Contracts Procedure Rules



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# ****1: CONTRACTS PROCEDURE RULES WHICH APPLY TO ALL CONTRACTS****

## 1.1 Basic Principles

### **Introduction**

#### 1.1.1.1 Minimum requirements

Officers responsible for, or involved in, procurement, Commissioning, contract administration or contract management must comply with these Contracts Procedure Rules of Sefton Metropolitan Borough Council (the **Council**). They lay down minimum requirementsand a more detailed procedure may be appropriate for a particular contract.

#### 1.1.1.2 Local Government Act 1972

These Contracts Procedure Rules are Standing Orders made under section 135 of the Local Government Act 1972. These Contracts Procedure Rules apply to all Officers of the Council.

#### 1.1.1.3 Scope of contracts

A contract for the purposes of these Contracts Procedure Rules shall be any agreement between the Council and one or more parties for pecuniary interest in respect of:

* The carrying out of works for the Council
* The purchase, leasing, or hiring of goods such as supplies or materials by the Council
* The supply of consultancy, agency workers or other services to the Council

For the avoidance of doubt these Contracts Procedure Rules shall not apply to:

1. The sale, leasing or purchase of land, or of any interest in land (Officers are requested to note that land transactions are generally subject to best value considerations under Local Government legislation and some property transactions e.g. long building leases etc. may need to take account of procurement legislation).
2. Advice in respect of land and property transactions must be sought from the Council’s Estates Team (Property.Management@sefton.gov.uk)
3. Any contract of employment which are governed by the relevant sections of the Financial Procedure Rules.
4. The Council bidding for Grant Funding from or awarding of Grant Funding to or other organisations or individuals, which is governed by the relevant sections of the Financial Procedure Rules and the Council's approved grant policy, as well as the applicable subsidy control rules. The Finance Procedure Rules are available here: [Financial Procedure Rules](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fintranet.smbc.loc%2Four-council%2Ffinance%2Ffinancial-procedure-rules.aspx&data=05%7C02%7CDafydd.Williams%40sefton.gov.uk%7C672f2247eaf0465cde9708dd3eea388b%7Cbf3a3387dc954c7d940e49cc2fc9d4f1%7C0%7C0%7C638735897862333030%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=NgPgTTxhnT3Hct7JKPskLNjkaqmnPBLT4FoFcxPVl20%3D&reserved=0)
5. Corporate contracts, as detailed in 1.2.6 below.
6. A contract for the provision of exempt legal services to a contracting authority as per Schedule 2, part 2, paragraph 14 of the Procurement Act 2023.

1.1.1.4 Concession contracts

The Council occasionally procures **concession contracts**. A concession contract is a contract for services or works for a pecuniary interest where:

1. The supplier will gain the right to derive revenue from the services or work as at least part of its consideration; and
2. There is a transfer of real operating risk from the authority to the supplier.

Examples of concession contracts typically include contracts to run assets which the public can access in return for payment (e.g. a swimming pool or leisure centre).

Different rules apply to the procurement of concession contracts. Therefore, where an Officer is procuring a concession contract, they should contact the Central Procurement Team.

#### 1.1.1.5 Service user choice

There are certain circumstances where the public can access a service of their choice and the local authority is obliged by regulation to pay the associated costs. This is mainly in regard to adult social care nursing and residential care homes, and open access sexual health services. In these circumstances Officers must work with Commissioners to ensure that relevant guidance, risk, invoicing and cost is clearly understood, managed and adhered to.

Additionally, under the NHS Provider Selection Regime, special rules apply to the procurement of "healthcare services" where the service user has a choice. These services are most likely to include sexual health services, substance use clinics and health visitors arranged by the Council. If such services are to be procured, Officers should contact the Central Procurement Team for the service to ensure the correct procedure is followed.

#### 1.1.1.6 Utilities Contracts

The Council does not routinely enter into utilities contracts and so these Contract Procedure Rules do not provide detailed guidance on the procurement of such contracts. Further, the definition of what constitutes a utilities contract can be complex. Therefore, where a procurement may be for a utilities contract, Officers should contact the Central Procurement Team for the service to ensure the correct procedure is followed.

