

# **Part 4 G**

## **Contract Procedure Rules**

February 2024

**Part 4 G - Contract Procedure Rules****GENERAL****RULE 1**  
***Compliance***

- (a) Officers must comply with these Rules. Failure to do so may result in disciplinary action.
- (b) Where a procurement under these rules involves a key decision, as determined by the appropriate Chief Officer, then prior to the commencement of the procurement this must be taken to the Executive. Key decisions are defined in Rule 8 of the Executive Procedure Rules (Part 4D) of this Constitution. In the case of ESPO only if a decision does not fall within Appendix 4 to Schedule 1: Functions of, and Delegations to the Director of ESPO, the decision can be escalated to the Director of ESPO, the decision can be escalated to the Chief Officers Group or Management Committee.
- (c) Sale of council assets are not part of these rules. They are covered by Rule 25 Purchasing and income collections and Rule 26 Inventories and assets of the Financial Procedure Rules (Part 4F) of the Constitution.

**RULE 2**  
***Delegation***

Appropriate Chief Officers and the Director of Law and Governance may delegate their responsibilities under these Rules in accordance with Rule 6 of Section D (General scheme of delegation to heads of departments) of Part 3 (Responsibility for Functions) of the Constitution.

**RULE 3**  
***Interpretation***

Words and expressions used in these Rules are to be interpreted in accordance with the provisions of Schedule 1.

**RULE 4**  
***Application***

These Rules apply to every procurement contract made by or on behalf of the Council except contracts:

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- (a) for only the acquisition or disposal of any interest in land;
- (b) for the lending or borrowing of money;
- (c) of employment (making an individual a direct employee of the Council).
- (d) for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of the Financial Services and Market Act 2000 (Markets in Financial Instruments) Regulation 2017 – UK Statutory Instruments 2017 No. 701.

**PROCUREMENT PRINCIPLES****RULE 5*****General Requirements***

- (a) Every Contract or official order for works, supplies or services made by the Council shall be for the purpose of implementing the Council's policies and must be made in accordance with the Council's duty of Best Value and in line with the Council's Strategic Plan 2022-26.
- (b) (i) Social Value will be considered in any contract with an estimated value equal to or greater than £50,000 in one of the of the following two ways:
  - As award criteria linked to the Council's Social Value Policy Statement and the Council's Strategic Plan 2022 – 2026;
  - As Outcomes built into the Specification or contract.
- (ii) Social Value will be addressed at contract management for any contract with a value equal to or greater than £50,000.
- (iii) Where Social Value has not been considered within either the tender process or specification, the reason shall be recorded and forwarded for approval to the relevant Commercial Specialist.
- (c) Where the services are Light-Touch Services the threshold for contracts for public supply or services contracts applies for the purposes of the Social Value Act, being the sum specified in regulation 5 (1) (d) of the Public Contracts Regulations 2015.
- (d) Where the services are required to be procured under The Health Care Services (Provider Selection Regime) Regulations 2023, Social Value will need to be considered regardless of the estimated contract value.

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- (e) Use of Corporate Contracts: The Procuring Officer must ensure that whenever Corporate Contracts have been approved by a Commercial Specialist that supplies, services and works are ordered via these. Intention to award via these contracts where the value exceeds £25,000 the Procuring Officer should include consultation with the relevant Commercial Specialist, before completing the award. The Procuring Officer must consider what risks the contract presents ahead of any procurement exercise, considerations must include those relating to Health and Safety, Business Continuity, Compliance with the Modern Slavery Act 2015 and Information Security. The Procuring Officer may not procure outside of the Corporate Contract unless it is agreed by the Commercial Specialist that better value for money can be clearly demonstrated outside of these approved Corporate Contracts. All such instances involving ESPO must be notified to ESPO by the Commercial Specialist.
- (f) Procedures set out in the relevant EU Retained law, Acts of Parliament and UK legislation (including for the avoidance of doubt the Public Contracts Regulations 2015 the Concession Contracts Regulations 2016, the Health Care Services (Provider Selection Regime) Regulations 2023 and where applicable the Public Contracts Regulations 2006) must be complied with at all times.
- (g) Based on criteria laid down by the Executive, the Chief Finance Officer will be responsible for evaluating the financial status of Tenderers and suppliers.
- (h) The Procuring Officer must ensure that sufficient budget provision has been agreed with the budget holder prior to any Procurement Exercise being undertaken.
- (i) Procurement Exercises should usually be undertaken by electronic means provided that:-
  - (j) the requirements of these Rules are followed with only such modifications as may be necessary to allow for procurement by such means; and
  - (ii) any electronic tendering system has been approved by the Director of Law and Governance following consultation with the Director of Corporate Resources.
- (i) Subject to the provisions of Rule 28(b) Contracts shall not be longer than 5 years (including extensions) in duration or of indeterminate length without the prior written approval of the Director of Corporate Resources, such approval to be obtained prior to the commencement of the Procurement Exercise.

**RULE 6**  
**Exceptions**

| What is the Exception?  | What approval is required?  |
|---|---|
| <p>6a) Direct purchase for supplies, materials, services or works which are available only as proprietary and/or patented articles, services or works from one contractor or supplier where there is no reasonably satisfactory alternative available in the UK and for repairs (to maintain warranties) to, or the supply of, parts of existing proprietary or patented articles or works, including machinery or plant.</p> | <p>Exception form must be completed outlining the full reasons for the request and the need for an exception.</p> <p>Approval needs authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Where the contract value/ exception is equal to or exceeds £100,000 the exception must be approved by the Assistant Director for Finance.</li> <li>• Where the contract value/ exception is equal to or exceeds £179,087 a copy of the exception form and reasons must be authorised by the Director of Corporate Resources and the Director of Law and Governance.</li> </ul> <p>Where the contract value/ exception is below £25,000 Rule 11 can apply.</p> <p>The approved form must be retained in the appropriate file.</p> |
| <p>6b) Direct purchase without advertising of works of art, museum specimens or historical documents.</p>   | <p>Exception form must be completed outlining the full reasons for the request and the need for an exception.</p> <p>Approval needs authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Where the value exceeds £25,000, involvement required of the Supplier Relationship Manager to ensure value for money is attained.</li> <li>• Where the contract is equal to or exceeds £179,087 a copy of the exception form/note and reasons must be authorised by the Director of Corporate Resources and the Director of Law and Governance.</li> </ul>   |

