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Contract Procedure Rules

MALDON
DISTRICT COUNCIL

Approved by Council 13th February 2025

CONTENTS

INTRODUCTION 4

1. BASIC PRINCIPLES 5
2. OFFICER RESPONSIBILITIES 5
3. EXEMPTIONS, COLLABORATIVE ARRANGEMENTS 6
4. RELEVANT CONTRACTS 7
5. STEPS PRIOR TO PURCHASE 7
6. FRAMEWORK AGREEMENTS, DYNAMIC Markets, Dynamic purchasing system 8
7. REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS 9
8. Pre-MARKET ENGAGEMENT 10
9. STANDARDS AND AWARD CRITERIA 10
10. INVITATIONS TO TENDER / QUOTATIONS 10
11. TENDER EVALUATION 14
12. BONDS AND PARENT COMPANY GUARANTEES 14
13. CONTRACT DOCUMENTS 15
14. CONTRACT MANAGEMENT 16
15. MODIFYING A CONTRACT 17
16. CONFLICTS OF INTEREST 18
17. DECLARATION OF INTERESTS 18
18. PREVENTION OF CORRUPTION 19

DEFINITIONS APPENDIX 19

INTRODUCTION

These Contract Procedure Rules apply to all officers, members and agents acting on behalf of the Council involved in Procurement and Contract Management and are issued in accordance with section 135 of the Local Government Act(1972) and section 1-29 of Local Government Act (1999). These rules are intended to promote good purchasing practice and public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for procurement and contract management activities and decision making must be fully aware of and comply with these rules. Officers have a duty to report breaches of these Contract Procedure Rules to an appropriate Director, the Monitoring Officer, and Lead Specialist Procurement.

Should a conflict be found between these rules, the law and procurement guidance, the order of precedence shall be the law, these rules, and any guidance. The Chief Finance Officer in consultation with the Lead Specialist Procurement may make minor changes to these Contract Procedure Rules.

Minor changes are defined as:

- Changes in statutory framework, such as references to new or updated legislation
- Changes in titles, names, or terminology
- Changes consequential to other constitutional changes already made.

Legislation

The Councils procurements are regulated by the Procurement Act 2023 and the Procurement Regulations 2024. There is other legislation that needs to be considered such as the Social Value Act 2012 and the Transparency Code 2015, which will impact on procurement, and it is important that officers are aware of the wider legislative framework.

Where a procurement was started under the Public Contracts Regulations (2015) then that procurement or contract will continue to be under these regulations until the end of the contract or framework.

Objectives

The Procurement Act 2023 sets out a series of objectives which procurements must have regard to they are;

- Delivering value for money
- Maximising public benefit
- Sharing information for the purposes of allowing suppliers and others to understand the Councils policies and decisions
- Acting and being seen to act with integrity.

Procurements must also have regard to the National Procurement Policy statement which sets out national priorities for procurement;

- Value for money
- Social Value
- SMEs

It is important that procurements support the delivery of the Councils wider ambitions

1. BASIC PRINCIPLES

All procurement and disposal procedures must:

- Ensure value for money and propriety in spending of public money; be consistent with the highest standards of integrity
- consider all necessary procurement, legal, financial, and professional advice
- Comply with all legal requirements and these rules
- Ensure that the Council is not exposed to unnecessary risk and likelihood of challenge arising from non-compliant procurement activity
- Consider and incorporate necessary health and safety, inclusion and diversity, and safeguarding children and vulnerable adults' requirements.
- Support the council's corporate and departmental objectives, plan and policies
- Consider the Councils duty to have regard to the fact that SMEs may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced, before commencing the procurement

2. OFFICER RESPONSIBILITIES

2.1 Responsible Officers

2.1.1 Officers responsible for purchasing or disposal must comply with these contract procedure rules, Financial Regulations, the Code of Conduct and with all UK binding legal requirements. Officers must ensure that any Agents, Consultants, and contractual partners acting on their behalf also comply.

All officers should undertake procurement in a manner which avoids any potential conflicts of interest. (Section 16)

2.1.2 Officers must:

- obtain all appropriate authorisations and check that appropriate budget provisions exist before the procurement commences
- have regard to the Procurement guidance
- have a business case completed and approved prior to commencing on contracts with a value of £50,000 or above
- consider whether the procurement constitutes a key decision. If so, approval must be sought from the Corporate Leadership Team (CLT), Project board and from the relevant committee.
- Check whether a suitable Corporate Contract exists before seeking to let another contract; where a suitable Corporate Contract exists, this must be used unless there is an auditable and valid reason not to do so.
- Follow the council's duty to have regard to the fact that SMEs may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced, before commencing the procurement.
- Take all necessary Procurement, legal, financial, and professional advice.
- Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended and to address any performance issues as soon as possible.

