewer than five expressions of interest in being invited to tender or fewer than five satisfactory SQ’s then the minimum number of Suppliers to be invited to tender may be reduced, with the approval of a Chief Officer(s);

5.1.4.1 Where the estimated value of a Contract over the whole life of the Contract exceeds the relevant threshold the Chief Officer and the preferred procurement provider will consider the following principles before inviting tenders:

* Analysis and evaluation of all practical options for Contract packages and methods of procurement, with the object of selecting the option that most effectively ensures best value and provides full, fair and open competition;
* that the supplier has not been excluded due to a mandatory or discretionary

ground;

* Taking into account the goals and objectives in the Council’s Procurement Strategy and the priorities of the Corporate Plan;
* Consultation with stakeholders within and outside the Council about service standards and specifications;
* Market investigation;
* Analysis of performance under any current Contract and consideration of prospective performance in the light of consultations and investigations;
* Stimulation of diversity and innovation, enhancement of choice for service users and attraction of new Suppliers;
* Promotion of sustainability;
* a commitment from the Supplier not to use zero-hour contracts, to recruit local apprentices and local labour and to pay the Living Wage;
* Declarations in relation to professional and business conduct, including Blacklisting;
* Partnerships between the public, private and voluntary sectors should be sought, which demonstrate a shared commitment to objectives that benefit users of the Council's services;
* Value for money should be applied, with the objective of achieving a Contract that best serves the needs of service users.

5.1.4.2 At the same time as submitting the procurement request to engage the preferred procurement provider in developing a procurement plan, the Chief Officer must give full instructions to Legal Services to draft or approve terms and conditions of Contract where non-standard terms are being used.

5.1.5 The decision to invite quotations or tenders for a Contract and the decision to award the Contract must be separate decisions.

Former Part B Services (excludes NHS Contracts):

5.1.6 Competitive tenders must be sought for Social and other Specific Services which are:

* Health, social and related services
* Administrative social, educational, healthcare and cultural services
* Compulsory social security services
* Benefit services
* Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
* Religious services
* Hotel and restaurant services
* Legal services to the extent not already excluded
* Other administrative services and Government services
* Provision of services to the community
* Prison related services
* Investigation and security services
* Internal services
* Postal services

5.1.7 Full details of the relevant services are contained in Schedule 2 of The Procurement Act 2023~~.~~

5.2 Formal Quotations and Tenders need not be sought:

5.2.1 If the estimated value of a Contract over the whole life of the Contract is less than £10,000. (Chief Officers have delegated authority to enter into Contracts below the Quotation level provided that a budget has been allocated for that expenditure). Contracts below the Quotation level must be signed for and on behalf of the Council by the Chief Officer responsible for the Contract or an Officer authorised by him/her and a Purchase Order raised through the Council’s finance system.

5.2.2 In the event of an emergency (Exceptions to Contract Procedure Rules), Chief Officers, however, shall ensure that the most suitable arrangement is secured for the Council and the details are recorded in writing and comply with the provisions set out in the Procurement Act 2023.

5.3 Chief Officers shall ensure that the e-tendering system shall be used wherever possible when inviting and receiving quotations and tenders electronically.

5.4 Chief Officers must not try to avoid compliance with these Contract Procedure Rules or the UK Procurement Legislation by splitting a procurement for the same or similar works, goods or services into smaller, separate contracts.

5.5 Chief Officers shall ensure that each individual Contract be packaged to secure Best Value for the Council.

5.6 Chief Officers shall ensure that suppliers invited to provide quotations or to submit tenders are contacted and (regardless of the process being used) a record maintained of the requests made and their agreement to provide quotations or submit tenders. In addition, a vetting process must be undertaken to ensure that the supplier has not been excluded due to a mandatory or discretionary ground.

5.7 Chief Officers shall ensure that where there is a multiple stage process for inviting quotations or tenders then any criteria to be used for short-listing suppliers throughout such process is robust and transparent and shall make use of the assistance available from the preferred procurement provider.

5.8 Chief Officers shall ensure that a realistic period be stipulated in the invitations to suppliers to provide quotations or to submit tenders, with a minimum period of ten working days allowed for a response.

5.9 Chief Officers shall ensure that invitations to suppliers to provide quotations or to submit tenders for work, goods, materials or services, incorporate:

5.9.1 The requirements set out in these Contract Procedure Rules appropriate to the circumstances of the invitation;

5.9.2 A specification that describes the Council’s requirements in sufficient detail to enable the submission of competitive offers. The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the Chief Officer to see whether the Council’s requirements are being met by the Supplier. All necessary professional and technical advice and assistance must be obtained in preparing the specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. Consultants who assist in the preparation of a specification must not be invited to tender for the Contract. The people who prepare the specification should, as a rule, be part of the panel that evaluates tenders;

5.9.3 The nature and quantity of the work, goods, materials or services that is required;

5.9.4 The time, or times, within which the work or services are to be performed or the goods and materials are to be delivered;

5.9.5 A notification that assignment or sub-contracting is not permitted without prior written consent from the Council, unless the circumstances of the particular invitation require a different approach;

5.9.6 A notification that quotations are provided and tenders are submitted to the Council on the basis that they are compiled and delivered at the supplier’s expense and that, in no circumstances, will the Council contribute to such expenses whatever the outcome of the procurement process;

