

# Contents Page

<b>PART 1 - Introduction</b> .....	3
1. Introduction.....	3
2. Key Principles .....	3
3. Statutory Requirements.....	3
4. Compliance.....	4
5. Scope.....	4
6. Roles and Responsibilities .....	6
<b>PART 2 - Process</b> .....	10
7. Calculating contract value.....	10
8. Thresholds and route to market.....	10
9. Permission to tender.....	11
10. Pre-market engagement .....	12
11. eSourcing .....	12
12. Records .....	12
13. Waivers.....	12
14. Direct award for Covered Procurement (exemption).....	13
15. Variations .....	14
16. Framework Agreement .....	14
17. Dynamic Purchasing .....	14
18. Assessing suppliers.....	15
<b>PART 3 - General</b> .....	16
19. Purchase Orders .....	16
20. Purchasing Cards .....	16
21. Temporary Staff, Consultants and Professional Services .....	16
22. IR35 .....	17
23. Disposal of Land and Property and other Council Assets.....	17
24. Grants .....	17
25. Social Value .....	17
26. Conflicts of interest.....	18
27. TUPE.....	19
28. Modern Slavery .....	19
29. Sustainable Procurement.....	19
30. Tax.....	20
31. Accessibility Standards.....	20

32. Contract register.....	20
33. Transparency and required notices.....	20
34. Freedom of Information .....	21
35. Work for Third Parties.....	21
36. Partnerships .....	21
37. Review of these Rules .....	22
38. Councillors .....	22
39. Contract Management .....	22
<b>PART 4 - Contracts.....</b>	<b>24</b>
40. Form of Contract .....	24
41. Sealing and signing of contracts .....	24
42. Novation .....	25
43. Financial Security .....	25
44. Insurance .....	25
<b>Appendix 1 - QUICK REFERENCE GUIDE.....</b>	<b>27</b>
<b>Appendix 2 – NOTICES REQUIRED UNDER PA 2023 .....</b>	<b>29</b>
<b>Appendix 3 – USEFUL LINKS.....</b>	<b>30</b>

## **PART 1 - Introduction**

### **1. Introduction**

- 1.1. These Contract Procedure Rules (Rules) set out the framework within which all the procurement activity in the Council is undertaken and spending is managed. They relate to the procuring and/or entering into contracts for the supply of all goods (supplies and materials), services (including consultancy appointments) and works. They ensure that contracts are entered into in a fair, open, non-discriminatory, proportionate, lawful and transparent way. They protect the Council and support the Council's strategic priorities.
- 1.2. Procurement decisions are among the most important decisions a local authority will make in order to ensure that public money is appropriately spent and that goods, services and works represent best value.
- 1.3. All Officers who purchase on behalf of the Council have a responsibility to follow these Rules, including all relevant Council policies and guidance detailed, and failure to do so is a disciplinary offence. Officers must also comply with the Council's Code of Conduct for Officers which forms part of the Constitution. Joint Strategic Directors and Assistant Directors are accountable for all procurement in their respective areas of responsibility and shall take appropriate action in the event of a breach of these Rules.
- 1.4. The Joint Strategic Director - Finance, is responsible for ensuring the Rules are up to date and reflect current law including any retained EU law. Any change in applicable law must be observed until the Rules can be revised.

### **2. Key Principles**

- 2.1. The purpose of these Rules is to provide a structure and process for decisions which ensure that the Council:
  - a) furthers its corporate objectives;
  - b) delivers best value and creates healthy competition;
  - c) maximises public benefit whilst delivering sustainability and social value;
  - d) acts with integrity and transparency;
  - e) treats all suppliers the same;
  - f) does not put a supplier at an unfair advantage or disadvantage;
  - g) has regard to small and medium enterprises.

### **3. Statutory Requirements**

- 3.1. These Contract Procedure Rules (Rules) are the Council's standing orders made under section 135 of the Local Government Act 1972.

- 3.2. Public procurement in the UK is regulated by the Public Contracts Regulations 2015 (PCR 2015) and the Procurement Act 2023 (PA 2023). Other relevant legislation is referenced in Appendix 3.
- 3.3. Where the contract is a **Covered Procurement** then the Council must comply with the tendering requirements set out in the PCR 2015 or PA 2023, or other legislation as applicable.
- 3.4. For the purpose of these Rules, a **Covered Procurement** is a procurement with a value above the statutory threshold (inclusive of VAT where applicable). The statutory thresholds are reviewed every two years to take account of currency fluctuations and for 1 January 2024 to 31 December 2025 are as follows:

Concession (works and services) contract	£5,372,609
Works contract	£5,372,609
Goods or services (inc. works for mixed contracts) contract	£214,904
Light touch regime	£663,540

**4. Compliance**

- 4.1. All procurement activity and resulting contracts made by, or on behalf of, the Council must comply with the relevant legislation and Constitution (including these Rules, Financial Procedure Rules and relevant Council policies).
- 4.2. If there is any conflict between the above the relevant law takes precedence, followed by the Council’s constitution, the National Procurement Policy Statement, these Rules and any Council policies or procedures, in that order.
- 4.3. Where an Officer has deliberately split a contract to avoid a particular procedure, or disregarded these Rules, the relevant Joint Strategic Director in collaboration with the Joint Strategic Director - Legal and Democratic Services and Joint Strategic Director - Finance will have the right to request the procurement to be cancelled.