- must keep a record of decisions made in connection with the procurement, this should include minutes from any meetings held.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

2.2 Directors

2.2.1 Directors must:

- Ensure that their staff comply with these rules at all times
- Appoint a Contract Manager for the lifetime of all contracts
- Ensure that all Exemption requests have followed the correct procedure.

3. EXEMPTIONS, COLLABORATIVE ARRANGEMENTS

3.1 The council has the power to waive requirements within these contract procedure rules for specific projects

3.2 Where a proposed contract is likely to exceed the UK Threshold, There are no delegated powers, and the matter has to be determined by the council.

3.3 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to life and/or safety of people or property arising from unforeseen events or incidents or serious disruption to council services, the Officer and the Chief Finance Officer may jointly approve the exemption, but they must prepare a report for the next Strategy and Resources Committee to support the action taken.

3.4 All exemptions, and the reasons for them, must be recorded using the form in the Procurement guidance. Exemptions shall be signed by the Officer and countersigned by the S151 Officer and the Chief Executive in consultation with the Chairperson of the Strategy and Resources Committee.

3.5 Grant Allocations; where the Council has been allocated a grant and there has been no time to procure during the grant application process or because the grand conditions required spend in too short a time period. Evidence of the application process will be required with the exemption. If the grant spend is not required within a twelve (12) month period, then an exemption may not be used.

3.6 Financial Officers must monitor the use of all exemptions.

3.7 All purchases made via a local authority are deemed to comply with these contract procedure rules, and no exemption is required. However, purchases above the UK Threshold must be let under the UK Procedure, The Council must be satisfied of this requirement by letting their contract in accordance with the UK Procedures on behalf of the authority and other members.

3.8 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules, and no exemption is required. However, advice must be sought from the Lead Specialist Procurement.

4. RELEVANT CONTRACTS

4.1 All Relevant Contracts must comply with these contract procedure rules. A Relevant Contract is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials, or services. These include arrangements for:

- The supply or disposal of goods;
- The hire, rental or lease of goods or equipment;
- The delivery of services, including (but not limited to) those related to:
  - Financial and Consultancy Services
  - Legal Services

4.2 ***Relevant Contracts*** **do not include:**

- Contracts of employment which make an individual a direct employee of the authority, or
- Agreements regarding the acquisition, disposal, or transfer of land (for which *Financial Regulations* shall apply).
- Contracts for retention of legal Counsel, or the appointment of expert witnesses in legal proceedings.
- Membership/Subscriptions (not applicable to software licensing) where the Council makes an arrangement to receive goods or services regularly by paying in advance and competition is absent for technical reasons.
- Any contract between the Council and another Contracting Authority where the contract has the aim of achieving public function related objectives and is solely in the public interest.

4.3 **Contract Value Calculation**

- Contract value means the estimated aggregate or recurring value payable inclusive of Value Added Tax over the entire contract period including any extensions of the contract.
- Contracts must not be artificially underestimated or disaggregated into two or more separate contracts where the effect is to avoid the application of the rules.
- Where a framework agreement is planned the contract value must be calculated to include the total value of all of the individual contract arrangements envisaged under the Framework Agreement.
- Where the estimated value cannot be determined, the procurement must be managed as though it was over the relevant UK Procurement Threshold

5. STEPS PRIOR TO PURCHASE

5.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any guidance in the Procurement guidance, by:

- Taking into account the requirements from any relevant Best Value review appraising the need for the expenditure and its priority defining the objectives of the purchase.
- Assessing the risks associated with the purchase and how to manage them considering what procurement method is most likely to achieve the

purchasing objectives, including internal or external sourcing, partnering, strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

- Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring.
- Allowing time to obtain approvals and the time necessary to complete a tender process.
- Consider the whole life cycle of the contract including any maintenance or service requirements once the contract is in place.
- There is Council or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution.

6. FRAMEWORK AGREEMENTS, DYNAMIC MARKETS, DYNAMIC PURCHASING SYSTEM

6.1 A framework, Dynamic Market or Dynamic Purchasing System is considered compliant when;

- It has been entered into by the Council in compliance with these rules, or;
- Another contracting authority, purchasing consortium or central government.