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|---|--|
|   | The approved form must be retained in the appropriate file.  |
| <p>6c) Direct purchase for the following social care services provided that the Estimated Value of such services does not exceed the UK threshold for Light-Touch service contracts:</p> <p>i.) residential placements sought for an individual with a registered care provider of their choice;</p> <p>ii.) supported living services sought for an individual with an appropriate care and support provider of their choice under the National Health Service and Community Care Act 1990 and Care Act 2014;</p> <p>iii.) social care packages managed by or on behalf of individual clients under the personalisation agenda;</p> <p>iv.) where certain needs of an individual (either an adult or a child) require a particular social care package, which is only available from a specific provider in the opinion of the appropriate Chief Officer.</p> <p>v.) residential placements sought for an individual under the Shared Lives scheme (or any equivalent scheme).</p> | <p>Exception note must be completed outlining the full reasons for the request and the need for an exception.</p> <p>Approval needs authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Supplier Relationship Manager should be consulted to ensure value for money is attained.</li> </ul> <p>The approved note must be retained in the appropriate file.</p> <p>In each case the appropriate Chief Officer must ensure that the provider meets the relevant national minimum standards legislative or otherwise, (for example those standards set by the Care Act 2014, OFSTED and HMI) and Contract Procedure Rules that a record of the reasons for the choice of provider is maintained on the individual's case notes as well as submitting to the relevant Commercial Specialist justification and evidence for exception placements.</p> <p>A record of the annual cumulative expenditure with each provider will be maintained by each directorate and made available for audit.</p> |
| <p>6d) Direct purchase for those unforeseen emergencies, where immediate action is required to fulfil the Council's statutory obligations under the Civil Contingencies Act 2004</p>  | <p>Exception form must be completed outlining the full reasons for the request and the need for an exception.</p> <p>Approval needs authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Where the value exceeds £25,000, involvement required of the Supplier Relationship Manager to ensure value for money is attained.</li> <li>• Where the contract is equal to or exceeds £179,087 a copy of the exception form and reasons must be authorised by the Director of Corporate</li> </ul>   |

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|                                     |  |
|-------------------------------------|--|
|                                     | <p>Resources and the Director of Law and Governance.</p> <p>The approved form must be retained in the appropriate file.</p>  |
| 6e) Other exceptions to these Rules | <p>Exception form must be completed outlining the full reasons for the request and the need for an exception.</p> <p>Approval needs authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Where the value exceeds £25,000, involvement required of the Supplier Relationship Manager to ensure value for money is attained.</li> <li>• Where the contract is equal to or exceeds £100,000 the exception must be authorised by the Assistant Director for Finance and also;</li> <li>• Where the contract is equal to or exceeds £179,087 a copy of the exception form and reasons must be also authorised by the Director of Corporate Resources and the Director of Law and Governance along with the Executive and Leader or Deputy Leader where the Leader is not practical. The requesting department is responsible for ensuring Cabinet approval is sought;</li> <li>• In an urgent case the Chief Executive after consultation with the Council Leader or Deputy Leader (save where this is not practicable) may direct that an exception be made subject to this being reported to the next meeting of the Executive.</li> </ul> <p>The approved form must be retained in the appropriate file.</p> |

**RULE 7*****Financial Thresholds and Delegation***

- (a) Financial limits and thresholds within these Rules may be varied from time to time by the Corporate Governance Committee.
- (b) Arrangements for delegation of functions to Officers within these Rules may be varied from time to time by the Chief Executive.

**RULE 8*****Annual Reporting***

- (a) The Director of Corporate Resources, in consultation with the Director of Law and Governance, shall at least once in each financial year submit a report to the Corporate Governance Committee in relation to the operation of these Rules (except those granted under Rule 6(iv)) and approved extensions to contract where not provided for in the contract, and proposed revisions to these Rules and/or changes required to accommodate the requirements of UK and EU Retained procurement law as may be necessary from time to time.
- (b) An annual summary of the number of contracts awarded using the Provider Selection Regime, in the year to which the summary relates where Direct Award Process A, Direct Award Process B, Direct Award Process C, the Most Suitable Provider Process or the Competitive Process was followed.

**RULE 9*****Prevention of Corruption / Conflict of Interest***

- (a) The Employee Code of Conduct (Part 5b of the Constitution) applies to any Procurement Exercise.
- (b) The following clause, or a clause that is substantially similar, will be included as a standard term and condition in every written contract in accordance with Rule 25(c):  
"The Council may terminate this contract and recover all its loss from the Contractor if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:
  - (i) offer, give or agree to give to anyone any personal inducement or reward in respect of this or any other Council contract (even if the contractor does not know what has been done); or
  - (ii) commit an offence under the Bribery Act 2010 or give any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or



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- (iii) 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 clause".

- (c) The Council's Supplier Code of Conduct applies to any Procurement Exercise.

**RULE 9A**  
**Counter Terrorism and Security Act 2015**

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

**PROCUREMENT EXERCISE**

**RULE 10**  
***Pre-Estimate***

- (a) Before any Procurement Exercise is begun the Procuring Officer must calculate its Estimated Value in accordance with this Rule. The estimated value for the Procurement must not be subdivided for the purpose of reducing the total value of the contract for multiple procurements.
- (b) The Estimated Value shall be calculated as follows:
  - (i) Where the contract period is fixed the Estimated Value shall be the total estimated maximum value of the supplies, services or works to be supplied over the period covered including any extensions to the contract;
  - (ii) Where the contract period is indeterminate the Estimated Value shall be calculated by multiplying the estimated average monthly value by 48;
  - (iii) For feasibility studies the Estimated Value shall include the value of the study and any subsequent contracts which may be awarded to the same supplier as a result where this is known;
  - (iv) For Concession Contracts the Estimated Value shall be the estimated financial value to the supplier that shall be made over the duration of the Contract, net of value added tax;

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- (v) The Estimated Value must exclude Value Added Tax (VAT) but must include all other taxes and duties;
  - (vi) Periodic purchases for the same requirement, whether that is from the same or different suppliers, must be aggregated over a minimum of a 12 month period;
  - (vii) Where the Council may be contributing only part of the Total Value of a contract, it is nevertheless the total Estimated Value that should be applied in determining the correct procedures to be applied under these Rules.
- (c) Where there is any doubt as to the Estimated Value then the procedure for the higher threshold in Rule 11 must be used.
- (d) Where the Estimated Value is:
- (i) £5,000 or more the Procuring Officer must notify in writing the appropriate Commercial Specialist of the Estimated Value before proceeding. A written record of that Estimated Value must then be kept on file by the Procuring Officer.
  - (ii) £25,000 or more the spend controls guidance must be followed and a Procurement Initiation Document used (this is not applicable to ESPO).

**RULE 11*****Procurement Exercise Process***

- (a) Based on the Estimated Value, as identified in Rule 10, Table 1 below makes provision for the minimum requirements for the subsequent Procurement Exercise.
- (b) In the case of a contract for individual independent day or residential school placement sought for a child with Special Educational Needs (SEN) with an Estimated Contract Value up to the UK Threshold for Light Touch Services three quotes must be sought.
- (c) In the case of a contract or framework agreement for healthcare services (as defined by Schedule 1 of the Health Care Services (Provider Selection Regime) Regulations 2023), the Procuring Officer must seek the advice of a Commercial Specialist on a suitable Process to follow under these Regulations. If Direct Award Process A, B, C or The Most Suitable Provider Process are considered the most appropriate route to market, approval must be sought from the Head of Procurement & Supply Chain Management.

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- (d) All contracts with an Estimated Value equal to or greater than the UK Threshold must be referred to the Commissioning Support Unit prior to the commencement of the Procurement Exercise. The Commissioning Support Unit shall advise the Procuring Officer on the appropriate route to market which may include the use of ESPO and ESPO framework agreements, Crown Commercial Services framework agreements, etc.
- (d) Details of oral Quotations must be confirmed in writing.
- (e) Where any Corporate Contracts or Standing Lists have been set up for supplies, services or works then these Rules are deemed to have been satisfied when the arrangement was set up and do not have to be further applied, if appropriately used. When the Corporate Contract is a Framework Agreement then the Procuring Officer must comply with Rule 28(c) after consultation with a relevant Commercial Specialist on the suitability of the framework intended to be used. When using a Standing List the Procuring Officer must comply with Rule 27.
- (f) All procurements over £25,000 must be approved before any procurement activity, by the Commissioning Support Unit via the spend controls guidance and use of the Procurement Initiation Document (this is not applicable to ESPO).