**5. Scope**

- 5.1. These Rules apply to all procurement undertaken by the Council and any explanation or clarification required should be sought exclusively from Procurement or Legal Services.
- 5.2. **Where an approval is required under these Rules this may be taken by any Officer authorised and nominated by the decision maker in accordance with the Scheme of Delegation. Where**

**Executive approval is required Officers should consider all the decisions which will need to be made throughout the process and these should be sought at the appropriate time.**

5.3. The Council has set the following financial thresholds (excluding VAT) for procurement activity:

- a) Threshold 1 – up to £5,000
- b) Threshold 2 – from £5,000 up to £25,000
- c) Threshold 3 – from £25,000 up to £150,000
- d) Threshold 4 – from £150,000

5.4. Part 2 of these Rules does not apply to the following contracts, which are covered by separate legislation and/or policies. The rest of these rules continue to apply in full:

Type of contract	Legislation, policy or guidance which covers out of scope contract
Land transactions for the acquisition or sale of any interest in land (where there is no connected delivery of services, works or goods for which the land forms part of the pecuniary interest)	Local Government Act 1972, Housing Act 1985 or any related acts or authorities for which reference should be made to the Financial Procedure Rules, and the Council’s policies.
Contracts for permanent or fixed term employment	Employment Rights Act 1996, Human Resources / Recruitment Policies
Unconditional grants and sponsorship agreements	Subsidy control will need to be considered
Financial transactions	Not subject to competition due to their nature
Works orders placed with statutory undertakers	Not subject to competition due to their nature
Procurements that have been jointly procured by another local authority, public sector consortium or collaboration of which the Council is a party but not the lead authority.	The procurement of contracts of this nature will be governed by the constitution of the lead authority.  Internal contract sign-off thresholds will still apply and a conflict assessment must still be undertaken in accordance with these Rules for each Council prior to agreeing to a joint procurement.
Contracts between the Council and a Supplier who is controlled by the Council	Internal contract sign-off thresholds will still apply and a conflict assessment must still be undertaken in accordance with these Rules for both the Council and the Supplier.

Contract Procedure Rules – Part 1 Introduction

Contracts between the Council and another local authority where the aim is to achieve common objectives for the public benefit.	Internal contract sign-off thresholds will still apply and a conflict assessment must still be undertaken in accordance with these Rules for the Council.
Exempt legal services (advice and representation in connection with judicial or dispute resolution proceedings)	Not subject to competition due to their nature
Alternative dispute resolution services	Not subject to competition due to their nature
Supply of works, goods and services by the Council	Internal contract sign-off thresholds will still apply
Contracts with other contracting authorities to achieve common objectives by co-operating in the public interest.	Referred to as Hamburg or Horizontal arrangements, provided that this is still best value for the Council.
Contracts with entities that are controlled by the Council	Referred to as Teckal or Vertical arrangements, provided that this is still best value for the Council.

5.5. Whilst Officers should always endeavour to uphold the key principles there are occasions when complying with Part 2 of these Rules does not provide sufficient flexibility and provided Procurement and Legal Services are informed in advance Part 2 will not apply to procurement that is within Thresholds 1 to 3 (up to £150,000) in the following circumstances:

- a) Emergency purchases. Where goods, services or works are awarded in a critical situation and authorised by the Chief Executive, or Joint Strategic Director in his absence. Provided that such purchases should be for a limited period. Sufficient funds must be available and signed off by the budget holder. Critical’ means a matter of pressing importance requiring swift action given the gravity of the situation, to prevent damage (or further damage) to life, limb, **property**, infrastructure, **reputation** or the financial integrity of the Councils.
- b) The Council is acting as an agent for another organisation.
- c) Legal services and expert witnesses.
- d) Contracts which are required by the Returning Officer or Electoral Registration Officer.

**6. Roles and Responsibilities**

## Contract Procedure Rules – Part 1 Introduction

- 6.1. All Officers have a duty to report breaches of the Rules to the Joint Strategic Director - Finance or to the Monitoring Officer. Compliance with these Rules is also subject to internal and external audit.
- 6.2. In considering how best to purchase works, goods and services, an Officer shall take into account wider contractual delivery opportunities and purchasing methods such as the collaboration project, setting up or letting under framework agreements, joint procurements with other public authorities, e-procurement methods and the availability of local authority trading and charging powers under the Local Government Act 2003 and the Localism Act 2011.
- 6.3. **Officers** purchasing on behalf of the Council are responsible for:
- a) Acting in compliance with these Rules and all relevant Council policies;
  - b) Identifying relevant existing contracts and ensuring these are used wherever possible.
  - c) Engaging with Procurement **before** approaching the market for any contract in excess of £5,000;
  - d) Ensuring a contract has been completed **before** raising a Purchase Order for purchases within or above Threshold 2.
  - e) Getting Purchase Orders approved **before** the requirements are delivered to the Council.
  - f) Ensure specifications accurately define the requirements.
  - g) Giving consideration to equality, diversity and social value implications.
  - h) Ensuring that Human Resources is consulted, and the appropriate approval obtained for requirements of temporary workers or consultants outside any agreed corporate contract.
  - i) Contracts are to be managed within Services, either by a dedicated Contract Manager or by a nominated officer.
  - j) Ensuring that commitments made by the Suppliers during the tender process are fulfilled, for example, social value.
  - k) Ensuring the contracts are being used in accordance with what they were procured for.
  - l) Reporting to the Joint Strategic Director any breach in respect of j and k, above.
- 6.4. **Procurement** is responsible for:
- a) Providing expert market knowledge ensuring compliance and delivering best value
  - b) Identifying existing contracts and ensuring these are used where possible.
  - c) Ensuring Officers have the correct tools, information and guidance to deliver a compliant, cost effective and good quality contract.
  - d) Ensuring that Finance have confirmed there is adequate budget available prior to any procurement commencing
  - e) Offering expert advice to Officers procuring within Thresholds 1 and 2 (up to £25k).
  - f) Taking a commercial lead on all procurements within Threshold 3 and 4. (over £150k)