Officers should ensure the rules as set by the framework are followed.

Further guidance and details on Frameworks, Dynamic Markets and Dynamic Purchasing systems can be found in the Procurement guidance

6.2 Contracts based on Framework Agreements may be awarded by either:

- applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
- where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
- inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders;
- fixing a time limit which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
- Awarding each contract to the tenderer who has submitted the Most Advantageous Tender on the basis of the Award Criteria set out in the specifications of the Framework Agreement

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6.3 **Approved Lists**

The Council does not as a rule agree the use of Approved Lists. Where the use of an approved list may be required, you should seek guidance from the Lead Specialist Procurement. a full business case and Director level approval must be obtained, prior to appointing an approved list.

7. REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The Officer must calculate the Total Value over the term of the contract including any extensions.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, Officers must seek the advice from Procurement.

7.2 Assets for Disposal

7.2.1 Assets for disposal must be sent to public auction (including electronic auction sites such as eBay) except where better Value for Money is likely to be obtained by inviting Quotations. (These may be invited by advertising on the council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the relevant Director.

7.2.2 The Chief Finance Officer has the discretion to agree other methods for disposal of Assets up to a value of £5,000 in consultation with the relevant Director.

7.2.3 In the first instance surplus vehicles, plant and equipment should be offered to Parish Council's within the District at a fair price (sold as seen) agreed by the Chief Finance Officer in consultation with the relevant Director.

7.3 Providing Services to External Purchasers

7.3.1 The Chief Finance Officer and Financial Regulations and procedures must be consulted where contracts to work for organisations other than the authority are contemplated.

7.4 The Appointment of Consultants to Provide Services

7.4.1 Consultant architects, engineers, surveyors, and other professional Consultants shall be selected, and commissions awarded in accordance with the procedures detailed within these contract procedure rules and as outlined below.

7.4.2 The Officer must produce suitable Terms of Reference (ToRs) setting out the scope of the assignment/study. This should be used to invite proposals from the Consultant[s]

7.4.3 The *Officer* must be satisfied that the fees and charges are reasonable and that appropriate procedures have been followed having regard to the type of work, prevailing market conditions and the particular knowledge or expertise of the consultant.

7.4.4 All consultants used must have:

- performed satisfactory work of a similar nature within the previous two years, or provided satisfactory evidence of relevant work carried out for other similar organisations within the last three years;
- relevant specialist knowledge and experience which is likely to be of value to Maldon;
- Hold professional indemnity of a sufficient level to protect the Councils interest

8. PRE-MARKET ENGAGEMENT

8.1 Officers must engage with procurement prior to commencing Market engagement.

Market engagement is permitted for the purposes of:

- Developing the Council's requirements and approach to the procurement
- Designing a procedure, conditions of participation or award criteria
- Preparing the tender notice and associated tender documents
- Identifying suppliers that may be able to supply the requirement (understanding the market).
- Identifying contractual terms
- Building capacity amongst suppliers in relation to the contract.

8.2 Market engagement must not have the effect that suppliers participating are put at an unfair advantage or that competition is otherwise distorted. If an officer deems that a supplier has been put at an unfair advantage, they must contact Procurement and Legal Services before progressing further with the procurement.

8.3 If the procurement is valued over the relevant UK procurement threshold, a preliminary market engagement notice must be published on the government's Central Digital Platform/Find a Tender.

9. STANDARDS AND AWARD CRITERIA

9.1 The Officer must ascertain what are the relevant British, European, or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary to describe the required quality. .

9.2 The Officer must define award criteria that are appropriate to the requirement and designed to secure an outcome giving Value for Money for the authority. Where The award criteria;

- Is the 'Most Advantageous Tender' where considerations other than price also apply.
- Savings over the life of the contract
- Sustainable Procurement
- Social Value
- The subject matter of the contract

9.3 Award Criteria must not include:

- Non-commercial Considerations
- Matters which discriminate against suppliers or signatories to the Government Procurement Agreement.

10. INVITATIONS TO TENDER / QUOTATIONS

10.1 **Procurements £5,000 up to £50,000**

The Officer responsible must ensure they have the budget and appropriate approvals in place to commence the quote process. Where the value of the contract exceeds

£50,000 then a tender process must be followed using the Councils nominated e-tendering portal via Procurement. Guidance should be sought from the Lead Specialist Procurement as to the correct process to follow at the earliest stage.