A utilities contract is a contract for the supply of goods, services or works wholly or mainly for the purpose of a "utility activity". By way of example only, a "utility activity" could include; the provision of energy, or water (provided specified thresholds are exceeded), or the operation of public transport networks, ports and airports. Further guidance on what may constitute a "utility activity" is available here: <https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-plan-phase/guidance-utilities-contracts-html>. However, this guidance should only be used to identify potential utilities contracts and advice should always be sought from the Central Procurement Team in cases of doubt.

#### 1.1.1.7 Good procurement practice

These Contracts Procedure Rules are intended to promote good procurement and Commissioning practice, transparency, public accountability, and deter corruption. The best defence against allegations that expenditure has been committed incorrectly or fraudulently is by following the Contracts Procedure Rules.

#### 1.1.1.8 Value Added Tax

All values specified in these rules shall be inclusive of Value Added Tax (**VAT**) unless expressly stated otherwise.

All values specified in contracts shall be inclusive of VAT.

#### 1.1.1.9 Constitution

These Contracts Procedure Rules must be read in conjunction with the relevant parts of the Council’s Constitution (including the [Financial Procedure Rules](http://smbc-modgov-03/documents/s99453/Enc.%201%20for%20Financial%20Procedure%20Rules.pdf)).

The Council’s constitution is available at: [Constitution](http://smbc-modgov-03/ecCatDisplay.aspx?sch=doc&cat=13370&path=0)

#### 1.1.1.10 External funding

External funders may impose additional requirements in respect of advertising, tendering, scoring and record keeping. In such cases it may be necessary to modify the approach to procurement in specific circumstances.

The terms and conditions of any external funding agreement should be complied with. However, such terms and conditions do not remove the need for Officers also to act in accordance the Council's statutory duties and these Contracts Procedure Rules. Where complying with terms and conditions attached to external funding conflict with or would place the Council in breach of its statutory duties, Officers should contact the Council's Legal Team to discuss how to proceed. Where complying with the terms and conditions of external funding would result in a breach of these Contracts Procedure Rules, a Waiver must be sought or, if a Waiver cannot be granted, Officers should contact the Council's Legal Team to discuss how to proceed.

#### 1.1.1.11 Procurement guidance

If a Client Officer is in any doubt as to if and how the Contracts Procedure Rules are applicable to a prospective procurement then the Central Procurement

Team must be contacted for advice and guidance.

Central Procurement Team Contact Details:

Central Procurement Team E-mail: central.procurement@sefton.gov.uk

Telephone: 0345 140 0845

Address: Sefton Metropolitan Borough Council, 1st Floor Magdalen House, Trinity Road,

Bootle L20 3JA

#### 1.1.1.12 Schools

These Contracts Procedure Rules will apply to all Council maintained schools, in accordance with **Fair Funding Guidance: Scheme for Financing Schools**, available on the Sefton Education Portal (www.seftoneducation.uk).

These rules are drafted to ensure procurement activity is undertaken in compliance with the statutory procurement framework and so they must be adhered to as closely as possible. Schools should however note that as these rules have been drafted for the Council’s use, they are addressed to the Council's Officers and reflect (where relevant) the Council’s standing orders and constitution. Therefore, these Contract Procedure Rules may need to be adapted to reflect the School's own constitution, policies, finance rules and standing orders. However, Schools may only make those adaptations that are necessary to ensure Schools comply with their constitution, policies, finance rules and standing orders. If Schools have any queries regarding this paragraph, they should seek further advice from the Council’s Central Procurement Team.

#### 1.1.1.13 Staffing

These Contract Procedure Rules will apply to the procurement and use of agency staff and consultants engaged by the Council to conduct, assist with or advise on the Council's procurements.

Any Officers procuring consultancy services or agency staff must comply with all aspects of these Contracts Procedure Rules and must ensure a competitive process is followed to ensure best value.

Advice must be sought from the Procurement Team as to an appropriate competitive process in respect of these Contracts Procedure Rules.

The Council's position is that, where possible, procurement activity should be conducted by Council Officers. Engaging agency staff or consultants to undertake certain tasks in a procurement, in particular the evaluation and moderation of Tenderers' bids, can cause significant difficulties for the Council in the event of a legal challenge. In consequence, agency staff and/or consultants should not be appointed as evaluators or moderators unless advanced written authority is obtained from the relevant Assistant Director for that service area in consultation with Procurement and Legal.