## Contract Procedure Rules – Part 1 Introduction

- g) For contracts above Threshold 2 ensuring Procurement has instructed Legal Services to advise and draft an appropriate level contract.
- h) Ensuring transparency and compliance by publishing required notices, subject to Procurement providing the required information.
- i) Maintaining and publishing the Contract Register.
- j) Maintaining procurement records and records of all material decisions
- k) Reviewing conflict assessments with input from Legal Services and in consultation with the relevant Assistant Director
- l) Reviewing Waiver submissions and maintaining Waiver log
- m) Reviewing Exemption submissions and maintaining an Exemption log
- n) Reviewing spend across all categories quarterly and reporting non-compliance to Executive
- o) Embedding social value and sustainable procurement appropriately across Council procurement activity
- p) Delivering procurement and contracts training to Officers
- q) Manage e-sourcing platform
- r) Updating the internal and external web pages to ensure Officers, Suppliers and residents are kept informed.
- s) Delivering the Procurement Strategy adoption to implement the Council's objectives
- t) Ensuring suppliers are aware of, and follow, the Council's Supplier Code of Conduct when bidding and delivering contracts
- u) Approving all new supplier set up requests
- v) Authorising any Procurement Card transactions outside of the nominated card holders

### 6.5. **Strategic Directors/Assistant Directors** are responsible for:

- a) Ensuring adequate budget provisions are in place prior to approving any procurement activity in compliance with the Financial Procedure Rules
- b) Incorporate within their service plan a list of all current and forecast contract opportunities for the upcoming three years. This list is to be updated as necessary throughout the year and shared with Procurement to inform the pipeline of work
- c) Ensuring that all procurements and contracts within their service comply with these Rules, the Financial Procedure Rules and public procurement legislation and that any necessary authority is in place.
- d) Ensuring that those Officers they approve or nominate to exercise their functions are aware of the strategic direction of the service, have appropriate knowledge and training and have authorisation to engage with Procurement.



Contract Procedure Rules – Part 1 Introduction

- e) Managing contracts within their service to ensure that contracts deliver best value, are operated effectively, efficiently, economically and in accordance with contract provisions
- f) Keep adequate records to comply with these Rules, the Financial Procedure Rules and all relevant legislation.
- g) Review ethical, social and sustainability issues throughout the contract.
- h) Ensuring that all decisions made are published in accordance with the Openness of Local Government Bodies Regulations 2014, if applicable.

## **PART 2 - Process**

### **7. Calculating contract value**

- 7.1. Prior to commencing a procurement exercise Officers must estimate the aggregate contract value; this will determine which threshold the procurement falls under.
- 7.2. The 'contract value' must be calculated in accordance with the relevant legislation and includes the aggregated value over life of the contract, including any extensions and options, exclusive of Value Added Tax (VAT).
- 7.3. Contracts must not be purposefully underestimated, split or packaged with the intention of avoiding the application of these Rules or the relevant legislation. This includes dividing into two or more contracts, or for contracts under the PA 2023 adding services to a works contract.
- 7.4. Spend with suppliers will be monitored regularly by Procurement to ensure contracts are not being disproportionately awarded and exceeding thresholds.
- 7.5. In the case of Framework Agreements, Dynamic Purchasing Systems or Dynamic Purchasing Markets, the contract value must be calculated to include the total estimated value, net of VAT, of all the contracts envisaged to be awarded for the total term.
- 7.6. Where the lowest value tender is above the value set in the threshold then prior written approval must be obtained from the Joint Strategic Director – Finance (or in accordance with paragraph 5.2) to accept the tender. Where it becomes a Covered Procurement advice will need to be sought from Procurement and Legal Services as to whether an award can proceed.
- 7.7. Where PA 2023 applies the procurement will be assumed to be a Covered Procurement if there is any uncertainty as to contract value, for example where a term is uncertain or the number of items to be ordered is unclear.

### **8. Thresholds and route to market**

- 8.1. Consideration should always be given to using lots, particularly if it will facilitate opportunities for small and medium enterprises and voluntary organisations. Consideration should be given where appropriate to using a Framework, Dynamic Purchasing System or Dynamic Purchasing Market. A 'competitive tender process' includes any procedure under the relevant legislation but does not include direct award unless an exemption is sought.
- 8.2. These requirements set out the minimum market engagement required at each threshold and Officers should always have regard to the provisions of these Rules and the duty to obtain best value.
- 8.3. Threshold 1 - Procurement below £5,000

## Contract Procedure Rules – Part 2 Process

A minimum of one quote must be sought by the Officer. A quote should be obtained by email and must include a clear specification and details of the Council's contract requirements set out in Part 4. Where possible local suppliers should be asked to quote.

A Purchase Order can be used to form the contract but a copy of the quote, conflict assessment and any additional terms and conditions of the supplier must be attached to the Purchase Order request.

### 8.4. Threshold 2 - Procurement valued from £5,000 to £24,999

The Officer should engage with Procurement to discuss the most appropriate route to market in accordance with the principles of these Rules. A minimum of three quotes should be obtained.

Contracts will be signed by the Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2).

Legal Services will advise on the appropriate form of contract and retain a copy of the contract.

Procurement will keep records including the conflict assessment.

### 8.5. Threshold 3 - Procurements valued from £25,000 to £150,000.

Procurement will lead and must be instructed by the Officer **before** any market engagement is undertaken. Where possible a competitive tender process should be used or a minimum of three quotes should be obtained if agreed by Procurement. All quotes should be obtained through the eSourcing and will require a contract signed by the Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2).

Legal Services will retain a copy of the contract and Procurement will keep records including the conflict assessment.

### 8.6. Threshold 4 - Procurement valued over £150,000

**Any procurement which is a Key Decision will require approval from Executive (or in accordance with paragraph 5.2) before tender and prior to award.**

Procurement will lead and should be instructed by the Officer **before** any market engagement is undertaken, failure to do so could lead to a breach in the relevant legislation. A competitive tender process should be followed in accordance with the relevant legislation. The procurement must be run through the eSourcing.

Legal Services should be instructed at the earliest opportunity to ensure that there is no delay to the project.

## 9. Permission to tender

## Contract Procedure Rules – Part 2 Process

Authority to commence a procurement is subject to written approval from the Assistant Director, by email (or in accordance with paragraph 5.2). Where the procurement will result in a Key Decision the approval will need to be from Executive (or in accordance with paragraph 5.2) and Procurement will seek the necessary approvals.