Table 1: Minimum requirements for a Procurement Exercise (for exceptions see Rule 6):

| Estimated Contract Value |         | Procurement Process                              | Minimum Contract Opportunity Publication  | Documentation   |
|--------------------------|---------|--|---|---|
| From                     | Up To   |  |   |   |
| £0                       | £5,000  | Obtain a minimum of one oral/written Quotation   | None  | Record details  |
| Above £5,000             | £25,000 | Seek to obtain a minimum of 3 written Quotations | When inviting quotations officers should consider the benefits of including a local supplier in the invitation to quote where appropriate or applicable to the contract.* | Record details.<br>(If three Quotations cannot be obtained a record of the reasons for this must be agreed in consultation with the appropriate Commercial Specialist.)<br>When inviting quotations officers should consider the benefits of including a local supplier in the invitation to quote where appropriate or applicable to the Contract. |

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| Estimated Contract Value  |                                  | Procurement Process  | Minimum Contract Opportunity Publication  | Documentation   |
|---|----------------------------------|--|---|---|
| From  | Up To                            |  |   |   |
| Above £25,000   | Up to but not including £179,087 | Seek written Quotations<br><br>(to be based on a Request for Quotation document where practical)<br><br>For exceptions see Rule 6(b) | Contracts Finder and on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market.   | Request for Quotation issued by the Procuring Officer and Quotations received.                          |
| Relevant UK Threshold<br><br>Goods/services: £179,087 before VAT<br><br>Works, Concessions and Utilities: £4,477,175 before VAT<br><br>Light touch regime: £552,950 | Above                            | Formal Tender Process (Refer to Commissioning Support)   | The UK e-notification service where required, Contracts Finder and on a Website approved by the Director of Corporate Resources for the purpose of notifying the supply market. | Formal Tender and sealed bids (should be submitted via an electronic tendering system, see Rule 18(d)). |

\* These are total contract spend estimates equaling total contract value over the term of the contract.

\* All values are not inclusive of VAT, the Threshold figures inclusive of VAT can be used on a project by project basis if it is deemed beneficial.

\* The Council cannot give preference to local suppliers, as there are legislative constraints and such a policy would be incompatible with Best Value. However, the Council recognises that there can be barriers limiting or restricting the ability of smaller suppliers to compete for Council business. The Council will seek to reduce the impact of such barriers, where it can do so legally, without discrimination, and without placing unacceptable levels of risk on the Council.

## RULE 12

### ***Suitability Assessment and Award Evaluation Criteria***

- (a) The Council shall not include a pre-qualification questionnaire stage where the value of the procurement is below the UK Threshold set out in Reg. 5 (1) (c) of the Public Contracts Regulations 2015. Below the UK Threshold only Suitability Assessment Questions may be asked. A standard form of Suitability Assessment Questions must be used.
- (b) In a Procurement Exercise with an estimated Value equal to or greater than the UK Threshold both selection and award criteria must be included. A

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Standard Selection Questionnaire or the Single Procurement Document must be used for the selection criteria;

- (c) Selection criteria must be included in the evaluation process where applying the Open Tendering procedure (Rule 15) or must be the only criteria used for the shortlisting methodology where applying the Restricted Tendering procedure (Rule 16).

**RULE 13*****Award and Evaluation Criteria***

- (a) The award criteria shall be based on the most economically advantageous Tender from the Council's point of view. That Tender shall be identified on the basis of price or cost, using a cost- effectiveness approach, such as Life-Cycle Costing and may include the best price-quality ratio which shall be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects or any other criteria linked to the subject-matter of the Contract in question.
- (b) When procuring Healthcare services, the five Key Criteria as stated in the Health Care Services (Provider Selection Regime) Regulations 2023 must all be evaluated. These are:
- Quality and innovation
  - Value
  - Integration, collaboration, and service sustainability
  - Improving access, reducing health inequalities, and facilitating choice
  - Social value
- (c) Before a contract can be awarded following an Open Tender procedure the supplier must meet the minimum standard for the selection criteria included in the evaluation process.
- (d) In the case of a Procurement Exercise with an Estimated Value of £25,000 or more the process for identifying the most economically advantageous Tender, including selection and award criteria, must be agreed in consultation with the appropriate Commercial Specialist and included in the RFQ/Invitation to Tender and a copy retained on file.
- (e) The Procuring Officer must notify all Tenderers of the award methodology and evaluation criteria being used in the case of the contract in question. If weightings are to be applied to the criteria then the Procuring Officer must ensure that these are also incorporated into the Invitation to Tender.

**RULE 14**  
***Contract Opportunity Publication***

- (a) Unless otherwise agreed by the appropriate Chief Officer, the Procuring Officer must ensure, for all Procurement Exercises with an Estimated Value of £25,000 or more but less than the relevant UK Threshold, that Contract Opportunity Publication is given on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market.
- (b) All Procurement Exercises with an Estimated Value of £25,000 or more must be advertised on Contracts Finder within 24 hours of the time when the Procurement Exercise is advertised in any other way. Procurement exercises over the relevant UK Threshold must be advertised on the UK e-notification service known as Find a Tender Service (FTS) and on Contracts Finder.
- (c) For all proposed contracts which are advertised where the Estimated Value is below the UK Threshold, a period of at least ten working days should be allowed between the date when an Invitation to Tender becomes available to all bidders and either:
  - (i) the deadline for receipt of Tenders where an Open Tendering procedure is being used; or
  - (ii) the deadline for receipt of the standard form of Suitability Assessment Questions or the Single Procurement Document, where a Restricted Tendering procedure is being used.
- (d) The Contract Opportunity Publication must express the nature and purpose of the Procurement Exercise, stating where further details may be obtained, how and to whom an interested supplier is to respond and any other requirements such as suitability requirements or explanatory information.
- (e) If the Estimated Value exceeds the relevant UK Threshold the Procuring Officer must ensure that Contract Opportunity Publication is first published on the UK e-notification service known as Find a Tender Service (FTS) and then on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market and in Contracts Finder.
- (f) A Procurement Exercise that is equal to or more than the UK Threshold for Light-Touch Services must be procured in compliance with Chapter 3, section 7 of the Public Contracts Regulations 2015.

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- (g) Where a contract opportunity is equal to or greater than the UK Threshold a Contract Opportunity Publication should not appear in any form before publication on the UK e-notification service and neither should any advertisement contain any more information than that published on the UK e-notification service known as Find a Tender Service (FTS).
  
- (h) The advertising requirements set out in this Rule 14 are minimum requirements and do not preclude further Contract Opportunity Publication where appropriate (e.g. in the local newspaper, trade or professional journal, the Council website).

**PROCUREMENT PROCESS****RULE 15**  
***Open Tendering***

Under Open Tendering, Procuring Officers must send Invitations to Tender to all those Persons who respond to the Contract Opportunity Publication and who meet the requirements stated therein. Where the opportunity has been advertised via the electronic tendering system the Invitation to Tenders and all supporting documents must be made available in the system for all interested parties to access subject to confidentiality agreement where applicable.