10.2 Where possible the Council shall ensure that for purchases of a value of up to £50,000 that at least two SME/Local supplier is invited to quote for suitable and relevant contracts. While there are no legislative timescales for return of quotes the deadline given to suppliers should be proportionate to the level of work expected for their submission. All documents and communications should be kept and where the lowest price is not accepted this must be recorded.

10.3 Once approval to proceed has been obtained by the necessary delegated authority the process should include the following:

- Details of the goods, services or works to be supplied;
- Where and when delivery is to take place;
- The total value of the contract; and
- The terms and conditions to apply including the price and payment terms.
- The terms of the purchase order should suffice for a contract.
- Use of the correct templates found on freshservice or obtained from Procurement

10.4 Where a quote is of a value of £30,000 and above then a below threshold tender notice must be published on the Central Digital Platform via the Council's e-tendering solution. All documentation/evidence and approval to award must be retained by the officer and forwarded to Procurement.

10.5 **Procurements valued between £50,000 up to UK Threshold**

Prior to commencing a tender process, the Responsible Officer should engage with procurement at the earliest opportunity and ensure;

(a) Approval to proceed to a procurement and award of contract in compliance with the Councils internal governance policies has been obtained. A business case/procurement plan will be required.

(b) Responsible Officers must create a robust risk assessment as part of the procurement planning process in conjunction with Procurement.

(c) Ensure there is no existing Council contract, framework, Dynamic Market or Dynamic Purchasing System before procuring the requirement.

(d) Have a specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers has been completed. The inclusion of social value criteria should also be considered.

(e) An open tender process must be followed, for the avoidance of doubt it is not possible to restrict the submission of tenders by reference to an assessment of suppliers' suitability to perform the contract.

(f) All relevant procurement documentation, including details of the evaluation criteria, will be developed by the Responsible Officer and Procurement.

(g) The Council must have regard to the fact that small and medium sized enterprises may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced

(h) Tenders must be evaluated according to the advertised evaluation criteria. clarification questions may be asked of bidders providing the response would not have the effect of materially changing the tender received.

(i) A tender report will be prepared by Procurement for approval to award the contract.

(j) Following approval to award the contract, a contract details notice must be published on the Central digital platform via the Councils e-tendering solution.

(k) All bidders will be notified of the outcome via the e-tendering solution.

(l) The contract must be signed by both parties prior to the contract commencing.

(m) Where appropriate and relevant to the contract it must be managed and have a risk register throughout the life cycle of the contract. Contracts excluded from this are for example;

- Software Licences,
- SLAs with other Local Authorities if not applicable

See section 14 of these rules for Contract Management.

10.6 **Procurements valued over the UK threshold**

The Responsible Officer must engage with Procurement at the earliest opportunity. There are strict deadlines and requirements for all over threshold procurements which are legal requirements under the Act.

(a) Approval to proceed to a procurement and award of contract in compliance with the Councils internal governance policies has been obtained. A business case/procurement plan will be required.

(b) Responsible Officers must create a robust risk assessment as part of the procurement planning process in conjunction with Procurement.

(c) The risk assessment must be reviewed and updated regularly during the procurement process and through the contract term.

(d) Procurement will confirm the most appropriate procurement process to use

(e) Where preliminary market engagement is used to inform the procurement process, a preliminary market engagement notice must be published on the Central Digital Platform via the Council's e tender solution.

(f) All relevant procurement documentation, including details of the evaluation criteria, will be developed by the Responsible Officer in consultation with the Procurement

(g) A tender notice must be published on the Central Digital Platform via the Council's e tender solution with associated tender documents

(h) Tenders must be evaluated according to the published evaluation criteria. Clarification questions may be asked of bidders as long as the response would not have the effect of materially changing the tender received

(i) The bidder with the highest evaluation score will normally be awarded the contract, if this is not the case further advice must be sought from the Procurement and Legal Services

(j) An award report will be prepared by Procurement for approval to proceed to awarding the contract

(k) All bidders must be notified of the award decision simultaneously via the Council's e tender solution whether or not their tender was successful, Procurement will prepare the relevant assessment summaries. Once assessment summaries have been sent to bidders a Contract Award Notice must be published on the Central Digital Platform via the Council's e tender solution.