### 10. Pre-market engagement

- 10.1. For all procurement in Threshold 4, Procurement should undertake pre-market consultation with potential suppliers to establish the market can meet the requirements in accordance with relevant legislation. This brings the opportunity to the attention of the market and can help with development of the specification. Pre-market engagement is optional for procurement in or below Threshold 3.
- 10.2. Any pre-market engagement must not distort competition and must be in compliance with these Rules.

### 11. eSourcing

- 11.1. All procurements in and above Threshold 2 should be advertised via the Council's eSourcing platform, unless agreed otherwise by Procurement. This ensures that the tender opportunity is advertised to the market in a fair and auditable way.
- 11.2. Procurement are responsible for the publishing of all opportunities via the Council's eSourcing platform.
- 11.3. For all procurements in Threshold 4, all communications with tenderers during procurement **must** be via the eSourcing portal (or equivalent used).

### 12. Records

- 12.1. Officers must keep a full audit trail of documents for all procurements for Threshold 1.
- 12.2. Procurement will keep a full audit trail of documents for all procurements at Threshold 2 and above. Officers should ensure that all correspondence or discussion that takes place in relation to the procurement are fully documented and a copy provided to Procurement.
- 12.3. Records must be kept for a minimum of three years following the award of the contract and then in accordance with the Council's retention policy.

### 13. Waivers

- 13.1. A waiver cannot be granted retrospectively or if doing so would contravene the relevant legislation i.e. for Covered Procurement.
- 13.2. These Rules may be waived in exceptional circumstances where one of the following apply:

## Contract Procedure Rules – Part 2 Process

- a) where the requirement is time critical (applications for waivers which are as a result of poor contract planning will rarely be considered genuinely exceptional).
  - b) the execution of the works or supply of services is of such a specialised nature that in the opinion of the relevant Joint Strategic Director the number of prospective Suppliers able to quote is less than required by these Rules.
  - c) the price of the goods or materials is wholly controlled by government order, statutory undertakers or trade organisations and no satisfactory alternative is available.
  - d) the work to be executed or the goods or materials supplied consist of repairs and/or maintenance to or the supply of parts for existing software, machinery or plant.
  - e) the nature of the market for goods, works or services has been investigated and it is demonstrated that a departure from the Rules is justified.
  - f) it is in the overall best interests of the Council.
- 13.3. A waiver which is not a Key Decision can be approved by the Joint Strategic Director – Finance (or in accordance with paragraph 5.2).
- 13.4. Any waiver which is a Key Decision needs the approval of Executive (or in accordance with paragraph 5.2).
- 13.5. Officers must obtain approval for a waiver by completing a waiver request documenting the reason for which the waiver is sought, budget availability, justification and risk. The waiver request must be completed in full and accurately describe the services needed, forms not completed satisfactorily will be returned.
- 13.6. All requests for waivers should be submitted to Procurement who will make a recommendation before seeking the required approval.
- 13.7. The Joint Strategic Director - Finance must maintain a log of all waivers and these will be reported to the Audit and Risk Committee [Corporate Governance and Standards Committee] on an annual basis.

## 14. Direct award for Covered Procurement (exemption)

- 14.1. Approval may be given for a direct award if a procurement is a **Covered Procurement** in accordance with the relevant legislation. The exemption will only be granted if approved by the Joint Strategic Director - Finance, Joint Strategic Director - Legal and Democratic Services and Procurement (or in accordance with paragraph 5.2).
- 14.2. If the exemption is a Key Decision this will also require the approval of Executive (or in accordance with paragraph 5.2).
- 14.3. The Joint Strategic Director - Finance must maintain a log of all exemptions and these will be reported to the Audit and Risk Committee [Corporate Governance and Standards

## **15. Variations**

- 15.1. A variation, including use of options provided for in the original contract, of an existing contract may be approved where it will not result in the contract becoming a Covered Procurement. A variation of an existing contract which will result in it becoming a Covered Procurement may only be approved if it is compliant with the relevant legislation.
- 15.2. A variation which will not result in the total value of the contract exceeding the Key Decision threshold can be approved by the Joint Strategic Director – Finance (or in accordance with paragraph 5.2).
- 15.3. A variation which will result in the total value of the contract exceeding the Key Decision threshold requires the approval of Executive (or in accordance with paragraph 5.2).
- 15.4. Officers must obtain approval for a variation by completing a variation request documenting the reason for which the variation is sought, budget availability, justification and risk. The variation request must be completed in full and accurately describe the services needed.
- 15.5. All requests for variations should be submitted to Procurement who will make a recommendation before seeking the required approval and seek advice from Legal Services where appropriate.

## **16. Framework Agreement**

A contract may be awarded by calling-off a Framework providing the following criteria are met:

- a) The call-off is done in accordance with the terms and conditions of the Framework;
- b) Value for money can be demonstrated; and
- c) The outcome was not decided prior to identifying the Framework.

For contracts at Threshold 3 and above legal advice should be sought to ensure that the Framework complies with the Council's requirements under these Rules and any necessary access agreements will need to be entered into by the Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2).

## **17. Dynamic Purchasing**

- 17.1. Contracts based on either a Dynamic Purchasing System or Dynamic Purchasing Market may be awarded provided they comply with the relevant legislation. For contracts at Threshold 3 and above legal advice should be sought to ensure compliance with the Council's requirements under these rules and any necessary access agreements will need to be

## Contract Procedure Rules – Part 2 Process

entered into by the Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2) and agreed by the Joint Strategic Direction, Finance.

- 17.2. The Officer is responsible for the specification development and technical evaluation criteria which is to be included in the procurement documentation.
- 17.3. Tenders can be assessed on a price only, price and technical split or technical basis. Where there is a price and technical split the weightings and split will be determined by Procurement taking into account the requirements of the service in order to determine the most advantageous tender.
- 17.4. The specification must be a clear and comprehensive description of the requirements and should incorporate measurable and, so far as is possible objective, quality and performance criteria.
- 17.5. Where the Council wishes to nominate a sub-contractor then this should be specified in the tender documentation including clarification of the process being used by the Council to select the nominated sub-contractor.
- 17.6. Procurement is responsible for the procurement documentation and for providing advice, as appropriate, on the specification and technical evaluation to produce the most advantageous solution over the lifetime of the contract.