Agencies and consultants may only be appointed in accordance with the Council's Off-Payroll Working policy (please speak to colleagues in procurement, HR and finance for further details on this). Officers should note that the appointment of agencies and contractors is overseen by the Council's Off-Payroll Working panel. For the avoidance of doubt, in addition to the Off-Payroll Working policy, any procuring of consultancy services or agency staff must be in full compliance with:

* Procurement legislation
* The requirement for a written contract as per paragraph 1.1.5 of these rules
* The requirement to ensure best value is obtained
* All of the provisions set out in these Contract Procedure Rules

If Officers require further advice on the appointment of an agency or consultant to conduct, assist with, or advise on a procurement, they should contact the Council's Central Procurement Team, HR, Off-Payroll Working Panel, and/or Legal Team as necessary.

#### 1.1.1.14 Contracts Procedure Rules review

These Contracts Procedure Rules shall be reviewed periodically (and at least annually or following a substantive development in law or practice) by the Assistant Director of Corporate Services and Commercial (Strategic Support), in consultation with the Executive Director of Corporate Services and Commercial and the Chief Legal and Democratic Officer.

### **1.1.2 Legal Compliance**

All procurement procedures and contracts shall comply with all legal requirements and no Officer or Committee or Board of the Council may seek to avoid them. If in doubt advice must be sought from Assistant Director of Corporate Services and Commercial (Strategic Support).

### **1.1.3 Procurement Act Requirements**

All relevant contracts must comply fully with the requirements of the Procurement Act and the associated regulations as in force from time to time including Procurement Regulations 2024 collectively referred to in this document as the **Procurement Act**.

The Council must also have regard to the National Procurement Policy Statement and its objectives and strategic priorities for conducting and delivering public procurement. The National Procurement Policy Statement is updated from time-to-time on gov.uk and should be monitored to ensure the Council's alignment with current policy objectives.

### **1.1.4 Procurement Act Objectives**

At all stages of the procurement of contracts (including structure, award, and management), the Council must have regard to Procurement Act's Objectives: the importance of (i) delivering value for money, (ii) maximising public benefit, (iii) sharing information for the purpose of allowing suppliers to understand the Council's procurement policies and decision (unless considerations of national security or overriding need to protect commercial confidence apply); and (iv) acting (and being seen to act) with integrity.

The Council must also treat all suppliers (including Treaty State Suppliers) the same unless a difference between the suppliers means that different treatment is justified. In such circumstances the Council will take all reasonable steps to ensure that a supplier is not put at an unfair advantage or disadvantage. However, Treaty State Suppliers must not be treated less favourably than UK suppliers because of the supplier's association with a treaty state or their lack of association with the UK or another treaty state. Where officers are in receipt of a tender from a non-UK based tenderer, they should check with the Legal Team whether they are a Treaty State Supplier.

Last, the Council must have regard to the fact that small and medium-sized enterprises may face particular barriers to participation in procurements and consider whether such barriers can be removed or reduced.

### **1.1.5 Procurement Documentation**

All contracts and contractual processes shall be consistent with these Contracts Procedure Rules and all relevant Council Procurement Guidance, Commissioning and or Procurement Strategy published on the Council’s intranet, as well as the official Procurement Act guidance documents published on gov.uk.

All Procurement notices must be published on the CDP by the Central Procurement Team via the Council's eSender provider. The Council may, in addition, publish these notices by other means, including on its website. A diagram of such notices can be found at Appendix 16 – Procurement Lifecycle Notices. All other procurement documentation will be published on the North West's Local Authority Procurement Portal, "the Chest" (available at https://www.the-chest.org.uk/).

It is the Council's policy that all contracts entered into by the Council must be in writing. Further detail on the specific requirements for contractual terms and conditions are set out at paragraph 1.2.10 of these rules.

### **1.1.6 Contracts where the Council acts as agent**

Where the Council acts as an agent for or jointly with any other local authority or public body or company these Contracts Procedure Rules shall apply unless the Assistant Director of Corporate Services and Commercial (Strategic Support) instructs otherwise in writing.