(l) The publication of the Contract Award Notice starts the mandatory eight (8) working days standstill period. If, during the standstill period, a challenge or request for feedback is received from an unsuccessful bidder, the standstill period must be paused until the matter is successfully resolved. No contract award can take place in the intervening period

(m) A Contract Details Notice must be published within thirty (30) days of the contract being entered into. Where the value of the contract is more than £5m, a redacted copy of the contract must be published within ninety (90) days of the contract being entered into and the Notice must contain details of the KPIs (at least three (3)) that will be used to monitor the contract.

(n) The contract must be signed or sealed by both parties before contract delivery starts. The Responsible Officer must ensure that procurement is in receipt of a copy of the fully signed contract.

(o) Where appropriate and relevant to the contract it must be managed and have a risk register throughout the life cycle of the contract. Contracts excluded from this are for example;

- Software Licences,
- SLAs with other Local Authorities if not applicable

See section 14 of these rules for Contract Management.

10.7 **Light Touch Contracts**

Light touch contracts cover certain social, health, education or other public services provided directly to individuals or groups of individuals and therefore have some differences such as threshold limits and a greater flexibility. Contracts of this nature with a value below the threshold are subject to the remainder of the rules. The Council still remains bound by the requirement to ensure procurements do not result in non-compliance with the Act.

Where a Responsible Officer considers their contract may fall under the Light Touch regime, they should contact procurement in the first instance.

10.8 **Concession Contracts**

Concession contract is a contract that is concluded in writing where the consideration for the contract is the concessionaires right to profit from the works/services that are the subject of the contract.

Where a Responsible Officer considers their contract may fall under the Concession regime, they should contact procurement in the first instance.

11. TENDER EVALUATION

11.1 Tenders received after the fixed closing date and time or tenders which are not submitted in accordance with these rules and any criteria set out in the procurement documentation will be disqualified unless otherwise agreed by Procurement and where appropriate Legal Services.

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

11.3 Bidders may seek clarifications throughout the procurement process, such clarification requests must be recorded in writing and where the response may be of value to potential bidders, the anonymised response must be circulated to all those potential bidders. Under no circumstances can clarification processes be used as an opportunity to conduct negotiations.

11.4 Evaluation must be conducted in accordance with the published criteria. Evaluations will be by way of individual evaluation and where appropriate include a final moderation meeting.

12.5 The Procurement Act 2023 places an obligation on the Council to notify a bidder if it considers a price to be abnormally low and give the bidder reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered. If the bidder is unable to demonstrate that, its tender may be disregarded

12. BONDS AND PARENT COMPANY GUARANTEES

12.1 The Officer must consult the Chief Finance Officer about whether a Parent Company Guarantee is necessary when a Candidate is a subsidiary of a parent company and:

- the Total Value exceeds £250,000; or
- award is based on evaluation of the parent company; or
- there is some concern about the stability of the Candidate.

12.2 The Officer must consult the Chief Finance Officer about whether a Bond is needed:

- where the Total Value exceeds £250,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Candidate.

13. CONTRACT DOCUMENTS

13.1 All Contracts that exceed £50,000 shall be in writing.

13.2 All Relevant Contracts, irrespective of value, shall clearly specify:

- what is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had, or done);
- the provisions for payment (i.e. the price to be paid and when);
- the time, or times, within which the contract is to be performed;
- the provisions for the council to terminate the contract.

13.3 In addition, every Relevant Contract of purchase over £50.000 must also state clearly as a minimum:

- that the contractor may not assign or sub-contract without prior written consent;
- any insurance requirements;
- health and safety requirements;
- ombudsman requirements;
- data protection Act 2018 (General Data Protection Regulation (GDPR) requirements, if relevant;
- that charter standards are to be met if relevant;
- race relations requirements;
- Disability Discrimination Act requirements;
- Freedom of Information Act requirements;
- where Agents are used to let contracts, that Agents must comply with the council's contract procedure rules;
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

13.4 The formal advice of Procurement and Legal Services must be sought for the following contracts:

- where the Total Value exceeds UK Threshold;
- those involving leasing arrangements;
- where it is proposed to use a supplier's own terms;
- those involving the purchase of application software with a Total Value of more than £50,000;
- those that are complex in any other way.