## **18. Assessing suppliers**

- 18.1. For procurements at Threshold 2 and below at least one Officer should undertake an evaluation and record the reasons for awarding the contract.
- 18.2. For procurements at Threshold 3 and above at least two Officers are required to undertake a technical evaluation unless agreed otherwise by Procurement.

## **PART 3 - General**

### **19. Purchase Orders**

- 19.1. Purchase Orders should be raised within the Council's purchasing system following the completion of the contract.
- 19.2. Invoices must be received electronically and should be emailed to [invoices@guildford.gov.uk][supplierinvoices@waverley.gov.uk] for payment. They must include the Purchase Order number.
- 19.3. Any invoice received that cannot be matched to a purchase order will be referred back to the budget manager.

### **20. Purchasing Cards**

- 20.1. The Council makes use of Purchase Cards. These are effectively credit cards which are used to make small purchases in a wide range of situations and should only be used as a last resort , where there are no contracts in place. Officers who are supplied with a purchasing card must refer to the guidance for further information.

### **21. Temporary Staff, Consultants and Professional Services**

- 21.1. Procurement works closely with Human Resources to manage the Council's temporary agency workforce needs. As the Council's contract will be with the agency and not the individual worker these Rules apply in full. [Prior to any appointment an Establishment Control Form must be completed.]
- 21.2. [The Council has a contract for the provision of temporary agency staff via a neutral vendor service supplier and no further procurement exercise is necessary to utilise this contract. All temporary agency workforce must be sourced via this contract in the first instance.
- 21.3. Where the neutral vendor is unable to source suitable candidates after a minimum of two weeks, other agencies, on the provision that the agency is registered with the neutral vendor for a payroll function, can be accessed.
- 21.4. Where it is not possible to use the neutral vendor referred to in 21.2 and 21.3 then these Rules will apply in full.] The contract value will be calculated as the total spend payable including the Supplier's pay and any agency margin. References must be sought prior to any contractor, agency worker or consultant starting their assignment.
- 21.5. All contractors, agency workers and other consultants must abide by the terms of the contract with the Council and follow the Council's Code of Conduct for Officers.
- 21.6. Any contractor, agency worker or other consultant whose contract will extend beyond 2 years will need approval from Executive (or in accordance with paragraph 5.2).



## **22. IR35**

- 22.1. IR35 relates to off-payroll working. This is where a supplier is operating and providing services to the Council via an intermediary, such as a limited company, and were it not for that arrangement, they would be considered an employee and within IR35.
- 22.2. It is the responsibility of the Council to determine if IR35 applies or not and any unpaid tax can be claimed back if the Council makes the decision wrong. The Officer should use the online tool to prepare a Status Determination Statement copies of which will need to be retained and sent to the supplier and fee payer (if via an agency).
- 22.3. If a contract is within IR35 this means that it will be treated as an employment contract for the purposes of tax and National Insurance only. These Rules still apply
- 22.4. Further IR35 advice can be found by contacting the HR Team.

## **23. Disposal of Land and Property and other Council Assets**

All land and property which is considered to be surplus to the Council's service requirements must be considered in accordance with the Council's Asset Management Strategy. Any disposal of land, property or other Council Assets should be done in accordance with the Financial Procedure Rules [and the Asset Disposal Policy] and the Scheme of Officer Delegations.

## **24. Grants**

The making of unconditional grants is not subject to these Rules. Officer must follow the rules and guidance for each individual grant and are reminded to take into account the legal requirements concerning subsidy control.

## **25. Social Value**

- 25.1. The Public Services (Social Value) Act 2012 came into force on 31st January 2012. The Act requires the Public Sector to consider how they can use contracts to enhance the wider wellbeing of the community. This complements existing procurement legislation and reinforces social value as part of the value for money considerations.
- 25.2. Social value can be achieved by generating benefits to society, the economy and positive impacts to the environment and local communities via our external spend. It can be created in many ways and has wide ranging benefits.
- 25.3. The Act currently applies to Covered Procurement service contracts but shall be considered in all procurements where applicable and it shall be the responsibility of Procurement. Social value

## Contract Procedure Rules – Part 3 General

forms part of a bidder's commitments at tender stage and should be tailored to the subject nature of the contract being awarded.

- 25.4. Social Value for each tender must contain a minimum weighting of 5% of the evaluation scoring.
- 25.5. It is the Contract Manager's responsibility to ensure social value is being delivered during the life of the contract.

### **26. Conflicts of interest**

- 26.1. Officers and Councillors must comply with their respective Code of Conduct to avoid any conflict between their own interests and those of the Council. Any Officer, Councillor or consultant who has reason to believe that there is a conflict of interests in respect of a supplier should report this to the Monitoring Officer. At any point during the procurement process, if an Officer or Councillor becomes aware that they have a direct or indirect pecuniary interest in a contract which the Council has entered into, or proposes to enter into, their interest must be recorded within the conflict assessment. This includes interests by their close associates or family members. Failure to declare an interest by an Officer, of which the Officer is aware, is a disciplinary offence; failure to declare an interest by a Councillors, of which the Councillors is aware could amount to a breach of the Code of Conduct for Councillors or a criminal offence.
- 26.2. A conflict assessment must be undertaken for all procurement activity and before any activity commences. The assessment should take account of all those involved or influencing the procurement (including developing the specification and tender documentation) and the future management of the contract including Officers, Councillors and consultants. The conflict assessment must identify any actual, potential or perceived conflicts of interests throughout the life of the contract and be proportionate to the level of contract.
- 26.3. In accordance with paragraph 5, where procurements have been jointly procured by another local authority, public sector consortium or collaboration of which the Council is a party but not the lead authority a separate conflict assessment must still be undertaken prior to commencing the joint procurement.
- 26.4. If a conflict of interest is identified then the assessment will set out what mitigation is being put in place to ensure that suppliers are not put at an unfair advantage or disadvantage. The Monitoring Officer must approve all conflict assessments where mitigation is being put in place.
- 26.5. For all contracts the conflicts assessment must be:
  - a) held by Procurement or, where there is no formal written contract, attached to the Purchase Order
  - b) regularly reviewed throughout the life of the contract by the Contract Manager.