**RULE 16**  
***Restricted Tendering***

- (a) Subject to Rule 16 (b), this Rule applies to Tenders where the Estimated Value is equal to or exceeds the UK Threshold.
- (b) Where the services being tendered are Light-Touch Services the Procuring Officer may choose to use this Restricted Tendering procedure but is not required to.
- (c) Under Restricted Tendering, Procuring Officers need only send Invitations to Tender to:
  - (i) not less than five of the Persons who respond to the Contract Opportunity Publication and who best meet the shortlisting methodology agreed in Rule 12(c); or
  - (ii) where fewer than five Persons have applied or are considered suitable, to all those Persons who equal or exceed the minimum requirements for the shortlisting methodology agreed in Rule 12(c).
- (d) The shortlisting criteria and process must be prepared (in consultation with the Commercial Specialist) in advance of the issue of the Standard Selection Questionnaire or the Single Procurement Document and a copy retained on file.
- (e) All Persons that do not qualify for inclusion on the shortlist to receive an Invitation to Tender must receive notice that they have been excluded from the Procurement Exercise. Any Person requesting in



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writing the reasons why they were unsuccessful shall be informed by the Procuring Officer of the reasons for the Council's decision.

**RULE 17*****Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure and Innovation Partnership Procedure***

The Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure or Innovation Partnership Procedure must only be used with the prior approval of the Director of Law and Governance and the Director of Corporate Resources. Competitive Procedure with Negotiation or Competitive Dialogue can only be used when criteria under PCR Reg.26(4) are met. Competitive Procedure with Negotiation or Competitive Dialogue can only be used when criteria under PCR Reg. 26(4) are met.

**RULE 17A*****Concession Contracts***

Procuring Officers must only establish Concession Contracts with prior consultation of the Director of Law and Governance and with the prior approval of the Director of Corporate Resources also in the case of Concession Contracts above the UK Threshold.

**RULE 18*****Invitations to Tender***

- (a) Every Invitation to Tender must specify the latest day and hour and the place appointed for the receipt of Tenders and must state the effect of Rule 19.
- (b) Procuring Officers must give all Tenderers the same information about the Procurement Exercise and in particular information relating to the Tender process, specification, award methodology and evaluation criteria and the terms and conditions of the Contract or Framework agreement.
- (c) Procuring Officers must also give all Tenderers the same information relating to questions, answers and clarifications raised during the Procurement Exercise unless they relate solely to another Person's Tender.

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- (d) All Procurement Exercises equal to or greater than £25,000 shall be handled via an Electronic Tendering System where possible. Only in exceptional cases may a Procurement Exercise be undertaken not using an Electronic Tendering System. Paper Tenders must be submitted to, addressed to and opened by the Chief Executive. Where the Estimated value is below £25,000 the Tenders may be returned directly to the Procuring Officer.
- (e) Where an Electronic Tendering System is not available and paper Tenders are to be received by the Chief Executive, the Procuring Officer must send to the Chief Executive a note of the subject and the closing date and time and (where appropriate) a list of the Persons invited to Tender together with the Estimated Value before the closing date for receipt of Tenders.

**RULE 19**  
***Irregular Tenders***

- (a) An Irregular Tender must not be accepted by either the Chief Executive or the Procuring Officer, other than in accordance with this Rule.
- (b) A Tender is not valid unless it has been either submitted via an Electronic Tendering System or in the case of paper tenders delivered to the place appointed in accordance with Rule 18 and not later than the appointed day and hour.
- (c) Tenders other than E-Tenders where the Estimated Value is equal to or greater than £179,087 are not valid unless they are received in a plain sealed envelope or parcel addressed to the Chief Executive. The envelope or package must bear the word "Tender" followed by the subject to which it relates.
- (d) E-Tenders must be submitted in accordance with the requirements of the Electronic Tendering System used.
- (e) Where a Tender has been received which is an Irregular Tender in that it does not fully comply with the instructions given in the Invitation to Tender and/or because it is received after the appointed time for receipt or does not comply with Rules 19(b) or 19(c), the provisions of Rules 19(f) and 19(g) apply.
- (f) A Tender other than an E-Tender which is received after the closing date and time may be opened and evaluated in accordance with Rule 20 if there is clear evidence of it having:-

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- (i) been posted by first class post at least a day before the closing date; OR
  - (ii) been posted by second class post at least three days before the closing date; OR
  - (iii) been placed in the custody of a courier who has provided written assurance of delivery prior to the closing date and time.
- (g) If in other cases of Irregular Tenders the Chief Executive considers that there are exceptional circumstances and that the Tenderer who submitted the Irregular Tender has gained no advantage from its irregularity he may determine to accept the Irregular Tender and authorise that it be opened and evaluated together with any other Tenders in accordance with Rule 20. The Chief Executive shall record in writing the reasons why each Irregular Tender has been accepted or rejected.
- (h) Irregular Tenders that the Chief Executive has rejected under this Rule must be returned to the Tenderer by the Chief Executive with a covering letter stating the reason for their rejection.

**RULE 20*****Receipt and Opening of Tenders***

- (a) Rules 20(b) to (f) apply only to Tenders where the Estimated Value is equal to or greater than £179,087 before VAT and the Tender is not an E-Tender. Rule 20(g) applies to E-Tenders only.
- (b) On receipt of non-electronic Tenders, envelopes containing the Tenders must be date and time stamped by the Chief Executive and shall remain in his custody until they are opened.
- (c) The Chief Executive must keep a record of all non-electronic Tenders received.
- (d) Tenders must be opened at one time in the presence of not less than two Officers one of whom is not involved in the Procurement Exercise and who is designated by the Chief Executive. Each Officer must initial each Tender once opened which must also be date stamped.
- (e) Particulars of all Tenders opened must be entered by the Chief Executive upon the record which must be signed by the Officers present at the opening, together with a note of all Irregular Tenders.

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- (f) The Chief Executive must forthwith send a copy of the record to the appropriate Procuring Officer (with the Tenders) and must retain a copy himself.
- (g) E-Tenders must be opened in accordance with the requirements of the Electronic Tendering System used.

**RULE 21*****Errors or Discrepancies in Tenders***

- (a) Tenderers are not allowed to alter their Tenders after opening save in accordance with this Rule or Rule 22.
- (b) Where it is suspected that there has been an error in a Tender and following the closing date for receipt of Tenders but before acceptance of any Tender discussions may take place with Tenderers in order to:
  - (i) ensure that the Tender is constructed correctly; or
  - (ii) ensure that the Tenderer has fully understood the specification; or
  - (iii) seek clarification from Tenderers of cost, quality and performance indicators.
- (c) A written note of the discussions must be made to record the suspected error, date, time, detail of the discussion and any agreement reached.