5.9.7 A notification that the Council is not bound to accept the lowest or any quotation or tender for a specific Contract;

5.9.8 A Certificate of Bona Fides;

5.9.9 A Form of Tender. The form of tender must also state that the tender will remain open for acceptance by the Council for a period of ninety days after the last date for receipt of tenders, or such other period as appropriate;

5.9.10 Adequate and appropriate provisions regarding insurances, health and safety, equality and diversity, data protection and freedom of information;

5.9.11 Adequate and appropriate price adjustment provisions (unless the circumstances of the particular invitation require a different approach), anti-collusion provisions, anti-corruption provisions and anti-fraud provisions;

5.9.12 Robust and transparent award criteria to be used in evaluating quotations or tenders received to ensure compliance with the requirements of these Contract Procedure Rules; and

5.9.13 The terms and conditions of Contract

5.9.13.1 For Contracts over the relevant Threshold, full instructions must be given at earliest opportunity and in any event not later than submitting the procurement request to the preferred procurement provider and to Legal Services to draft the terms and conditions of Contract or to approve non-standard terms and conditions of Contract e.g. JCT.

5.9.13.2 All Contracts, whatever their value, must include:

* A clear and comprehensive description of the works, goods or services to be supplied (the specification);
* The price to be paid by the Council and mechanism;
* Key performance indicators;
* The time or times within which the Contract is to be performed;
* A provision allowing the Council to use information gained from the Contract for preventing and detecting fraud;
* A provision requiring the Supplier to comply with requests under the Freedom of Information Act 2000 for information relating to the Contract;
* A right for the Council to terminate the Contract immediately in the event of corrupt activity and for the Council to recover its losses arising from the termination and other termination provisions where appropriate;
* A provision requiring the Supplier to comply with all applicable law about:

the processing of personal data and privacy (including the General Data Protection Regulation (Regulation (EU) 2016/679)(“UK GDPR”), any applicable national implementing Laws as amended from time to time and the Data Protection Act 2018 (to the extent that it relates to processing of personal data and privacy);

* Health and Safety;
* Equality and Diversity;
* Freedom of Information;
* Money Laundering;
* Anti-Corruption;
* Intellectual Property;
* Whistleblowing;
* Insurance;
* Other relevant statutory provisions including Modern Slavery and Social Value;
* A provision for making changes to the Contract to take account of changes in circumstances;
* If the Supplier's failure in performance would cause the Council financial loss, a provision for payment of liquidated damages;
* An appropriate dispute resolution procedure;
* A prohibition on the Supplier assigning, sub-letting or novating the Contract without the Council's consent;
* A provision requiring the Supplier to co-operate with the Council.
* If appropriate, a warranty by the Supplier that his employees are suitable persons to be employed in that Contract and, notwithstanding the provisions of the Rehabilitation of Offenders Act 1974, have disclosed all charges, cautions and convictions of criminal offences. This may include obtaining disclosures by the Disclosure and Barring Service, including the Supplier’s connected persons (including persons with significant control over the Supplier), and whether any exclusion grounds may apply to the Supplier or its associated and connected persons.
* A provision requiring the Supplier to employ sufficient numbers of appropriately trained, skilled and competent staff and allowing the Council to require the removal of any member of the Supplier's staff from the Contract, if his/her behaviour justifies it;
* Where transfer of staff may be involved, provisions dealing with rights and obligations regarding employee matters, including pensions;
* A requirement for the Supplier to maintain records concerning the Contract and to give the Council access to such records and to the Supplier's premises and personnel for the purpose of internal or external audit;
* Where appropriate, a provision regarding tax deductions under the Construction Industry Scheme.
	+ 1. The Chief Officer must:
			1. Require the Supplier to maintain appropriate and adequate levels of insurance cover, in consultation with the Council's Corporate Resources Director, for employer's liability, public liability, products liability, all risks/Contract works and professional indemnity insurance. Unless otherwise agreed by the Corporate Resources Director, the minimum levels of cover shall be:
* £10 million for employer's liability insurance
* £5 million for public liability and products liability insurance
* £2 million for professional indemnity insurance or in exceptional cases where £2m is not feasible for the works covered, £1m at the discretion of the Chief Finance Officer. All policies must contain an indemnity of principals clause.
	+ - 1. Ensure that the Supplier holds the required insurance cover at the start of the Contract, renews the policies as necessary during the Contract period and, following each renewal, provides details verified by his insurer or broker of his insurance for the Council's records. It is permissible to ask suppliers to demonstrate their capability to obtain the insurance such as by way of a quote or other proof of intention. For lesser amounts of insurances these have to be proportionate to the performance of the contract and authorised by the Corporate Resources Director.

5.9.15 As a general rule, all Contracts, whatever their value, must provide for payment by the Council after supply of the works, goods or services. Exceptionally, and only with the consent of the Chief Finance Officer, a Contract may provide for payment in advance. Generally, the Contract notice or other advertisement inviting tenders must not be published until the terms and conditions of Contract have been drafted.

5.9.16 If appropriate, a pricing document for completion by the tenderer; and

5.9.17 Any other relevant items that are considered necessary.

5.10 Chief Officers shall ensure that the information set-out in paragraphs 5.9.1 to 5.9.17 inclusive of these Contract Procedure Rules be issued to each supplier invited to provide quotations or to submit tenders at the same time. Any supplementary information must be given on the same basis.