## **27. TUPE**

- 27.1. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply when an employee of the Council or of a supplier providing a service to the Council may be affected because of a change in the service provider.
- 27.2. Officers must ensure that any TUPE issues are considered and advice is sought from Legal Services before proceeding with the procurement. Where it is considered that an individual may be transferring to or from the Council advice should also be sought from Human Resources.

## **28. Modern Slavery**

- 28.1. The Modern Slavery Act 2015 ("MSA") is designed to tackle slavery and human trafficking through the consolidation of previous legislation and the introduction of new measures. Specifically, it introduces new requirements for organisations in regard to their business and supply chains and creates a criminal offence for non-compliance.
- 28.2. Modern Slavery is defined as slavery, servitude, forced or compulsory labour, human trafficking and exploitation was put in place.
- 28.3. [The Council adopted the Modern Slavery Motion in 2020 and has an obligation to publicly report annually on its progress.]

## **29. Sustainable Procurement**

- 29.1. Sustainable procurement, put simply, is the process by which an organisation meets their purchasing needs in a way that achieves value for money, on a whole life basis, whilst benefitting the organisation, its customers, the wider society and economy and protecting the environment.
- 29.2. The Council has declared a climate emergency across the borough with an ambition of reducing the Council's carbon emissions to net-zero by 2030. As such for every procurement within the scope of these Rules the environmental impact of its activities must be considered. To help do this, suppliers bidding for contract opportunities will be asked, where appropriate;
  - a) to demonstrate their awareness of relevant environmental issues through their own policies;
  - b) for deliverables enhancing or delivering sustainability.
- 29.3. Typically sustainable procurement should follow the following principles:
  - a) Adopting social, economic and environmental factors alongside the typical price and quality considerations into the organisations handling of procurement processes and procedures.
  - b) Planning ahead to manage demand, effective ongoing contract management and dealing with supply chain risks and impacts.

## Contract Procedure Rules – Part 3 General

- c) Incorporating sustainable procurement into future contracts in order to facilitate a reduction in our supply chain emissions.

29.4. It is the Contract Manager’s responsibility to ensure sustainability is being delivered during the life of the contract.

### **30. Construction Tax**

30.1. The VAT reverse charge for construction came into effect on 1 March 2021. The reverse charge applies to any services related to the construction of buildings and the materials, but not to professionals’ fees like those of architects, surveyors, or consultants. A reverse charge means that the end user of the works will be accountable for the VAT rather than the supplier. Officer must ensure that Finance are advised if the Council is not the end user.

30.2. The Construction Industry Scheme (CIS) requires that the Council deducts money from payments to sub-contractors and pays it to HMRC as a contribution towards the sub-contractors’ tax and National Insurance. Officer must ensure that all CIS information is provided when setting up the new supplier and that invoices for works where CIS deductions are required include a breakdown of labour and materials.

### **31. Accessibility Standards**

31.1. The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 came into effect in 2018. This Act builds upon existing obligations under the Equality Act 2010.

31.2. Any procurement that will result in a public facing website where the Council or a supplier on its behalf is presenting information relating to the Council or services the Council offer, must comply with the Act and Regulations and must meet the new accessibility standards.

31.3. Officers must ensure that the Council’s Communications Teams advice is sought.

### **32. Contract register**

The Council is committed to displaying information that explains how its money is spent. The Local Government Transparency Code 2015 requires Local Authorities to publish any expenditure that exceeds £500 and maintain a contracts register of all contracts over £5,000. This can be found on the Councils public website and is updated every three months.

### **33. Transparency and required notices**

33.1. Under the relevant legislation the Council has a statutory obligation to publish notices in relation to procurement activity. It is the responsibility of the Assistant Directors to ensure that Officers

## Contract Procedure Rules – Part 3 General

provide Procurement with the relevant information to ensure that the statutory requirements are complied with.

- 33.2. Notices are published through the Council's eSourcing and for procurements over £25,000 notices must be completed and published by Procurement.
- 33.3. For procurement activity to which the PCR 2015 applies it is mandatory that any advertised opportunity over £25,000 is published on Contracts Finder and any Covered Procurement must be published on Find a Tender Service (FTS). A contract award notice must also be published on FTS for all awarded contracts.
- 33.4. For procurement activity to which the PA 2023 applies there are a number of mandatory notices that must be published on the central digital platform (see Appendix 2). Procurement will advise on the relevant notices depending on the contract value and route to market.

## 34. Freedom of Information

In accordance with the Freedom of Information Act (FOIA) 2000 and Environmental Information Regulations (EIR) 2004, the Council has an obligation to publish specific information and to provide information to members of the public upon request. That is subject to certain disclosure exemptions such as where confidential or commercially sensitive information may be withheld.

## 35. Work for Third Parties

- 35.1. The Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2) must approve the contractual arrangements for any work carried out by the Council for third parties or external bodies.
- 35.2. All contracts must comply with Part 4 of these Rules.

## 36. Partnerships

- 36.1. Partnerships with other local, public, private, voluntary and community sector organisations will be entered into subject to the approval of the relevant committee who shall agree:
  - a) the terms of reference; and
  - b) where appropriate, a scheme of delegation to officers to operate within the partnership.
  - c) Unless specifically agreed by the relevant committee, partnership arrangements shall only be entered into in accordance with the provisions of these Rules.
- 36.2. The heads of terms for all partnership arrangements shall be approved by the relevant Assistant Director and Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2).

36.3. The Assistant Director shall be responsible for ensuring that adequate arrangements for governance are set up within each partnership entered into. Such arrangements shall include provisions for arranging contracts with external bodies.