**RULE 22*****Discussions and Post Tender Negotiations***

- (a) In the case where the Estimated Value is below the relevant UK Threshold, the Procuring Officer in consultation with the appropriate Commercial Specialist may carry out Post Tender Negotiations with the Tenderer submitting the most competitive Tender in an attempt to secure improvements in the price or economic advantage in one or more of the following circumstances:
  - (i) where the most competitive Tender (according to the pre-determined award methodology and evaluation criteria) submitted exceeds the Estimated Value;

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- (ii) where it is considered that the price of the most competitive Tender submitted does not represent the best value for money that can reasonably be obtained;
  - (iii) where Tenders have been invited only on the basis of unit prices or a schedule of rates and the lowest in aggregate is not the lowest on all items;
  - (iv) where the most competitive Tender contains conditions, trading terms, guarantees, or provisions relating to performance or service delivery less favourable than in other Tenders, or than stipulated for and this defect appears capable of being remedied by Post Tender Negotiations.
- (b) When conducting Post Tender Negotiations, the following additional Rules shall apply:
- (i) At no time during the negotiations must a Tenderer be informed of the detail of any other Tender submitted or as to whether or not the Tender he submitted was the lowest.
  - (ii) During negotiations in person there must always be present at least two officers of the Council.
  - (iii) A note of the negotiations will be made by one of the Officers present recording those present, the time and location of the negotiations, detail of the discussion and any agreement reached.
  - (iv) Post Tender Negotiations shall not enable any material departure from the published specification. The Director of Law and Governance shall determine whether any proposed change to the specification constitutes a material departure.
- (c) Post Tender Negotiations are not allowed in the case of contracts with an Estimated Value exceeding the relevant UK Threshold. However, clarifications of errors or discrepancies in Tenders may take place in accordance with Rule 21.

**AWARD OF CONTRACT****RULE 23*****Acceptance of Tenders***

- (a) A Tender can only be accepted in accordance with the initial award methodology and evaluation criteria as set out in Rule 13. Any evaluation sheets must be maintained on file in accordance with Rule 34.
- (b) Any Tender with an Estimated Value of below £25,000 (where a Request for Quotation or an Invitation to Tender is not used) may only be accepted with the prior written approval of the appropriate Commercial Specialist.
- (c) If the Tender to be accepted exceeds the budget which was agreed in accordance with Rule 5(g) the Procuring Officer must ensure that sufficient funds are available and approved by the appropriate budget holder, appropriate Chief Officer or Executive prior to accepting the Tender.
- (d) Where an abnormally low Tender is submitted the Council shall require the Tenderer to explain in writing the price or costs proposed and may only reject the Tender where the explanation is unsatisfactory. Where it is established that the Tender is low due to breaches of environmental, social or labour law, the Council must reject the Tender.
- (e) Subject to Rule 1, the appropriate Chief Officer shall have the authority to accept a Tender but in any particular circumstance may decline to give approval and refer the decision to the Executive to determine.

**RULE 24*****Notification of Contract Award***

- (a) The Procuring Officer must notify the successful Tenderer of the acceptance of their Tender and for all Procurement Exercises with an Estimated Value of £5,000 or more this notification must be in writing.
- (b) In the case where the Estimated Value is £25,000 or more the Procuring Officer must notify in writing all Tenderers who submitted a Tender of the decision as soon as possible after the decision has been made.

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- (c) Where a Contract with an Estimated Value of £25,000 or more is awarded the Council must publish information as required by the Public Contracts Regulations 2015 on Contracts Finder within 90 calendar days of the date the Contract was awarded.
- (d) In the case where the Estimated Value is equal to or greater than the relevant UK Threshold the following additional Rules shall apply:
  - (i) The notice in Rule 24 (b) shall include the award criteria, the reasons for the decision, including the successful Tenderer's score, the score (if any) of the Tenderer receiving the notice, and the characteristics and (if appropriate) relative advantages of the successful Tenderer's Tender, any reasons why the recipient of the notice did not meet the technical specification, the name of the Tenderer awarded the Contract, as well as the date when the standstill period required in accordance with Rule 24 (d)(ii) will come to an end.
  - (ii) A minimum period of 10 calendar days must elapse between the day of sending the notice in Rule 24 (b) and the date on which the Council enters into a contract, if the notice is sent electronically. Where the notice is sent by other means then either 15 days from the day of sending the notice or 10 days from the day of receipt of the notice by the last Tenderer to receive the notice must elapse. In all cases counting the day after sending the notice as day 1. The standstill period must end on a working day.
  - (iii) The Procuring Officer shall ensure that a UK e-notification service contract award notice known as Find a Tender Service (FTS) is placed within 30 days of the contract award where required. In the case where contracts are awarded under the regime covering Light Touch Services or Dynamic Purchasing System, award notices may be grouped together in accordance with regulation 74 for Light-Touch Services and regulation 50(5) for Dynamic Purchasing Systems.
  - (iv) For every Contract or Framework Agreement covered by the Public Contract Regulations, and every time a Dynamic Purchasing System is established, the Procuring Officer shall draw up a written report in accordance with the requirements outlined in regulation 84 of PCR.
- (e) The Procuring Officer must notify the appropriate Commercial Specialist in writing of any contract (including framework call off contracts) that has been awarded with a Total Value of £5,000 or more.

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- (f) In the case of the Provider Selection Regime the relevant notification to awards must be adhered to dependent on the route to market deemed most appropriate

**RULE 25**  
***Form of Contract***

- (a) A Contract shall be formed:
- (i) by exchange of letter or electronic communication accepting the successful Tender and incorporating the Invitation to Tender or Request for Quotation and the outcome of any subsequent negotiations and discussions; or
  - (ii) by completion of a formal contract incorporating the Invitation to Tender or Request for Quotation, the Tender and the outcome of any subsequent negotiations and/or discussions; or
  - (iii) by placing an order in accordance with Rule 26.
- (b) In determining and negotiating the terms and conditions of contract, the Procuring Officer must ensure that the appropriate Standard Terms and Conditions are incorporated unless the Procuring Officer having consulted the appropriate Director of Law and Governance and the appropriate Commercial Specialist considers it inappropriate to do so.
- (c) All contracts with an Estimated Value of £25,000 or more must be in writing and where appropriate the appropriate Chief Officer shall:
- (i) ensure that the Contract includes a definition of the circumstances that will be considered to constitute a default on the terms of the Contract by the supplier. The Contract must provide for notice of default to be given to the supplier and for any resulting losses to be recovered from the supplier if the default is not rectified.
  - (ii) decide whether it is necessary to require suppliers to provide a Performance Bond with a third party. The need for this will depend on an assessment of the risk associated with the contract or the supplier.
  - (iii) ensure that the contract provides for the supplier to have an insurance policy, which can be inspected during the contract period. The Chief Finance Officer shall be consulted on the insurance requirements.



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- (iv) consult the Chief Finance Officer on the appropriate VAT requirements.
- (d) Every contract must be signed (by electronic means or otherwise) by the appropriate Officer as defined in the scheme of delegation table below.
- (e) The Director of Law and Governance has designated the following officers to sign contracts, in accordance with Article 14.04(a):

| <b>Contract Value (including possible extensions)</b> |                   | <b>Designated Officer authorised to sign the contract</b> |
|---|-------------------|---|
| From<br>£0  | Up to<br>£24,999  | Team Manager<br>(Grade 12-14)                             |
| From<br>£25,000                                       | Up to<br>£175,000 | Head of Service<br>(Grade 15-17)                          |
| From<br>£175,001                                      | Up to<br>£499,999 | Assistant Director<br>(Grade 17-19)                       |
| From<br>£500,000 and above                            |                   | Director<br>(Grade 18 and above)                          |

- (f) The Procuring Officer shall comply with the General Data Protection Regulation (GDPR) and Data Protection Act 2018 requirements and shall include in the contract appropriate provisions.