### **1.1.7 Calculating the Financial Value of a contract**

#### 1.1.7.1 Contract values assessment

In deciding the value of contracts for the purposes of applying the requirements of these Contracts Procedure Rules and the Procurement Act, the Client Officer must take into account:

1. the total cost for the lifetime of the contract that can be expected to be paid, including:
2. amounts receivable if an option to extend the term or the scope of the contract was to be exercised;
3. the value of any goods, services or works provided by the contracting authority other than for payment;
4. amounts representing premiums, fees, commissions or interest that could be payable under the contract;
5. amounts representing prizes or payments that could be made to participants in the procurement;
6. that the value of contracts of like nature, or for contracts awarded or to be awarded under a single Framework Agreement, shall be aggregated and that aggregate value shall be applied.

* in the case of joint procurement arrangements, the value shall be the value of all parties’ purchases under the contract;

1. in the case of contracts for which an estimate cannot be reached, such as contracts which have no defined end date (e.g., long term adult and children's social care contracts), the total cost will be valued at being above the threshold amount for the purpose of applying the Procurement Act;
2. in the case of concession contracts, the value should be estimated as the maximum amount the supplier could expect to receive under or in connection with the contract, including any amounts already received. This includes:
   1. amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the works or services;
   2. the value of any goods, services or works provided by the contracting authority other than for payment;
   3. amounts receivable if an option to extend the term or the scope of the contract was to be exercised;
   4. amounts representing premiums, fees, commissions or interest; and
   5. amounts received on the sale of assets held by the supplier under the contract; and
3. no Officer or Committee or Board of the Council may seek to divide potential contracts in order to avoid the requirements of these Contracts Procedure Rules or the Procurement Act.

#### 1.1.7.2 Disaggregation

Officers must not actively seek to disaggregate or fragment prospective spend amounts for the purpose of avoiding specific procurement activity or to avoid exceeding thresholds in these Contracts Procedure Rules.

#### 1.1.7.3 Procurement Spend Thresholds

The Procurement Act requires particular procurement processes to be utilised where the estimated contract value exceeds predetermined Spend Thresholds. As outlined in Schedule 1 of the Procurement Act, the current Spend Thresholds (for the whole of the contract including any optional years) are:

|  |  |
| --- | --- |
| **Type of contract** | **Threshold amount (inclusive of VAT) from 1 January 2024 to 31 December 2025** |
| **Concession works and services contract** | £5,372,609 |
| **Works contract** | £5,372,609 |
| **Contract for the supply of goods or services (which may be mixed contracts that contain some works elements) not within any other row** | £214,904 |
| **Light touch concession contract** | £5,372,609 |
| **All other light touch contracts (other than light touch concession or utilities contracts)** | £663,540 |

*Note: Spend Threshold figures correct as at 1 January 2024, but subject to ongoing change, ordinarily on a two year cycle. Updates to the threshold figures will be updated from time to time.*

*Schedule 1 of the Procurement Act can be viewed online at legislation.gov.uk.*

For more information on concession contracts, see 1.1.1.4 above.

More information about the level of Procurement activity required depending on the value of the contract can be found at Appendix 1 - What level of procurement activity is required in respect of contract value?

### **1.1.8 Public Services (Social Value) Act 2012**

#### 1.1.8.1 Social Value statutory duties

Contracting Authorities are under a statutory duty to consider economic, social and environmental well-being issues at the pre-Procurement stage of a public service contract:

* how the economic, social and environmental wellbeing of the local authority

area might be improved by the proposed contract;

* how in conducting the procurement process, the Council might act with a view to securing that improvement (NB: Only matters that are relevant to what is to be procured can be taken into account and those matters must be proportionate); and
* whether any consultation must be undertaken in relation to social value matters.

The Council goes beyond the provisions of the Public Services (Social Value) Act 2012 in its assessment of social value in alignment with the principles laid out in the Ethical Business Practices, available on the Council's intranet.

The Council supports the principles of the Procurement Act and its guidance documents ([available](https://www.gov.uk/government/collections/procurement-act-2023-guidance-documents) online) that public procurement should be leveraged to support priority national and local outcomes for the public benefit. The Council must also align with the Social Value policy set out in the National Procurement Policy Statement.

The Council intends to ensure that its approach to social value supports:

* creating resilient businesses and opportunities for quality employment and skills development;
* improving innovation, supply chain resilience and security of supply;
* tackling climate change and reducing waste; and
* maximising public benefit.