### **37. Review of these Rules**

These Rules shall be reviewed and updated on a regular basis and at least once a year. Save in the case of revisions to thresholds or otherwise arising out of a change in the law, any changes to these Rules shall be approved and adopted by the Council. Revisions to thresholds, or otherwise arising out of a change in the law, shall be dealt with by the Joint Strategic Director - Legal and Democratic Services in consultation with the Joint Strategic Director - Finance.

### **38. Councillors**

- 38.1. No Councillor shall have authority to agree the award of any contract on behalf of the Council unless they are an Executive member with the appropriate delegated authority.
- 38.2. No Councillor shall have authority to issue any instruction or variation to a supplier on behalf of the Council.

### **39. Contract Management**

- 39.1. It is the Officer's responsibility to ensure that there is a robust contract management plan in place that is proportionate to the scale and scope of the contract. This should include, but is not limited to:
- a) Accountability, roles and responsibility
  - b) Strong governance procedures
  - c) Measure and report on performance and use KPIs and data efficiently to incentivise good performance
  - d) Drive continuous improvement, value for money and capture innovation
  - e) Adopt and encourage mature commercial behaviours
- 39.2. Any variations (including extensions) to a contract may only be made in accordance with paragraph 15.
- 39.3. Procurement must be kept advised as to any performance concerns and should be contacted for further advice and support as necessary. The Officer is responsible for ensuring that Procurement have the necessary information to be able to comply with relevant legislation and where required notices about payments, performance and termination.
- 39.4. A contract can only be terminated following advice from the Legal Service.

Contract Procedure Rules – Part 3 General

39.5. Procurement will provide Assistant Directors on a monthly basis with a list of all contracts highlighting those which are expiring in the next six months.

## **PART 4 - Contracts**

### **40. Form of Contract**

- 40.1. Contract award notification and assessment summaries shall be issued by Procurement when the evaluation has been completed and the procurement report signed off and approved.
- 40.2. Legal Services should be instructed by Procurement for all contracts in and above Threshold 2 at the earliest opportunity to ensure that there is no delay.
- 40.3. Except in exceptional circumstances, and with the written approval of the Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2), all contracts must be signed or sealed **before** works commencing or goods or materials being received.
- 40.4. All contracts shall:
- a) specify the goods, materials or services to be supplied and/or works to be undertaken, price to be paid, payment terms and conditions, details of any discounts or penalties, the period of the contract and any other terms and conditions that may be agreed;
  - b) require payment to be made within 30 days of receipt of a valid invoice;
  - c) contain a copy of the tender submission;
  - d) give the Council the right to cancel the contract, and recover from the Supplier the amount of any loss resulting from such cancellation, as a result of bribery;
  - e) reserve rights of audit to the Council where the Supplier makes payments to, or collects income on behalf of, the Council;
  - f) only permit sub-contracting with the Council's express consent and a requirement that the Supplier impose on the sub-contractors equivalent requirements in terms of equality, health and safety, bribery and corruption, insurance, data protection, modern slavery and payment provisions;
- 40.5. Threshold 4 contracts must also include a right to terminate the contract where:
- a) there has been substantial modification which would have required a new procurement procedure under relevant legislation;
  - b) the Supplier should, at the time of the contract award, should have been excluded from the procurement procedure; or
  - c) a UK court has declared that the contract should not have been awarded to the Supplier in view of a serious breach of the relevant legislation.

### **41. Sealing and signing of contracts**

- 41.1. Contracts within Threshold 1 shall be the subject of a Purchase Order, unless Legal Services have advised that a formal written contract is required. A copy of the quote and conflict assessment should be attached to the Purchase Order request. If there is a requirement for additional terms



## Contract Procedure Rules – Part 4 Contracts

and conditions these can be signed by the relevant Assistant Director (or in accordance with paragraph 5.2).

- 41.2. Contracts within Threshold 2 should be the subject of a formal written contract signed by the Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2), unless Legal Services have advised that a Purchase Order is sufficient in which case the process in 41.1 can be followed.
- 41.3. Contracts within Threshold 3 and 4 shall be the subject of a formal written contract signed by the Joint Strategic Director - Legal and Democratic Services (or in accordance with paragraph 5.2) or under seal in accordance with legal advice.
- 41.4. Every contract valued at £200,000 or more shall be sealed with the common seal of the Council provided the award decision has been approved by the Executive (or in accordance with paragraph 5.2) or the decision has been delegated by them, in accordance with the terms of the Constitution.

## 42. Novation

- 42.1. Novation refers to where one of the contracting parties in the original contract is replaced by an entirely new party that assumes the rights and obligations of the original party.
- 42.2. Novation is not permitted without the express consent of the Assistant Director and Joint Strategic Director - Legal and Democratic Services (in accordance with paragraph 5.2).

## 43. Financial Security

- 43.1. The Officer must assess the impact of the contract failing upon the Council's ability to perform its duties and the Council's reputation **before** commencing any procurement activity. Appropriate safeguards should be included in the requirements.
- 43.2. Where the procurement falls in Threshold 4 and the impact of the contract failing is deemed to be high, Officers must consult with Finance to agree a proportionate financial standing check for the bidders. This must be published in any tender documents.
- 43.3. The Joint Strategic Director – Finance (in accordance with paragraph 5.2) will consider whether financial security, parent company guarantee and/or a performance bond are required if there is any concern about the stability of the bidder or for any contract in excess of £1million. Any decision should be recorded by Procurement.

## 44. Insurance

- 44.1. The following are recommended requirements for insurance level for each and every claim:
  - a) Employers Liability Insurance: £5,000,000
  - b) Public Liability Insurance: £10,000,000

## Contract Procedure Rules – Part 4 Contracts

- c) Professional Indemnity Insurance: £2,000,000
  - d) Product Liability Insurance: Should be proportionate to the product being purchased.
- 44.2. Before commencing any procurement activity Officers must consider whether the recommended insurance cover in paragraph 44.1 is proportionate to the contract. In doing so Officers must have regard to whether the insurance levels requested may present an obstacle for small or medium enterprises. Advice should be sought from the Insurance Officer if it is considered that the insurance levels should be increased or decreased and any variation must be agreed by the relevant Assistant Director.
- 44.3. For all procurement activity above Threshold 4, the relevant Assistant Director must confirm that they consider the insurance levels are appropriate.
- 44.4. Procurement will request copies of any relevant insurance documents on contract awards. The Contract Manager should ensure that updated copies are requested as required.