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- (g) The Procuring Officer shall ensure the contract includes a Right to Audit Clause.

**RULE 25A****Contract Management**

*(Rule 25A is not yet adopted by ESPO)*

- (a) The Procuring Officer shall advise the Commercial Officer or Commercial Specialist who shall immediately upon completion of every Procurement Exercise;
- (i) In respect of contracts having a value of less than £25,000 and where the Electronic Tendering System has not been used, enter the Contract details in the Council's contracts register;
- (ii) In respect of contracts of whatever value handled via the Electronic Tendering System the Procuring Officer shall ensure that the details of the Contract are published in the Council's contracts register.
- (b) All contracts shall be managed in accordance with these Rules and the Council's contract management toolkit which can be found in the Commissioning Toolkit on the Council's intranet.
- (c) The authorised officer or Contract Manager responsible for the management of the Contract shall:
- (i) Obtain prior approval in accordance with Rule 30 before proceeding to authorise (in writing) any modification/extension to the Contract;
- (ii) Ensure all documentation is uploaded to the Council's Contracts Register;
- (iii) Ensure that a record is kept of all certificates and instructions issued under the Contract;
- (iv) Keep documents in support of each payment showing how the payment amount has been valued and maintain a record of all such payments including any professional fees;
- (v) Prior to the contract renewal notice period for a contract, consult the relevant Commercial Specialist to review opportunities for contract negotiations for favourable contract terms;
- (vi) Before terminating any contract and in particular for breach, consult the Director of Law and Governance;
- (vii) Resolve all contractual matters and contractual claims, and issue any final account and final certificate in accordance

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with the terms of the Contract, taking advice from the Director of Law and Governance.

**RULE 26*****Orders for work, goods and services***

Orders for work, goods and services must only be placed in accordance with Instruction 8 of the Standard Financial Instructions.

**STANDING LISTS****RULE 27*****Standing Lists***

- (a) Standing Lists must not be created or added to without the prior written approval of the appropriate Chief Officer in consultation with the appropriate Commercial Specialist.
- (b) Procuring Officers must not use a Standing List where the total value of contracts to be awarded using the Standing List is estimated to exceed the relevant UK Threshold.
- (c) The Standing List must contain the names of all Persons who are approved and indicate the categories of contract and the values or amounts in respect of those categories for which those Persons are approved.
- (d) At least four weeks before a list is first compiled, the Procuring Officer must publish on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market a notice inviting applications by a specified date for inclusion in it.
- (e) Procuring Officers must renew all Standing Lists at intervals not exceeding four years. At least four weeks before each renewal, each Person whose name appears in the list must be notified by the Procuring Officer of the intention to review the list. If they wish to remain on the list they must re-apply for inclusion. Procuring Officers must ensure that notices inviting applications for inclusion in the list are published in the manner provided by Rule 27(d).
- (f) In cases where the use of a Standing List has been authorised the Procuring Officer must send Invitations to Tender to not less than four of the Persons from among those approved for a contract of the relevant category and amount or value. Where fewer than four Persons are approved for a contract of the relevant category and amount or value Invitations to Tender shall be sent to no fewer than three Persons. Where

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there are fewer than three Persons the procedure for Standing Lists must not be used unless the appropriate Commercial Specialist advises otherwise.

- (g) The Procuring Officer in consultation with the Commercial Specialist shall determine the criteria for selecting Persons from the list.
- (h) In such circumstances as the Director of Corporate Resources shall determine, Procuring Officers shall provide such information as shall reasonably be necessary of the extent to which Standing Lists have been utilised.

**FRAMEWORK AGREEMENTS****RULE 28*****Framework Agreements***

- (a) Procuring Officers must establish all Framework Agreements in accordance with these Rules.
- (b) Framework Agreements must not be awarded for more than 4 years, including any extensions without the prior written consent of the Director of Corporate Resources following consultation with the Director of Law and Governance.
- (c) All suppliers on the Framework Agreement capable of performing the contract must be invited to participate in a Further Competition unless it is clear from the terms of the Framework Agreement which supplier best meets the award methodology set out in the Framework Agreement in which case that supplier may be selected provided the Procuring Officer can demonstrate value for money. Direct Award on frameworks must be first discussed with a relevant Commercial Specialist before proceeding if the value exceeds the threshold.
- (d) Additional suppliers may only be added to a Framework Agreement throughout its duration in circumstances where:
  - (i) the Estimated Value is below the UK Threshold; or
  - (ii) the services tendered are Light-Touch Services to which the full regime of the Public Contracts Regulations 2015 is not considered to apply: or
  - (iii) the services tendered are Healthcare services to which the Health Care Services (Provider Selection Regime) Regulations 2023 apply:
  - (iv) and in whichever case ((i) (ii) or (iii) above) provided that the Invitation to Tender states:

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- (aa) that new suppliers may be added to the Framework Agreement; and
  - (bb) how many suppliers can apply to be added to the Framework Agreement; and
  - (cc) that the same evaluation criteria and award methodology are applied when deciding whether to award a place on the Framework Agreement to new suppliers as was applied at the time of the original award.
- (e) Each use of a Framework agreement either by call off or direct award must be included on the Contracts Register within 30 days of award.

**RULE 29*****Dynamic Purchasing Systems***

Procuring Officers must only establish Dynamic Purchasing Systems with the prior written approval of a Senior Commercial Specialist and the Director of Corporate Resources and in accordance with the requirements of the Public Contracts Regulations 2015 and these Rules where appropriate.

**CONTRACT AMENDMENTS****RULE 30*****Contract Modifications and Extensions***

| What is the Modification?  | What approval is required?   |
|--|--|
| <p>30a)</p> <p>Where the contract modification meets all the following:</p> <ul style="list-style-type: none"> <li>i) Modification value is below £179,087 (ex VAT) – this value shall be net cumulative of all modifications to the contract.</li> <li>ii) Modification value is within 10% greater or lesser of the original contract value.</li> <li>iii) Does not alter the overall nature of the original contract.</li> </ul> <p>or</p> <p>Where the contract modification meets all the following and was procured under the provider selection regime:</p> <ul style="list-style-type: none"> <li>i) Modification value is below £500,000 (ex VAT) – this value</li> </ul> | <p>Modification form must be completed outlining the full reasons for the request and the need for a modification</p> <p>All approvals need authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist. In addition:</p> <ul style="list-style-type: none"> <li>• Where the value exceeds £25,000, involvement required of the Supplier Relationship Manager to ensure value for money is attained.</li> <li>• Where the modification is equal to or exceeds £100,000 the modification must be approved</li> </ul> |

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| <p>shall be net cumulative of all modifications to the contract.</p> <p>ii) Modification is 25% greater or lesser the original contract value.</p> <p>iii) Does not alter the overall nature of the original contract.</p>   | <p>by the Assistant Director for Finance.</p> <p>Prior to any modification being agreed which would result in an increase in the Total Value of the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.</p>  |
| <p>30(b)<br/>Where the contract modification meets all the following:</p> <p>i) Modification value is below £25,000</p> <p>ii) Modification value is above 10% greater or lesser the original contract value.</p> <p>iii) The overall contract value including this modification does not exceed £179,087 (ex VAT).</p> <p>iv) Does not alter the overall nature of the original contract.</p> | <p>Modification form must be completed outlining the full reasons for the request and the need for a modification</p> <p>Approval needs authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist.</p> <p>Prior to any modification being agreed which would result in an increase in the Total Value of the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.</p>  |
| <p>30c)<br/>All other contract modifications.</p>  | <p>Modification form must be completed outlining the full reasons for the request and the need for a modification.</p> <p>Modification approval needs authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist and authorisation from the Director of Corporate Resources and the Director of Law and Governance.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Where the value exceeds £25,000, involvement required of the Supplier Relationship Manager to ensure value for money is attained.</li> </ul> <p>The approved form must be retained in the appropriate file.</p> <p>Prior to any modification being agreed which would result in an increase in the Total Value of the Contract the</p> |