5.11 Chief Officers shall ensure that TUPE issues are considered when any employee either of the Council or of an incumbent provider of work or services may be affected by any transfer arrangement and obtain advice from a Legal Services before proceeding with invitations to suppliers to provide quotations or to submit tenders.

**6.** **TENDERING PROCEDURES**

This paragraph relates to tendering procedures for Contracts in respect of which the Council’s e-tendering system is not used as expressly agreed by the preferred procurement provider involving construction and engineering related work or Contracts estimated to have a value over the whole life of the Contract exceeding £50,000 for work, goods, materials and services, provided there is no conflict with the requirements of UK Procurement Legislation and any re-enactment(s).

6.1 Chief Officers shall ensure that all suppliers invited to submit a tender (regardless of the process being used) confirm receipt of the tender documents, using the Council’s e-tendering system.

6.2 Unless otherwise stipulated in the tender documents, all written tenders must be delivered to the preferred procurement provider (as appropriate) and in a plain envelope.

6.3 Chief Officers shall ensure that the tender documents stipulate that all envelopes containing tenders shall be securely sealed and shall bear the word ‘TENDER’ followed by the name and/or reference of the Contract to which the tender relates. Also, such envelopes shall not bear any distinguishing mark intended to indicate the identity of the supplier.

6.4 Chief Officers shall ensure that all envelopes containing tenders remain in the custody of the designated officer concerned until the time appointed for their opening.

6.5 Chief Officers shall ensure that the envelopes containing tenders for the same Contract be opened at the same time by the designated officer concerned who shall do so in the presence of another officer or officers approved by the designated officer concerned for that purpose.

6.6 Chief Officers shall ensure that tenders received for whatever reason after the specified time or date or not delivered to the Council in accordance with the tender instructions will not be considered.

6.7 A commitment from the Supplier not to use zero hour contracts, to recruit local apprentices and local labour and to pay the Living Wage is welcomed.

6.8 Declarations in relation to professional and business conduct, including Blacklisting must be completed;

6.9 Any tender that does not comply with the instructions to tenderers or is conditional in any way will be rejected and will not be evaluated by the Council; and

* Any Contract will be terminated immediately, and any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge) : (1) Offers or promises or gives a financial or other advantage to any elected Member of the Council, any Member of Staff or any consultant in connection with the Contract; or (2) Requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly;

6.10 Appropriate time must be allowed for submission of tenders. The minimum is ten working days from the date of the invitation to tender where a qualifying planned procurement notice has been issued, where the Council as the contracting authority considers there to be a state of urgency that means any other applicable minimum tender period is impractical, or where a contract is being awarded under a dynamic market or the procurement included a condition of participation stage, and only pre-selected suppliers are invited to submit a tender. In all other cases other tender timelines will apply and should be determined in line with the provisions set out in the Procurement Act 2023.

6.11 Amendments to invitation to tender documents, made after the invitations have been sent out, must be clearly headed "ITT Amendment" and sent to all Suppliers who have been invited to tender. One or more amendments must be numbered consecutively. Amendments must be sent out in sufficient time to allow Suppliers to adjust their tenders before close of tenders. If necessary, the tender period must be extended to allow for this.

6.12 Tenders must be opened one at a time by the preferred procurement provider, in the presence of the Chief Officer or an Officer authorised by him/her.

6.13 All tenders must be numbered in the order they are opened and all persons present must initial the forms of tender.

6.14 Requests For Quotations and Invitations to Tender should be transmitted by electronic means wherever possible. The paper-based processes set out in these Rules must be followed unless an e-procurement package is being used.

**7. PROCEDURES FOR QUOTATION AND TENDER DISCUSSION AND/OR CLARIFICATION**

7.1 Pre-Quotation and Pre-Tender Discussion

7.1.1 It is advisable to publish a qualifying planned procurement notice to reduce tender timescales. If the Council carries out preliminary market engagement, a preliminary market engagement notice must be published before publishing a tender notice, or reasons for not doing so must be provided in the tender notice.

 A discussion prior to inviting quotations or tenders with potential suppliers may be appropriate as part of the competition process and in order to secure Best Value for the Council. The objective for such discussion is to ensure that an effective invitation is prepared. All potential suppliers must be treated equally within this process.

7.2 Post-Quotation and Post-Tender Clarification

7.2.1 Clarification after receipt of quotations or tenders and before the letting of Contract(s) with those supplier(s) who have submitted such quotations or tenders may be appropriate in special circumstances as part of the competition process and in order to secure Best Value for the Council, provided there is no conflict with the requirements of UK Procurement Legislation and any re-enactment(s) of them. The objective of such discussion is to obtain an improvement in content of these quotations or tenders in circumstances which do not put the other supplier(s) at a disadvantage, distort competition or affect adversely trust in the competition process. All potential suppliers must be treated equally within this process.

7.2.2 Where post-quotation or post-tender clarification results in a fundamental change to the specification or the proposed terms and conditions that are to apply, an official order must not be issued or a formal contract must not be made and quotations or tenders must be re-invited.

7.2.3 A tender that is qualified or expressed to be conditional upon the Council's acceptance of alterations to the specification or the terms and conditions of Contract must be treated as non-compliant and rejected. Non-compliant tenders must not be evaluated. This does not prevent the Council inviting variant bids. If variant bids are invited, tenderers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender, so that all bids may be compared fairly.