The Council's general policy is for social value to constitute a minimum of 10% and a maximum of 15% of evaluation criteria in procurement processes.

#### 1.1.8.2 Social Value £20,000 to £100,000 (whole life cost)

Social Value must be considered with appropriate social value questions embedded within the tender questionnaire. Generally, the weighting of social value should be a minimum of 10% of the assessment methodology, however this weighting can be flexible based on the opportunity within the market to deliver meaningful social value.

Works contracts below £100,000 may be excluded from social value assessment, unless the Officer believes there is a significant opportunity to embed social value into the requirements.

Client Officers are responsible for ensuring delivery of social value commitments through contract management once contracts have been awarded.

#### 1.1.8.3 Social Value over £100,000 (whole life cost)

Social value must be considered with use of the Social Value Portal required within the tender questionnaire. The Social Value Portal provides an opportunity for bidders to detail the proposed social value, quantify the value of the social value against validated standards, and to provide a methodology for the delivery of the social value.

The Social Value Portal is available for Works contracts above £100,000.

All figures noted under this paragraph 1.1.8 are exclusive of VAT

[**Social Value Portal**](https://socialvalueportal.com/)

#### 1.1.8.4 Social Value weighting

Generally, the weighting for social value should be between a minimum of 10% and a maximum of 15% of the assessment methodology, however this weighting can be flexible depending on the opportunity within the market to deliver meaningful social value.

#### 1.1.8.5 Social Value Contract Management

Client Officers are responsible for contract managing the delivery of social value outcomes. Social Value Portal will proactively work with successful suppliers awarded contracts to report Social Value outcomes delivered within the tool.

In the event of a Services tender being issued using these Contracts Procedure Rules processes and not including social value, a file note should be captured by the Central Procurement Team to ensure a justification for not assessing social value is captured.

### **1.1.9 Forfeiture in Case of Bribery or Corruption**

Every contract must include a clause empowering the Council to cancel the contract, and to recover from the Contractor the amount of any loss resulting from such cancellation, if:

* (1) the Contractor offered or gave or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or having forborne to do, any action in relation to the award or execution of the contract; or
* (2) if the acts described at (1) above were done by any person employed by the Contractor or acting on the Contractor’s behalf (whether with or without the knowledge of the Contractor); or
* (3) if in relation to any Contract with the Council, the Contractor, or any person employed by the Contractor or acting on the Contractor’s behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward, the acceptance of which is an offence under Section 117 of the Local Government Act 1972.

### **1.1.10 Contract sealing**

It is a requirement under these rules that the following contracts shall be sealed (whether physically or electronically) with the Council’s Seal and shall be executed by the Contractor as a Deed:

* Every contract whose total (as opposed to the annual) value exceeds £250,000 (exclusive of VAT) with any individual Contractor, and
* Subject to advice on individual cases from the Council's Legal Team, every construction or works contract (irrespective of value).

In order that the contract can be sealed the following package of documents must be forwarded in hard copy or electronic PDF format by the Procurement Team to the Council's Legal Team:

* The Tender Notice (TN), or Request for Quotation (RFQ) document as applicable).
* The successful bidder’s TN or RFQ.
* The Internal Authorisation to award a contract as per delegated authority (Cabinet / Cabinet Member etc.).
* Copies of the award & acceptance correspondence.
* The bidder’s in-date insurance cover.
* A summary of questions asked by bidders during the procurement process and responses provided by the Council.

The Council's Legal Team shall advise if the contract will require physical signature or where an electronic signature from the successful supplier will suffice. The Council's Legal Team may also advise that a construction or works contract does not need to be sealed and, if not, shall advise how the contract should be completed.

Where the contract being sealed is being agreed pursuant to a Waiver the following package must be forwarded in hard copy or electronic PDF format to the Council's Legal Team:

* The contract documentation.
* The Internal Authorisation to waive these Contracts Procedure Rules.
* The bidder’s in-date insurance cover.

### **1.1.11 Contract Roadmap, Pipeline Notices and Planned Procurement Notices**

The Council will ensure that it publishes Pipeline Notices on the CDP for all planned procurements with an estimated value of over £2 million inclusive of VAT commencing in the 18 month ‘reporting period’ from the start of the financial year in which the notice is published. Pipeline Notices must be published in the first 56 days of the financial year. Notices must include the information included in Appendix 3 - Pipeline Notice Content. Service teams must inform the Central Procurement Team of any procurements with an estimated value of at least £2 million inclusive of VAT they plan to undertake as soon as practicable.