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|   |   |
|---|---|
|   | Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.   |
| What is the Extension?  | What approval is required?  |
| <p>30d)<br/>Where a Contract Extension has been provided for both in the Initial Procurement Documents and in the Contract in clear and precise terms.</p> <p>Or</p> <p>Where the Contract Extension</p> <ul style="list-style-type: none"> <li>i) Value is below £179,087 (ex VAT) – this value shall be net cumulative of all extensions to this contract.</li> <li>ii) Value is within 10% up of the original contract value.</li> <li>iii) Does not alter the overall nature of the original contract.</li> </ul> | <p>Extension form must be completed outlining the full reasons for the request to extend the contract.</p> <p>Approval needs authorisation from the Chief Officer in consultation with the Commercial Specialist.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Where the value exceeds £25,000, involvement required of the Supplier Relationship Manager to ensure value for money is attained.</li> </ul> <p>The approved form must be retained in the appropriate file.</p> <p>Prior to any extension being agreed the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.</p>  |
| <p>30e)<br/>All other Contract Extensions</p>   | <p>Extension form must be completed outlining the full reasons for the request and the need for an extension to the contract.</p> <p>Approval needs authorisation from the appropriate Chief Officer, on the advice of the Commercial Specialist and authorisation from the Director of Corporate Resources and the Director of Law and Governance.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>• Where the value exceeds £25,000, involvement required of the Supplier Relationship Manager to ensure value for money is attained.</li> </ul> <p>The approved form must be retained in the appropriate file.</p> <p>Prior to any extension being agreed the Contract the Procuring Officer must</p> |

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|  |  |
|--|--|
|  | ensure that sufficient additional budget provision has been approved by the budget holder. |
|--|--|

**RULE 31*****Novation of Existing Contracts***

The novation of a Contract to a new Person irrespective of value requires the prior written approval of the Director of Corporate Resources in consultation with the Director of Law and Governance (or the Director of ESPO in the case of ESPO).

**RULE 32*****Early Termination of Contracts***

Unless a provision for early termination is clearly stated in the Contract, Procuring Officers shall seek advice from the Director of Law and Governance where it is intended to terminate a contract early. Where the Total Value of the Contract is equal to £179,087 or more the prior written approval of the Director of Corporate Resources shall also be obtained.

**MISCELLANEOUS PROVISIONS****RULE 33*****Application of these Rules to ESPO***

- (a) Where acting solely on behalf of the Council ESPO must comply with these Rules where applicable.
- (b) In cases where ESPO is acting on behalf of the Council:
  - (i) ESPO is authorised to act as agent of the Council in place of the appropriate Chief Officer or Procuring Officer for the purposes of Rules 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 27 and 28 and these Rules shall be construed accordingly.
  - (ii) ESPO is authorised to act as agent of the Chief Executive for the purposes of Rules 18, 19 and 20.
  - (iii) For the avoidance of doubt, decisions under Rule 23 shall remain the responsibility of Procuring Officers who may receive advice from ESPO.



**Part 4G** Contract Procedure Rules**RULE 34*****Document Retention***

- (a) All Contract records, that might be required in court proceedings must be retained for at least six years and any under seal for at least twelve years from expiry of the Contract.
- (b) Where the Contract is externally funded any contingent liabilities and/or grant conditions must be taken account of by the length of the retention period.

**RULE 35*****Supervision of Contracts by Third Parties***

- (a) The Procuring Officer shall ensure that it is a condition of any contract between the Council and any Person (not being an Officer of the Council) who is involved in a Procurement Exercise or the management of a contract on behalf of the Council that in relation to that contract he must comply with the requirements of these Rules and other reasonable requirements of the Council.
- (b) Such Person must:
  - (i) at any time during the carrying out of the Contract produce to the appropriate Chief Officer or his representative, Commercial Specialist or in the case of ESPO an officer with delegated authority or Council Auditor on request all records maintained by him in relation to the Contract; and
  - (ii) on completion of the Contract transmit all records to the appropriate Chief Officer, Commercial Specialist or in the case of ESPO an officer with delegated authority.

**RULE 36*****Nominated Sub-Contractors and Suppliers***

- (a) Where a sub-contractor or supplier is to be nominated by the Council to a main contractor, the provisions of these Rules shall have effect.
- (b) The terms of an Invitation to Tender under Rule 18 must require an undertaking by the Tenderer that, if selected, they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work, supplies or services included in the sub-contract.

## SCHEDULE 1

### *Interpretation*

1. “appropriate Chief Officer” means the Chief Officer responsible for the function to which the Contract relates except that, where another Chief Officer is responsible for the letting of the Contract, it shall mean that Chief Officer in consultation with the Chief Officer on whose behalf the Contract is to be let. Refer to the following for the list of Chief Officers: <https://www.leicestershire.gov.uk/about-the-council/how-the-council-works/leader-and-cabinet/chief-officers-of-the-council> (In the case of ESPO the Chief Officer refers to the Director of ESPO).
2. “Best Value” means the duty of the Council to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
3. “Chief Finance Officer” is a statutory appointment pursuant to Section 151 of the Local Government Act 1972. The functions of the Chief Finance Officer are set out in Article 12 of Part 2 of the Council’s Constitution.
4. “Commercial Specialist” means an Officer authorised by the Director of Corporate Resources to manage the procurement of a category or categories of goods, services and/or works. If there is no Commercial Specialist for the goods, services and/or works being procured then the Senior Commercial Specialists or Procurement and Commissioning Support Manager will adopt this role.
5. “Concession Contract” means a works concession Contract or services concession Contract for pecuniary interest concluded in writing by means of which the Council entrusts the execution of works or the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration for which consists either solely in the right to exploit the works or the services that are the subject of the Contract or in that right together with payment; and that meets the requirements of Regulation 3(4) of the Concession Contracts Regulations 2016 (CCR 2016).