**8.** **ACCEPTANCE OF QUOTATIONS AND TENDERS**

8.1 Whenever an e-tendering system is not used, Chief Officers shall ensure that a record of the quotations received be prepared, signed, dated and timed, which record shall include the date and time each quotation is received, together with the main terms of each quotation (e.g. value, price, delivery period, or other significant issues unique to each quotation).

8.2 Whenever an e-tendering system is not used, Chief Officers shall ensure that a record of the tenders received is prepared, signed, dated and timed and countersigned by another officer or officers present, which record shall include the date and time each tender is received, together with the main terms of each tender (e.g. value, price, delivery period, or other significant issues unique to each tender).

8.3 Subject to any legal obligations on the Council, Chief Officers shall ensure that the confidentiality of quotations and tenders received and the identity of the corresponding supplier is preserved at all times and that information about one supplier’s offer shall not be given to another supplier.

8.4 Where a quotation or tender is received from a consortium, which is acting jointly for the purpose of being awarded a Contract, such quotation or tender shall be evaluated in accordance with the requirements of either paragraph 8.5 or paragraph 8.5.1 of these Contract Procedure Rules.

8.4.1 Chief Officers shall ensure that any quotation or tender of a consortium is not treated as ineligible on the grounds that the consortium has not formed a legal entity for the purposes of providing a quotation or submitting a tender.

8.4.2 Where the quotation or tender received from a consortium is to be accepted, Chief Officers shall ensure that the proposed terms and conditions that are to apply are referred to the Legal Services for consideration of the Council’s legal liability before proceeding with or entering into an official order or a formal contract. The Executive Director of Governance shall decide on whether to require the consortium to form a legal entity before entering into, or as a term of, the official order or formal contract.

8.4.3 The vetting of the consortium, and for Contracts involving construction and engineering related work, shall be in accordance with the requirements of paragraph 4.4.1 of these Contract Procedure Rules.

8.5 Chief Officers shall ensure that tenders received are evaluated in accordance with the Quotation/Tender Evaluation model recommended by the preferred procurement provider. Any Contract that has a procurement requirement falling within the UK Procurement Legislation regime and, if so, whose value, or (if made up of a series of related Contracts), whose aggregate value is likely to exceed the relevant threshold figure for the time being in force.

8.5.1 Chief Officers shall ensure that quotations received and tenders received are adequately and appropriately evaluated where any Contract does not have a procurement requirement falling within the UK Procurement Legislation regime or, if it does, whose value, or (if made up of a series of related Contracts) whose aggregate value is not likely to exceed the relevant threshold figure for the time being in force and shall adopt the Quotation/Tender Evaluation Model recommended by the preferred procurement provider.

8.6 Chief Officers shall ensure that errors or discrepancies found in quotations or tenders be adequately and appropriately dealt with. Where such error or discrepancy cannot be adequately and appropriately dealt with the matter shall be immediately referred to the Chief Finance Officer for a decision.

8.7 Chief Officers shall ensure that the quotation or tender which secures Best Value for the Council be accepted, provided that there is no conflict with the Procurement Act 2023 and any re-enactment(s).

8.8 Chief Officers shall ensure that a record is kept of the withdrawal of a quotation or tender by a supplier within a specific Contract together with the circumstances of such withdrawal.

8.8.1 Chief Officers shall ensure that this information is reported to all officers responsible for the selection of suppliers who may be invited to provide quotations or submit tenders for the provision of work, goods, materials or services.

8.9 Chief Officers shall ensure that where the accepted quotation or tender is changed following the rectification of errors or discrepancies and/or post-quotation/tender clarification, such amendment(s) be initialled by Chief Officers or authorised signing officer(s).

8.10 Each Contract shall be let on the authority of a Chief Officer, following a decision having been taken on the acceptance of a quotation or tender by an appropriate decision-maker (i.e. for executive business a Chief Officer (or other specifically delegated officer), Executive Lead Member/Leader or Cabinet) in accordance with the currently prevailing financial limits.

8.11 Chief Officers shall ensure compliance with the relevant provisions of these Contract Procedure Rules where the accepted quotation or tender incorporates provisional, prime cost or non-defined items or other such similar items.

8.12 A tender that exceeds the budget allocated must not be accepted. If a tender exceeds the budget allocated, the Chief Officer must obtain an additional allocation of funds in accordance with Financial Regulations before the tender may be accepted.

8.13 The decision to award the Contract must include the name of the successful tenderer, the length of the Contract and any options for extension and the price or estimated price of the Contract.

8.14 Chief Officers shall ensure that suppliers whose quotation or tender for a specific Contract is not accepted be notified and given the names of all suppliers who provided a quotation or submitted a tender, together with the prices, or ranges of prices, so provided or submitted. Such prices, or range of prices, must not be correlated to the names of the suppliers.

**9.** **ORDERS AND CONTRACTS**

* 1. All Contracts must be evidenced by means of an official order or a formal contract. Such official order must be issued or such formal contract must be made to all suppliers for the provision of Contracts, before the relevant supply, service or work begins, except in exceptional circumstances as provided for in paragraph 9.2 of these Contract Procedure Rules.