The Council may also publish Planned Procurement Notices to inform the market of procurements being planned in the near future. Notices must include the information included in

Appendix 4 – Planned Procurement Notice content. Where a Planned Procurement Notice has been published, the tendering period may be reduced to a minimum of 10 days, to be set in accordance with the Procurement Objectives.

## 1.2 Officer Responsibilities

### **1.2.1 Roles and Responsibilities**

Ahead of any procurement exercise commencing, the roles of all Officers to be involved in the exercise must be determined and responsibilities for undertaking all aspects of the procurement process shall be set out and clearly assigned, in order that the process is properly controlled and undertaken and there is a clear understanding of the requirements of each member of the team throughout the process.

Roles and Responsibilities documentation will be produced by the Procurement Officer and regularly reviewed to meet this need. The current documentation is available here: [**http://intranet.smbc.loc/our-council/procurement.aspx**](http://intranet.smbc.loc/our-council/procurement.aspx)

### **1.2.2 Adequate Budget Provision**

No Officer should seek to enter into a contract, or purport to enter into a contract, for the provision of goods, works or services unless there is adequate provision in the agreed Capital Programme and/or agreed Annual Revenue Budget. If in doubt the Executive Director of Corporate Services and Commercial must be consulted.

### **1.2.3 Disciplines**

Ahead of commencing any procurement exercise Officers must give thought to the question of which disciplines need to be considered for either operational involvement in the process or within an advisory support role. For instance, whilst the need for the involvement of Procurement Officers is apparent, in addition consideration must be given to the value of other disciplines, which as examples may include but not be limited to :

* Legal
* Audit
* Contribution from Client Support Officers
* Finance
* Human Resources
* ICT
* Investment and Employment Service
* External Advice/Consultancy – private or another local authority
* External Social Value advice from Social Value Portal

### **1.2.4 ICT**

### Any procurement that involves the storing, processing, or transferring of Council data, or integration with the Council’s network, must undergo a review and receive approval from the ICT Client department prior to both the Tender Notice being published and the contract being awarded, irrespective of the procurement method or value.

### Engaging the ICT Client Unit ensures compliance with the Council's Cyber Security Standards and technical design principles. Failure to adhere to this process may result in additional costs for remedial work or, potentially, the removal of the technology from use.

### **1.2.5 Information Management**

Officers must be mindful that throughout any procurement exercise the governance, management and security of information is vital to both the integrity of the work to be conducted, and potentially the reputation of the Council. Officers must therefore ensure:

* Storage and handling of procurement or any supporting information or documentation, whether digital, paper or another format is carried out securely.
* Where the information and documentation are in a digital format this may involve using an encrypted fixed or digital device or other suitable and secure mechanism to ensure that access is restricted only to those Officers involved in the procurement project and in accordance with their assigned roles and responsibilities. It may involve Officers using their allocated personal drive within the Council’s ICT system or a closed off or restricted SharePoint site / SharePoint Document Library, to which access is limited, or creation of a shared folder secured through controlled access rights, password or some other means to prevent unauthorised access.
* All documents forming part of a tender / RFQ process, (including specifications, tender / ARFQ documents, evaluation documents etc.) must be subject to effective document management, including version control, review and sign-off and shall be held in a readily identifiable folder titled: ‘*Procurement of [INSERT PROJECT TITLE HERE]*’**.**
* As a guiding principle, Officers must be mindful that other people, including fellow Officers, not involved in a procurement exercise must not have access to information that relates to it.
* Diligence is employed when conducting discussions that relate to a procurement exercise. Officers must be mindful of both topics discussed, and the environment within which they are discussed. Consideration must be given to holding discussions in a controlled area, such as an individual’s personal office, or a meeting room, in order to ensure that only an invited group of Officers are privy to information discussed.
* Officers must also be mindful of the content of telephone conversations held in an uncontrolled environment, if in any doubt that the content of a proposed conversation is sensitive then arrangements must be made to hold that discussion in a controlled area.
* Control is employed when communicating with bidders or potential bidders within a procurement exercise. Officers must ensure that no direct verbal or email communication is entered into with a bidder, bidders or potential bidders, or their representatives. Officers must ensure that all communication with any bidder or their representative, within any procurement exercise must be carried out in written form, through the Chest, via the Procurement Officer holding responsibility for that Procurement.