13.5 All contracts must be concluded in writing or by email before the supply, service or construction work begins.

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

13.7 **Contract Authorisation**

Agreements (Contracts and Orders) shall be completed as follows:

Total Value	Method of Completion	By
Up to £5,000	Electronic order	*Authorised buyer*
£5,001 to £50,000	Electronic order	*Line Manager*
Above £50,001	Signature on written contract	*Chief Executive or Director*

Approved Buyer- An Officer designated by a Director who is authorised to generate electronic orders on behalf of the Council.

Line Manager - An Officer designated by the Chief Executive to exercise the role reserved to the line manager by the contract procedure rules, this will be a Level 2 Director.

Chief Executive - responsible for delivery of services

13.8 Where contracts are completed by each side adding their formal seal, such contracts shall be signed in accordance with the Council's constitution.

13.9 Every council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

13.10 A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its end;
- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services.

14. CONTRACT MANAGEMENT

14.1 The Procurement Act 2023 now specifies a number of requirements in terms of Contract Management. All contract performance requirements throughout the life cycle of the contract must be considered at pre-tender stage and included in the tender documents. Contract performance requirements should be proportionate to the individual contract.

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14.2 Contract Managers must keep a record of key dates with the lifecycle of a contract including but not limited to the dates of reviews, insurance renewals, any contractual ability to extend a contract, the notice periods required and the expiry of the term of contract.

14.3 At least six months prior to the expiry of a contract the contract manager should consult with procurement to agree if there is an option to extend and if taking up that option or renewal of a contract.

14.4 Contract managers are responsible for contract management on a day to day basis and in addition to contract inception meetings, and agreed implementation plans, as required shall be responsible for the regular review and monitoring of a contract with the supplier, and on an annual basis ensuring that all required insurances are renewed and that Business continuity plans, if used are reviewed.

14.5 For all contracts at or above the UK threshold value, information has to be published on the Councils e-tendering solution annually throughout the life cycle of the contract, including performance against any Key Performance indicators (KPIs) (a minimum of 3 KPIs should be set) and on termination of the contract

14.6 For all contracts with a value higher than the UK Threshold limits, or which are High Risk, an annual report must also be submitted to the relevant Committee.

14.7 Where the Total Value of the contract exceeds £250,000, the Officer must make a written report to the relevant Committee evaluating the extent to which the purchasing need and the contract objectives were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

15. MODIFYING A CONTRACT

Contracts may only be extended or varied if all of the following conditions have been met;

- The extension or variation is in accordance with the terms and conditions of the existing contract;
- The contract has not been extended before the extension or variation and has an approved budget allocation
- Legal advice must be sought before assignments or novation's are entered into;

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

If the contract is valued over the relevant UK Procurement Threshold, advice from the Procurement and Legal should be sought before a substantial modification is made. A substantial modification is one which would;

- Increase or decrease the term of the contract by more than 10% of the maximum term provided for,
- Materially change the scope of the contract, or
- Materially change the economic value of the contract in favour of the supplier.

Before modifying a contract valued over the relevant UK procurement threshold or when a modification takes the value over the relevant UK procurement threshold, a Contract Change notice must be published except where:

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

If the value of the contract is over £5m a redacted copy of the modified contract must be published via an updated Contract Details Notice on the Central Digital Platform via the Council's e-tendering solution.

16. CONFLICTS OF INTEREST

16.1 Officers must take all reasonable steps to identify and keep under review any conflicts of interest or potential conflicts of interest.

16.2 Any person who influences a decision must be included in the conflict of interest review.

16.3 Officers must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage. If the officer deems that the advantage or disadvantage cannot be avoided, they should contact the Procurement and Legal Services before progressing further with the procurement. This obligation starts when the need for the procurement is first identified and continues until the termination of the contract.

16.4 Where the procurement is valued over £100,000, a conflicts assessment must be prepared by the Responsible Officer in conjunction with Procurement before the procurement is published. This should include details of all conflicts or potential conflicts of interest and any steps that the Council has taken or will take to mitigate that conflict of interest. This may include any steps taken to demonstrate that there is no conflict of interest where one might be perceived.

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

16.7 Officers and Members involved in a procurement will, at all times, act in a way that is consistent with their Code of Conduct.

17. DECLARATION OF INTERESTS

17.1 If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has a pecuniary interest as described in the Code of Conduct has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer. The Monitoring Officer shall report such declarations to the appropriate Committee.

17.2 The Monitoring Officer shall maintain a record of all declarations of interests notified by members and Officers

17.3 The Monitoring Officer shall ensure that the attention of all members is drawn to the Council's Code of Conduct when taking office.