9.1.1 Chief Officers shall ensure that official orders are raised through the Council’s main financial system.

9.1.2 Chief Officers shall ensure that official orders are also raised through the Council’s main financial system:

9.1.2.1 For call-offs, draw-downs or other similar arrangements, where an official order has already been issued or formal contract has already been made, or where a series of official orders have already been issued or formal contracts have already been made with the same external organisation, which relate to the same Contract; and

9.1.2.2 For budgetary purposes, where a formal contract has already been made. However, such budgetary orders shall not be issued to suppliers, but shall be retained by the relevant Council department.

9.2 In exceptional circumstances, where an official order has been raised electronically, i.e. by telephone, e-mail or fax transmission, Chief Officers shall ensure that an official confirmatory order be issued through the Council’s main financial system without undue delay.

9.3 Chief Officers shall ensure that an official order or a formal contract for any individual Contract is not artificially divided into two or more separate official orders or formal contracts with the intention of avoiding the application of these Contract Procedure Rules.

9.4 Where any Contract has a value of £50,000 or more:

9.4.1 the Head of Paid Service must make a formal contract under seal where the value of any Contract is £50,000 or more. All Contracts executed as deeds must have the Council’s Common Seal impressed on them. All call off contracts under Framework Agreements, bonds and guarantees, and Contracts of £50,000 or more must be executed as deeds.

9.4.2 the Executive Director of Governance (taking into consideration the risks involved) may deem a formal contract under seal to be inappropriate in any particular case (except for Contracts involving construction and engineering related work), even where the value of the Contract not involving construction and engineering related work is £50,000 or more. In this case, the Chief Officer concerned shall ensure that an official order or a simple contract relating to such Contract is made in such terms that have the prior approval of the Executive Director of Governance.

9.5 Where any Contract has a value of less than £50,000:

9.5.1 the Chief Officer concerned must issue an official order or make a simple contract where the value of any Contract is less than £50,000. Such official order or such simple contract must be signed by at least one Chief Officer;

9.5.2 the Executive Director of Governance (taking into consideration the risks involved) may deem an official order or simple contract inappropriate in any particular case, even where the value of the Contract is less than £50,000. In this case, the Chief Officer concerned shall ensure that a formal contract under seal relating to the Contract is made in such terms that have the prior approval of the Executive Director Governance and in accordance with paragraph 9.4 of these Contract Procedure Rules;

9.5.3 Chief Officers may authorise, in writing, other officers to sign official orders or simple contracts or to authorise such orders or contracts electronically in a main financial system on their behalf at a value agreed with the Chief Finance Officer provided Chief Officers are satisfied that their officers have received relevant financial training as approved by the Chief Finance Officer.

9.6 Chief Officers shall ensure that:

9.6.1 no official order be issued or formal contract made for a Contract which will commit the Council to expenditure unless provision exists to finance that expenditure, except in the event of an emergency;

9.6.2 no official order be issued or formal contract made for work, goods, materials or services for the private use of any person;

9.6.3 only official order forms in a format approved by the Chief Finance Officer be used;

9.6.4 each official order or formal contract indicates clearly the nature and quantity of the work, goods, materials or services, the agreed value or price and provisions for payment, any trade or cash discount or allowance, the time, or times, within which such order or contract is to be performed, together with any reference to a quotation, tender or other arrangement;

9.6.5 each official order or supplier’s form of order used to call-off, draw-down or make other similar arrangements where a formal contract in respect of such requirements is already made (whether such contract be under seal or a simple contract) contains full details of the contract in question, including as a minimum: the date of the contract, the names of the parties to it and a description of the work, goods, materials or services (as the case may be) which form the subject-matter of the contract;

9.6.6 where the terms of any official order or a formal contract are changed, such amendment(s) be initialled by Chief Officers or authorised signing officers. In addition, the copy of an official order so changed and held by the issuing Council department, be amended accordingly;

9.6.7 a scanned copy of every executed formal contract is sent to the Procurement and Projects Officer.

9.7 The Procurement and Projects Officer shall ensure that as soon as possible after any formal contract has been made, the Chief Finance Officer is notified and a register be kept of such contracts made.

9.8 Chief Officers shall ensure that any contingency allowance incorporated into an official order or formal contract does not exceed 10% of the estimated cost of a Contract unless agreed otherwise with the Chief Finance Officer.

9.9 Where the modification increases or decreases the contract value by less than 10% (goods & services) or 15% (works) unless they are a convertible contract - then a contract change notice must be published – Refer to the table of notices at section 19 of these Contract Procedure Rules.

**10.**  **CONTRACTS THAT HAVE COMMENCED**

Contract Management

10.1 A Contract must not start until the Contract documents have been signed or signed and sealed and dated. Chief Officers must allow time for this in the Contract programme.

10.2 Within ten days of the date of the Chief Officer or Contract officer should 1] notify the Finance Team if the Contract is worth £5,000 or more or 2] Procurement and Projects Officer and the preferred procurement provider if the Contract is worth £30,000 or more of the following:

* The Contract reference number
* The title of the agreement
* The local authority responsible
* The works, goods or services to be supplied;
* The procurement procedure adopted;
* The name of the Supplier,
* The Contract value; and
* The commencement and completion dates.

10.3 Statutory notices must be published in relation to the contract award, through the life of the contract and in relation to contract termination in accordance with the Procurement Act 2023 – **refer to the table of notices at section 19 of these Contract Procedure Rules.**

 Relevant exemptions to this are set out in the Procurement Act 2023.