## 45. Liability

- 45.1. Liability levels must be set before commencing any tendering activity and consideration needs to be given to the correct liability levels to ensure that this does not present a barrier for small and medium enterprises.
- 45.2. Liability cannot be limited for supplying goods without the right to do so, fraud, personal injury or death. In all other circumstances unlimited liability should only be used in exceptional circumstances and the approval of the Assistant Director must be provided with reasons.
- 45.3. In setting liability limits consideration needs to be given to the financial, reputational and operational loss which might be incurred by the Council as a result of the supplier failing to deliver in accordance with the contract. Liability may be appropriately limited by reference to the insurance levels, the contract value or a percentage of the contract value.

## Appendix 1 - QUICK REFERENCE GUIDE

This Table provides a quick checklist of requirements:									
	Aggregate Value including extensions £ (exc. VAT)	Transparency	Method	Receipt of quotes	Who is authorised to carry out Procurement	Contract Options	Who must approve the procurement	Who signs the contract on the Council's behalf	Records (held for a minimum of 3 years)
Threshold 1	£0 to £5,000	Published spend over £500	Minimum of one quote	Email	Officer	Purchase Order	Assistant Director	Assistant Director (if required)	<i>Held in finance system:</i> Purchase Order Quote Conflict assessment
Threshold 2	£5,000 to under £25,000	Contract Register	Minimum of three quotes	Email <i>or</i> eSourcing platform	Officer (consulting with Procurement)	Council form Supplier T&Cs Purchase Order	Assistant Director	Strategic Director - Legal and Democratic Services	<i>Held by Procurement:</i> Procurement Report Conflict assessment  <i>Held by Legal:</i> Contract
Threshold 3	£25,000 to under £150,000	Contract Register Procurement Notices	Competitive procedure (or three quotes as advised by Procurement)	eSourcing platform	Procurement	Council form	Assistant Director & Joint Strategic Director - Finance		
Threshold 4	Over £150,000	Contract Register	Competitive procedure	eSourcing platform	Procurement	Council form	Assistant Director & Joint Strategic Director - Finance		
Threshold 4	Additional requirements over £200,000 (Key Decision)	Procurement Notices	Covered Procurement – in accordance with relevant legislation				Executive	Sealed	Committee Report

## Appendix 1 - QUICK REFERENCE GUIDE

Where an approval is required under these Rules this may be taken by any Officer authorised and nominated by the decision maker in accordance with the Scheme of Delegation. Where Executive approval is required Officers should consider all the decisions which will need to be made throughout the process and these should be sought at the appropriate time.

## Appendix 2 – NOTICES REQUIRED UNDER PA 2023

<b>Type of notice</b>	<b>Relevant provisions</b>	<b>Purpose</b>
Pipeline Notice	s93 PA 2023 Reg. 15 Procurement Regulations 2024 (PCR 2024)	Mandatory annual notice setting out planned procurement over £2million for the next 18 months.
Preliminary Market Engagement Notice	s17 PA 2023 Reg. 17 PCR 2024	Mandatory if preliminary market engagement is undertaken.
Planned Procurement Notice	s15 PA 2023 Reg. 16 PCR 2024	An optional notice setting out the intention to undertake a tender exercise.
Tender Notice	s21, s87 PA 2023 Regs. 18 – 21 PCR 2024	Mandatory notice published inviting tenders for both Covered Procurement (s21) or an advertised contract over £30,000 (inc. VAT) (s87).
Dynamic Markets Notice	s39 PA 2023 Reg. 25 PCR 2024	Mandatory notice setting out the intention to set up a Dynamic Market.
Transparency Notice	s44 PA 2023 Reg. 26 PCR 2024	Mandatory notice setting out the intention to make a direct award.
Contract Award Notice	s50 PA 2023 Reg. 27 PCR 2024	Mandatory notice published on award of contract which commences the standstill period.
Contract Details Notice	s53, s87 PA 2023 Regs. 32 – 36 PCR 2024	Mandatory notice setting out the details when the contract is completed for the award of a Covered Procurement (s53) or a contract over £30,000 (inc. VAT) (s87).
Procurement Termination Notice	s55 PA 2023 Reg. 37 PCR 2024	Mandatory notice published when a decision is taken not to award a contract.
Contract Performance Notice	s52, s71 PA 2023 Reg. 39 PCR 2024	Mandatory notice every 12 months and on termination for contracts valued over £5million to assess performance against KPIs
Contract Change Notice	s75 PA 2023 Reg. 41 PCR 2024	Mandatory notice if a Covered Procurement is varied and there is an increase or decrease of the term by more than 10% or the value by more than 10% for goods and services or 15% for works.
Payments Compliance Notice	s69 PA 2023 Reg. 38 PCR 2024	Mandatory notice every 6 months setting out the Council's compliance with the 30 day payment term.
Contract Termination Notice	s80 PA 2023 Reg. 40 PCR 2024	Mandatory notice when a Covered Procurement contract is terminated.

## Appendix 3 – USEFUL LINKS

[Procurement Act 2023](#)

[The Health Care Services \(Provider Selection Regime\) Regulations 2023](#)

[Public Contracts Regulations 2015](#)

[The Utilities Contract Regulations 2016](#)

[The Concession Contracts Regulations 2016](#)

[The Public Services \(social value\) Act 2012](#)

[The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020](#)

[Modern Slavery Act 2015](#)

[Social Value Act 2012](#)

[Local government Transparency Code 2015](#)

[Freedom of Information Act 2000](#)

[IR35 Guidance](#)

[Local Government Act 1999 \(Section 3; best value\)](#)

[National Procurement Policy Statement](#)