Regulation 3(4) of the CCR 2016 further defines the necessary requirements of the arrangement for the purposes of the regime, which are :

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- (i) the award of the Contract must transfer to the concessionaire the operating risk in exploiting the works or services encompassing demand or supply risk or both; and
  - (ii) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.
6. "Concession Contracts Regulations 2016" means the Concession Contracts Regulations 2016 as amended, consolidated, extended, re-enacted or replaced. These Regulations implement Directive 2014/23/EU of the European Parliament and of the Council of 19 February 2014 on public procurement and repealing Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public service contracts, and Directive 2004/25/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, and Directive 2004/26/EC of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts.
7. "Contract" means a binding agreement between two or more parties for performing, or refraining from performing, some specified act(s) in exchange for lawful consideration.
8. "Contract Extension" means an extension to the duration of the Contract, but not including any alteration to the scope of the Contract.
9. "Contracts Finder" means the web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015.
10. "Contract Opportunity Publication" is the means by which a Procurement Exercise is advertised, and includes (where appropriate) the 'Contract Notice' and Contracts Finder as defined in the Public Contracts Regulations 2015.
11. "Contract Manager" means an Officer responsible for the administration and management of the Contract.
12. "Contract Modification" means an alteration to the scope of the contract.
13. "Contracts Register" means a register of (current) contracts, commissioned activity, purchase orders, framework agreements and any other legally enforceable agreement with a value that exceeds £25,000 entered into by the Council and held on the Council's electronic tendering system.
14. "Corporate Contract" means any Contract or Framework Agreement or other arrangement approved for use in sourcing a particular requirement in consultation with the relevant Commercial Specialist, and put in place by the Council itself, ESPO, or any other public sector organisation (including other Local Authorities) or consortium in which

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the Council is entitled to participate and which, where necessary, has been awarded in compliance with EU Retained law.

15. "Council" means Leicestershire County Council.
16. "Direct Employee: a person who works as an employee of the Council and is paid a salary by it, rather than being employed through an agency or other third party."
17. "Dynamic Purchasing System" means a completely electronic process, which has a limited duration, for making commonly used purchases, as more particularly defined and described in the Public Contract Regulations 2015.
18. "Electronic Tendering System" means an electronic tendering system approved in accordance with Rule 5 (h) (ii).
19. "ESPO" means the Eastern Shires Purchasing Organisation being a local authority purchasing and distribution consortium of which the Council is a joint member authority.
20. "Estimated Value" means the value as estimated under Rule 10.
21. "E-Tender" means a Tender that has been submitted using an Electronic Tendering System.
22. "EU Retained law" is where some EU law was carried over into UK law after the UK exit from the European Union on the 31st December 2020. The means by which this was done was via the European Union (Withdrawal Act 2018.) The retained EU law includes i) domestic law which was implemented or related to former EU obligations; ii) EU Legislation which was applicable in the UK without implementing legislation; and iii) other rights and principles in EU law (such as EU treaties) that has direct effect in the UK.
23. "Executive" means the executive or committee determined in accordance with the Council's constitution.
24. "Formal Tender Process" is a process following the requirements of Open Tendering, Restricted Tendering, Standing List, Negotiated Procedure, Competitive procedure with Negotiation, Competitive Dialogue or Innovation Partnership Procedure. And Formal Tender shall be construed accordingly.
25. "Framework Agreement" is a general term for agreements with suppliers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. The

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Framework Agreement may, itself, be a contract to which the EU Retained procurement directives and Public Contracts Regulations 2015 or the Health Care Services (Provider Selection Regime) Regulations 2023 apply.

26. "Further Competition" is undertaken where not all the terms of a proposed contract are laid down in a Framework Agreement. It involves re-opening competition between the economic operators which are parties to the Framework Agreement and which are capable of performing the proposed contract, on the basis of the same or, if necessary, more precisely formulated terms, and where appropriate other terms referred to in the contract documents based on the Framework Agreement.
27. "Invitation to Tender" means the document(s) containing the specification, proposed terms and conditions and other appropriate information as issued to the Tenderers to solicit Formal Tenders.
28. "Irregular Tender" means a Tender that does not fully comply with the instructions given in the Invitation to Tender.
29. "Life-Cycle Costing" means all or part of the following costs over the life-cycle of a product, service or works, to the extent that they are relevant:
  - (a) Costs of acquisition;
  - (b) Costs of use, such as consumption of energy and other resources;
  - (c) Maintenance costs;
  - (d) End of life costs, such as collection and recycling costs;
  - (e) Costs imputed to the environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified. These costs may include the costs of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.
30. "Light-Touch Services" means those services referred to in regulation 74 and Schedule 3 of the Public Contracts Regulations 2015.
31. "Officer" means an employee of the Council.
32. "Person" includes a partnership, body corporate or unincorporated association.
34. "Post Tender Negotiations" means the ability to negotiate with a Tenderer after a Tender has been opened and evaluated in accordance with the published evaluation criteria for the purposes of securing an

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improvement in the delivery of the contract including but not limited to improvements in price.

35. "Procurement Exercise" means any process by which goods, services and/or works are to be procured including but not limited to Request for Quotations and Formal Tender Processes. For the purpose of these Rules a contract for a Concession, a contract via a Framework Agreement/Dynamic Purchasing system shall be treated as a Procurement Exercise.
36. "Procuring Officer" means any Officer, acting under the delegated powers of the appropriate Chief Officer, who is responsible for the procurement of works, goods and/or services.
37. "Provider Selection Regime" means a set of rules for procuring health care services in England by organisations termed relevant authorities. The Provider Selection Regime (PSR) came into force on 1 January 2024.
38. "Public Contracts Regulations 2015" means the Public Contracts Regulations 2015 as amended, consolidated, extended, re-enacted or replaced. These Regulations implement Statutory Instrument 2015 No. 102 and of the Council on Public Procurement.
39. "Quotation" means an offer to sell works, goods and/or services at a stated price under specified conditions. A Quotation may or may not be written.
40. "Request for Quotation" ("RFQ") means a document or documents containing the specification, and proposed terms and conditions issued to potential suppliers to solicit written Quotations.
41. "Standard Terms and Conditions" means standard contractual terms used by Leicestershire County Council, including those attached to procurement orders or orders generated by 'line of business' systems, those included in Request for Quotation templates, and standard industry terms.
42. "Standard Selection questionnaire" means a questionnaire that complies with the Crown Commercial Service statutory guidance relating to Standard Selection Questionnaires.
43. "Standing List" means a list of Persons which has been established in accordance with Rule 27.

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44. "Suitability Assessment Question" means a question which relates to the subject matter of the procurement and is proportionate and which the Council requires for assessing the Tenderers suitability.
45. "The Council's Strategic Plan 2022-26" means the strategy document that explains how the Council's commissioning and procurement activity will be used between 2018 and 2022 to improve the quality of life for the people of Leicestershire and make Leicestershire the best possible place to live and work for everyone.
46. "Tender" means the formal offer from a Tenderer, which is capable of acceptance by the Council, which is a response to an Invitation to Tender. It shall include all documents comprising the submission including pricing, technical specification and method statements as well as information about the Tenderer. A written Quotation is also a Tender. The term "Tender" also includes an E-Tender except where the context implies otherwise.
47. "Tenderer" or "Tenderers" means the Person or Persons invited to participate in a Procurement Exercise.
48. "Total Value" means the value of a contract which has been calculated in accordance with Rule 10(b) (excluding Rule 10(b)(vii)) reading where appropriate Total Value for Estimated Value.
49. "UK e-notification service" known as "FTS" (Find a Tender Service) is defined in the Public Contracts Regulations 2015 (as amended).
50. "UK Threshold" means the respective threshold for Services, Supplies, Works or Light-Touch Services contracts referred to in the Public Contract Regulations 2015
51. "In writing" or "written" for the purpose of interpreting these Rules includes transmission by any electronic means which have been approved by the Director of Law and Governance in consultation with the Director of Corporate Resources.
52. Words imparting the masculine include the feminine gender.
53. "Rule(s)" means these Contract Procedure rules as may be amended from time to time.

**[end of Contract Procedure Rules]**