 All notices must be published no later than 30 days after the procurement has been awarded.

10.4 The Chief Officer shall be the Contract manager for the Contracts for which he/she is responsible up to the relevant Threshold, but he/she may authorise another Officer by written delegation to have day-to-day responsibility for managing the Contract. For Contracts over the relevant Threshold, the Chief Officer must appoint a dedicated Contract manager with appropriate skills and experience.

10.5 The Chief Officer is responsible for:

* Managing the Contract and ensuring that it is carried out in accordance with its terms and conditions;
* Monitoring the Supplier's performance;
* Making the Contractor aware that he is expected to comply with the Council’s equal opportunities, anti-bribery, whistle-blowing and anti-money laundering policies;
* Ensuring that the Supplier maintains the insurance policies required by the Contract;
* Agreeing any minor changes to the Contract (but not changes to prices) before they are carried out;
* Keeping a record of all valuations, payments, claims, monitoring, changes and certificates under the Contract;
* Deducting liquidated damages, if appropriate;
* In consultation with Legal Services consenting to sub-Contracts, assignments to new Suppliers and/or novation to a new Supplier(s); and
* Managing the transition between the ending of one Contract and the beginning of another
* Ensure details relating to publication notices are available for publication – to include:

Contract payment notice, Contract performance notice, Contract change notice, Contract termination notice, Payment’s compliance notice.

**For Notices – Refer to the table at section 19 of these Contract Procedure Rules**

10.6 The Chief Officer must consult Legal Services for consideration of the Council's legal position:

* Before any Contract is to be terminated or suspended;
* In the event of a claim for payment not clearly within the terms and conditions of Contract;
* Before making any deduction from payments due to a Supplier or withholding payment from a Supplier;
* Before making any extension to a Contract or variation of the scope of a Contract.

Extensions to Contracts

10.7 An extension to a Contract is an additional period at the end of the Contract, during which the works or the services to be carried out are a repetition of the works, supplies or services under the original Contract.

10.8 Unless a Contract specifically includes an option to extend its term, that Contract may not be extended. The Contract will cease to exist at the end of its term. Exceptions to this paragraph 10.8 (extension of the term of a contract where the contract does not provide an option to extend the term) may be permitted only in exceptional circumstances in consultation with Legal Services and in accordance with the provisions of the Procurement Act 2023, and the approval of the Executive Director of Governance must be obtained.

10.9 If a Contract specifically includes an option to extend its term and:

* The contract notice or other advertisements for the Contract stated that an extension Contract may be awarded; and
* The estimated value of the Contract in the contract notice or other advertisements took account of the potential extended Contract; and
* The extension represents good value for money for the Council,

10.10 Then the Chief Officer may make a decision to award the extension Contract if the value of the extension is below £50,000 per annum. If the value of the extension is over £50,000 per annum the decision to award the extension Contract must be made by the Cabinet, unless Cabinet Authority has already been provided within the original contract approval. Once the extension has expired, that Contract will cease to exist.

Variations to the Scope of Contracts

10.11 Provided that a budget has been allocated for that expenditure and value for money can be demonstrated, the Chief Officer may agree with a Supplier to carry out additional works or services that were not included in the original Contract but which through unforeseen circumstances have become necessary and which either cannot for technical or economic reasons be carried out or provided separately from those included in the original Contract without major inconvenience to the Council or could be carried out or provided separately but are strictly necessary to the later stages of the Contract. The additional works or services must not exceed 50% of the value of the Contract and authorisation must be obtained from the appropriate decision-maker. The modifications to a contract are subject to the requirements of the Procurement Act 2023 and the requirement to publish contract change notices. Refer to the table of notices and publication requirements at section 19 of these Contract Procedure Rules

**11.** **PAYMENTS**

11.1 Chief Officers shall ensure that payments to suppliers for work, goods, materials or services are certified and made in accordance with:

11.1.1 The appropriate term(s) of the official order or formal contract; and

11.1.2 The Council’s Financial Regulations.

**12** **PERFORMANCE SECURITY ARRANGEMENTS**

12.1 Chief Officers shall ensure that procurement exercises allow for the obtaining of security for the due performance of all Contracts (whether they be Contracts involving goods, materials or services or involving construction and engineering related work) between the Council and any external organisation where the value of such Contract is estimated to be £500,000 or more.

12.2 Chief Officers must decide, taking appropriate advice, whether the circumstances justify the Council requiring the supplier to provide appropriate security arrangements. Such security may be by way of performance bonding, parent company/third party guarantees, deposit of money as security or other means considered appropriate by the Chief Officer.

**13** **INSURANCES**

13.1 Chief Officers shall ensure that there is adequate and appropriate insurance cover in force during the continuance of a Contract for both the Council and its suppliers in conjunction with the Council’s insurance officers.

**14.** **CONSULTANTS**

14.1 Where a supplier is providing consultancy services to the Council (e.g. professional, technical, IT and managerial), Chief Officers shall ensure that the relevant provisions of these Contract Procedure Rules are followed and included in the terms of such supplier’s appointment.

14.2 Chief Officers shall ensure that the taxation procedures set out within the Financial Regulations are followed in the employment of consultants.