Where it is necessary to disclose TUPE (as defined at paragraph 2.12 below) information to prospective bidders to enable them to prepare a bid, before that TUPE information may be disclosed, the prospective bidder must sign a Non-Disclosure Agreement (**NDA**) with the Council which, as a minimum, requires the prospective bidder to:

1. keep the TUPE information confidential using the Council’s template NDA;
   * not to use the TUPE information for any purpose other than the preparation of their bid in the relevant procurement;
   * not disclose the TUPE the information to any other person without the express permission of the Council; and
2. destroy the TUPE information within 1 month of the award decision.

Procurement Officers must ensure that the Chest is utilised where appropriate to store documents created throughout the procurement process in order to build a comprehensive audit trail. Such documents will include, but not be limited to:

* Assessment Panel members’ individual scores and scoring notes
* Moderated scores
* Moderation notes
* Finalised Evaluation Matrix
* Versions of Tender Notice documents
* Versions of Advanced RFQ (**ARFQ**) documents
* Procurement Specific Questionnaire (PSQ)
* Responses to questions raised by bidders
* Copies of correspondence (for example, regarding Mandatory Standstill)

Where procurement processes must be conducted outside of the Chest, email communication is permitted but must be held in appropriate secure storage for audit trail purposes.

### **1.2.6 Corporate Contracts**

A Corporate Contract is a contract centrally procured by the Council. Corporate Contracts are usually procured where goods, services or works which are required by more than one department (such as PPE, cleaning materials, stationary or furniture). Corporate Contracts are used to obtain the best value for money through bulk buying. It is, therefore, highly unlikely that goods, services or works procured by individual departments will provide better value for money than a Corporate Contract.

Corporate Contracts are likely to, but will not always, be Framework Agreements from which contracts for goods, services or works can be called off at agreed rates by any department within the Council. Therefore, before procuring goods, services or works, an Officer shall contact the Procurement Team in the Council to ascertain whether any those goods, services or works can be procured from an existing Corporate Contract. Where the goods, services or works can be procured under a Corporate Contract, they must be procured from this contract and not via a separate contract.

Where an Officer has attempted to procure goods, services or works from a Corporate Contract but has not been successful, assistance should be sought from the Central Procurement Team to identify another compliant route to market under these Contracts Procedure Rules, including the possibility of a waiver of these Contracts Procedure Rules.

### **1.2.7 Bonds and Security**

A performance bond or adequate security (surety) should be considered in all cases.

A performance bond or other security (including but not limited to a parent company indemnity) will be required where;

1. the value of the contract is such that the likelihood of failure should a risk arise is sufficiently high such that it would have a significant impact;
2. the nature and length of the contract is such that the risk of failure is sufficiently high;
3. the estimated cost of re-establishing a service if the contract fails is sufficiently high;
4. there are known technical difficulties associated with the contract; or
5. the circumstances otherwise suggest that a performance bond or other surety is required.

As an alternative to a bond, where the Contractor is a limited company which is part of a larger group, the ultimate holding company may be required to provide a parent company indemnity in addition to or instead of a performance bond or other security.

The decision as to whether a performance bond or other security is required shall be made by the Assistant Director for that service area in consultation with the Section 151 Officer (or delegated Officer). This will be a decision that is determined by commercial, financial, procurement and legal considerations and as such advice may be sought from Officers in Finance, Procurement and the Council's Legal Team as required.

If it is decided that there shall be a performance bond or other security the decision as to the precise form of the bond or other security shall be made by the Head of Service in consultation with the Section 151 Officer (or delegated Officer). This will be a decision that is determined by commercial, financial, procurement and legal considerations and as such advice may be sought from Officers in Finance, Procurement and the Council's Legal Team as required.

### **1.2.8 Contracts – Delay and liquidated damages**

In the case of Works contracts over the total value of £100,000 (exclusive of VAT) and, in any other case where a risk assessment, undertaken at the pre-Procurement stage, indicates that it is necessary, a clause shall be inserted in the contract providing for the payment of liquidated damages (calculated as a genuine pre-estimate of loss) in circumstances where the contract is not completed within the time specified.