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

18. PREVENTION OF CORRUPTION

1.1 The Officer must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 17.2 below.

18.2 The following clause **must** be put in every written Council contract:

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

(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or

(b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or

(c) 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."

DEFINITIONS APPENDIX

Agent	A person or organisation acting on behalf of the council or on behalf of another organisation.
Director	Responsible for operational delivery of services and designated as such in the constitution
Approved Buyer	Officer Designated by a Director who is authorised to generate electronic orders on behalf of the Council.
Award Criteria	The criteria by which the successful Quotation or Tender is to be selected
Award Procedure	The procedure for awarding a contract
Best Value	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the council. This terminology has now in many instances been superseded by Value for Money.
Bond	An insurance policy: if the contractor does not do what it has promised under a contract with the council, the council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the council against a level of cost arising from the

	contractor's failure.
Candidate	Any person who asks or is invited to submit a Quotation or Tender.
Chief Finance Officer	The Officer Designated Chief Finance Officer (Section 151 Officer) by the Council.
Code of Conduct	The respective codes regulating the conduct of Members and Officers.
Committee	A Committee which has power to make decisions for the Council, for example a joint Committee with another local authority, but not the scrutiny Committee.
Constitution	The constitutional document approved by the council which: • allocates powers and responsibility within the council and between it and others; • delegates authority to act to the Committees, and Officers; • regulates the behaviour of individuals and groups through rules of procedure, codes, and protocols.
Consultant	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience, or capacity to undertake the work.
Corporate Contract	A contract let by the Council to support the council's aim of achieving Value for Money.
UK Procedure	The procedure required by the UK where the Total Value exceeds the UK Threshold.
UK Threshold	The contract value at which the UK public procurement directives apply.
European Economic Area	The members of the European Union, and Norway, Iceland, and Liechtenstein.
Financial Officer	The most senior Officer representing the Chief Finance Officer or designated by him/her to provide financial advice to the Chief Executive
Financial Regulations and procedures	The financial regulations and procedures outlining Officer responsibilities for financial matters issued by the Chief Finance Officer in accordance with the Constitution.
Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein, and Singapore.
High Profile	A high-profile purchase is one that could have an impact on functions integral to council service delivery should it fail or go wrong.
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the council's part should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the UK Threshold values.
Invitation to Tender	Invitation to tender documents in the form required by these contract procedure rules.
Key Decision	Decisions that are defined as key decisions in the Constitution.
Members	Persons currently elected to serve on the Council
Monitoring Officer	The Officer defined as such in the Constitution
Nominated Suppliers and Sub-contractors	Those persons specified in a main contract for the discharge of any part of that contract.
Non-commercial Considerations	a) The terms and conditions of employment by contractors of their workers or the composition of the arrangements for the promotion, transfer, or training of or the other opportunities afforded to, their workforces ('workforce matters'). b) Whether the terms on which contractors' contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only. c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy. d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes'). e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors. f) Any political, industrial, or sectarian affiliations or interests of contractors or their directors, partners, or employees. g) Financial support or lack of financial support by contractors for any institution to or from which the

	authority gives or withholds support. h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings. (Protection of Employment) Regulations 1981 (TUPE) may apply.
Officer	The Officer designated by the Director to deal with the contract in question.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: • if the subsidiary company fails to do what it has promised under a contract with the council, the council can require the parent company to do so instead.
Procurement Strategy	The document setting out the council's approach to procurement and key priorities for the next few years.
Project Management Methodology	The process set up by the Council to ensure that a project is executed in a disciplined and structured manor
Procurement guidance	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these Contract Procedure Rules. The guidance is available on the council's intranet.
Procurement Act 2023	An Act of the parliament of the United Kingdom to simplify procurement processes, become more transparent and deliver better value for money.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Relevant Contract	Contracts to which these Contract Procedure Rules apply (see Rule 4).
Strategy & Resources Directorate	The directorate of the Council that includes responsibility for discharging the Council's procurement responsibilities
Service	The services provided by the Council are currently broken down into two directorate.
Solicitor	Any Solicitor designated by the Council's Chief Executive or the Monitoring Officer.
Tender	A Candidate's proposal submitted in response to an Invitation to Tender.

Total Value

The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:

(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period.

(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.

(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48.

(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result.

(e) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.

TUPE

(Transfer of Undertakings (Protection of Employment) Regulations 2006)

(SI 2006 No.246)

Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in conducting the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Value for Money

Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.