14.3 Chief Officers shall ensure compliance with the requirements of the Audit for commissioning and managing consultants

14.4 All consultants engaged to act on behalf of the Council must comply with policy and declare that:

* They will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council; and
* They will notify the relevant Chief Officer if they have any links with (e.g. a family member or close friend works for) an organisation or Supplier who is tendering or quoting for a Contract with the Council or already has a Contract with the Council; and
* Any consultant or agent acting for the Council in a procurement capacity will be required to comply with the requirements of these procedures and must be competent in public procurement.

**15.** **RECORDS**

15.1 Chief Officers shall ensure that the records required by these Contract Procedure Rules are kept and securely retained.

15.2 For the purpose of these Contract Procedure Rules, Chief Officers shall ensure that the relevant documentation set-out in the Council’s Retention and Disposal Policy is securely kept and retained for at least the periods stated in such schedule.

**16** **AUDIT EXAMINATION**

16.1 The authority of the Council’s Internal Audit is outlined in the Council’s Financial Regulations and will be utilised where appropriate.

**17.** **EXCEPTIONS TO CONTRACT PROCEDURE RULES**

17.1 An exception to Contract Procedure Rules is a permission to let a Contract without complying with one or more of the Rules. An exception to Contract Procedure Rules may be granted subject to conditions.

17.2 Permission to use an exception to Contract Procedure Rules will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not be a permitted exception to the Rules.

17.3 If an exception is granted, the Chief Officer responsible for the Contract must demonstrate that the price obtained is not in excess of the market price and that the Contract represents value for money.

17.4 An exception to Contract Procedure Rules is not required in the following circumstances:

17.4.1 Placing an order under an existing Corporate Contract or single Supplier Framework Agreement;

17.4.2 As part of a partnering Contract that contemplates a series of Contracts with a single Supplier, provided the entire series has been duly authorised as appropriate for its value;

17.4.3 Legislation requires the Council to let a Contract differently from these Contract Procedure Rules;

17.4.4 Placing an order through the preferred procurement under an arrangement, of which the Council is an affiliate, which has gone through a compliant competitive process;

17.5 Exceptions under this Rule shall be notified to the Procurement and Projects Officer or the Corporate Resources Director.

17.6 Exceptions may be granted in the following circumstances:

17.6.1 The Contract is for the execution of works or the supply of goods or services certified by the Chief Executive Officer, Executive Director or Corporate Resources Director to be required so urgently as to preclude the invitation of tenders. The urgency must be extreme and unavoidable – the urgency must not be attributable to the Council and therefore does not include instances where the Council has not built in sufficient time. The appropriate Executive Lead Member shall be kept informed of such decisions and a record of the decision shall be retained by the Chief Executive Officer, Executive Director or Corporate Resources Director and a copy sent to the Procurement and Projects Officer or the Corporate Resources Director.

17.6.2 Where there is no (or insufficient) marketplace to tender for the supply of goods, services or works required because of the specialist nature of the proposed Contract permission to apply an exception will be sought from the Executive Lead Member or Cabinet to either deal with a single contractor or to vary the quotation/tender requirements. If the Council has invited tenders or requests to participate and have confirmed that there have not been any suitable tenders received, then provisions exist under the Procurement Act 2023 to switch to a direct award procedure.

**18. ELECTRONIC SIGNATURES**

18.1 Signatures may be affixed to a Contract either using physical, handwritten means or an Electronic Signature, as appropriate and in accordance with UK law.

* + 1. Electronic Signatures may only be affixed using the Council’s chosen electronic signature system or an approved alternative.
		2. The use of Electronic Signatures is not permitted in circumstances where:
			- * the Contract is to be sealed;
				* a physical, handwritten signature needs to be filed;
				* there is a proviso in the Contract which prevents the use of an Electronic Signature;
				* the Contract may need to be enforced in a jurisdiction where Electronic Signatures are not accepted;
				* the Contract needs to be notarised.

**19. NOTICES AND PUBLICATION REQUIREMENTS**

The Council will advertise procurements and publish details of awarded contracts as follows: Advertising and publication requirements under the Regulations, Local Government Transparency Code and Procurement Act 2023:

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| **Procurement Lifecycle** | **Notice**  | **Requirements** |
| PLAN | Pipeline notice (this will be obtained from the 5-year procurement plan) | MANDATORY where organisational procurement spend is £100m+, publish 12-month forward of procurements £2m+  |
| DEFINE | Preliminary market engagement notice  | MANDATORY where pre-market engagement is planned or has taken place (or explain why not, in tender notice)  |
| PROCURE | Planned procurement notice | OPTIONAL AND BEST PRACTICE -Publish a qualifying planned procurement notice to reduce tender timescales |
| PROCURE | Tender Notice | MANDATORY when undertakingan open or competitiveflexible procedure (includingto establish a framework andaward a contract under anexisting dynamic market) ora regulated below-thresholdprocedure |
| PROCURE | Transparency Notice | MANDATORY when undertakinga direct award (publish priorto award) |
| PROCURE | Contract Award Notice | MANDATORY - communicatesthe outcome of theprocurement andcommences standstill priorto awarding a contractopen or competitive flexibleprocedure. |
| PROCURE | Contract Details Notice | MANDATORY - For contracts over £5m total value, KPIs must be set and the contract (redacted as required) published |
| PROCURE | Procurement termination notice  | MANDATORY - Publish if, following a tender or transparency notice, the procurement ends without a contract award  |
| PROCURE | Dynamic market notice  | MANDATORY - Publish to advertise, establish, change or terminate a dynamic market  |
| PROCURE | Copy of awarded contract (and KPIs) | MANDATORY - For contracts over £5m total value, KPIs must be set and the contract (redacted as required) published |
| MANAGE | Contract performance notice  | MANDATORY - Publish annual KPI data (contracts £5m+), and/or as required to report breach of contract / poor performance  |
| MANAGE | Contract payments notice  | MANDATORY - Publish where one or more contract payment of £30k+ is made under a public contract (quarterly)  |
| MANAGE | Contract change notice  | MANDATORY - Publish when making a contract modification (unless exemption applies) |
| MANAGE | Contract Termination Notice | MANDATORY when a publiccontract ends (subject to limited exemptions) |
| MANAGE | Payments Compliance Notice | MANDATORY - details ofcontracting authorityperformance against 30-day payment terms (twiceannually) |

**20. DEFINITIONS**

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| Authority  | Means a decision by the Cabinet, the Council, the Executive Lead Member and or Chief Officer to spend money and award the Contract;  |

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| Award a Contract  | means to accept an offer from a Supplier;  |

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| Cabinet  | means the Leader of the Council and the other members of the Council's Executive, who are all Executive Lead Members;  |

 CCS Crown Commercial Service

Central Digital Platform means a web-based portal provided by or on behalf of the Cabinet Office

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| Chief Finance Officer  | means the officer designated under section 151 of the Local Government Act 1972.  |

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| Chief Officer  | means the posts designated as Chief Officers in Part 2 Article 10 of the Council’s Constitution or a person authorised by him/her in writing |

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| Contract  | means the bargain or agreement between the Council and a Supplier for the supply of works, goods or services;  |

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| Contract Document  | means the document setting out the Council’s specific requirements to be delivered through the contract, together with the terms and conditions of the Contract. A Purchase Order is a Contract document. Although at law a verbal agreement may be a Contract, Contracts for Ashfield District Council must always be supported by appropriate written Contract documents;  |

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| Contractor  | see Supplier;  |

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| Corporate Contract Dynamic Market | means a Contract for the supply of works, goods or services to the Council as a whole rather than for an individual service area e.g. stationery. Corporate Contracts are generally procured and managed by the preferred procurement provider; Dynamic Markets that are set up pursuant to s36 of the Procurement Act 2023 |

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| Emergency | means an occurrence involving or likely to ‘involve danger to life or health’ or ‘serious damage to property’ or ‘destruction of property’. |
| Exception | means a decision by Cabinet, the Council, an Executive Lead Member or a Chief Officer not to comply fully with these Contract Procedure Rules |
| Frameworks | Section 45 of the Procurement Act 2023 defines a framework as a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers. |

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| Framework Agreement means | an agreement between one or more contracting authorities and one or more Suppliers which fixes the terms and conditions under which the Supplier will enter into one or more specific call off Contracts with an authority during the term of the framework agreement, which should be no more than 4 years;  |

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| Goods  | see Supplies Contract;  |

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| Key Decision | a key Decision is defined in the constitution as one which is likely to:- (a) Result in the Council making savings or incurring expenditure exceeding £100,000 revenue or £1m capital or (b) Have a significant effect, either positive or negative, on communities living or working in an area comprising two or more wards or electoral divisions in the Council’s area.  |

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| Living Wage  | means an hourly wage rate, set independently and updated annually calculated according to the basic cost of living in the UK;  |

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| Members of Staff  | means Officers who carry out the day to day work of the Council, either on a permanent or a temporary basis, and includes officers, interim post-holders and agency staff but not consultants or Suppliers;  |

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| Monitoring Officer MeansNotices | the Officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration. The Executive Director of Governance is the Monitoring Officer; Notices as determined under the Procurement Act 2023 |

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| Officer  | means an individual who holds a post on the Council's establishment;  |

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| PIN  | means the Prior Information Notice;  |

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| Preferred ProcurementProvider  | means the provider that has been approved to manage procurement activities. |

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| Purchase Order  | means the Council's official order form for the purchase of works, goods or services;  |

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| Quotation  | means an offer by a Supplier to undertake a Contract;  |

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| Services Contract  | means a Contract for the provision of services to the Council;  |

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| Supplier  | means a Supplier of works, goods or services to the Council;  |

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| Supplies Contract Supplier Questionnaire   | means a Contract for the sale or hire of goods to the Council and includes, where appropriate, installation of goods; means a supplier questionnaire (SQ) which Suppliers have to complete to provide evidence of their legal, financial and technical capacity (including but the not limited to their health and safety and equal opportunities polices) to undertake a Contract for the Council;  |

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| Tender  | means an offer by a Supplier to undertake a Contract of £50,000 or more in value; |
|  Threshold  | means the value in pounds sterling above which UK Procurement Legislation applies to a proposed public Contract;  |

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| TUPE Regulations  | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment, re-enactment or replacement of them. |
| UK Procurement Legislation  | means the Procurement Act 2023 and any Procurement Regulations affecting UK public sector Contracts and any amendment, re-enactment or replacement of any of them as amended from time to time;  |

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| Works Contract  | means a Contract for the construction, repair or maintenance of a physical asset e.g. a building or a road. |