Where completion of the contract is delayed it shall be the duty of the relevant Client Officer under the contract to take appropriate action in respect of any claim for liquidated damages as may be provided for within the terms and conditions of the contract.

### **1.2.9 Breach of Contracts Procedure Rules**

Any breach or non-compliance with these Contracts Procedure Rules must, on discovery, be reported immediately to the Assistant Director of Corporate Services and Commercial (Strategic Support), Executive Director of Corporate Services and Commercial, and the Chief Internal Auditor.

The Assistant Director of Corporate Services and Commercial (Strategic Support), and the Chief Internal Auditor shall consider whether each reported breach or non-compliance presents a significant risk of harm to the Council’s interests and if satisfied that such risk exists shall undertake any necessary investigation and report the findings to the relevant Head of Service, Executive Director of Corporate Services and Commercial and Chief Executive, as appropriate.

Officers must be aware that any non-compliance with Contracts Procedure Rules could result in disciplinary action.

### **1.2.10 Conditions of Contract**

Wherever possible, every written contract for the supply of goods or services should be on the Council’s standard Terms and Conditions. Please note there are different versions of these standard Terms and Conditions depending on the value and nature of the goods and/or services. Legal advice should be sought if you are unsure which version should be used in any particular case.

Where it is not possible to contract on the Council’s standard Terms and Conditions; for example where the contract is for works or where the Council’s standard terms are not suitable for the service area, the contract must include provisions ensuring compliance with the content of this section 1.2.10. Where the Council’s standard Terms and Conditions are not used, clauses incorporating the following requirements must be included as a minimum in the contract.

* the Employment and the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular ensuring that all persons employed by the Contractor in relation to the execution of the contract are afforded the rights and facilities specified in those Acts regarding trade union Membership.
* The provisions of the Equality Act 2010. The Contractor shall have regard to the nine protected characteristics within the Act and must not discriminate either directly or indirectly on the grounds of: Age, Disability, Gender Re-assignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion, Sex, Sexual Orientation.
* The requirements of the Public Interest Disclosure Act 1998.
* The requirements of the Freedom of Information Act 2000 and Regulations made thereunder. The Council's obligations in respect of the said Act are also drawn to the attention of the Contractor.
* The requirements of the Bribery Act 2010.
* The requirements of the Social Value Act 2012.
* Clauses that ensure the protection of personal data in accordance with data protection legislation. Please note the Council has different versions of data protection clauses depending on the respective processing role of the Council and the Contractor. Please take advice from the Council’s legal department and Data Protection Officer if you are unsure which version should be used in any particular case.
* Funding Availability. Contract conditions must state:

***“****The price agreed for the contract is subject to the ongoing availability of sufficient funding. In the event that during the contract period the Council does not have sufficient funds to cover the price of the contract the Contractor will develop and agree a contract variation with the Commissioner / Officer such that the contract price remains within the funding available.*

*In the event that agreement cannot be reached the dispute resolution procedure set out within the contract will be followed.”*

* The Health & Safety at Work etc. Act 1974 or of any Regulations or Codes of Practice made under the authority of that Act and to comply with any lawful requirements of the Health and Safety Executive in relation to such work; and there shall be reserved to any duly authorised Officer of the Council the right of access to the site for the purpose of ensuring compliance with the requirements of this paragraph that have regard to sustainability and to the requirements of the Equality Act 2010.In every contract the Contractor shall be required to indemnify the Council against:
  + any claim which may be made in respect of employers' liability against the Council or the Contractor by any workmen employed by the Contractor or any sub-contractor in the execution of the works or the provision of supplies and services;
  + any claim for public liability, i.e., for bodily injury, or damage to, property of third parties; and
  + any claim which may be made under the Health and Safety at Work etc. Act 1974 (HASWA) against the Council or the Contractor/sub-contractor unless such claim is substantially due to the neglect of the Council or any of its Officers; and the Contractor shall when required by the Head of Service and Executive Director of Corporate Services and Commercial produce satisfactory evidence that it is insured against any such claims.
* Levels of indemnity cover must be considered for topics such as Employers Liability, Public Liability, and Professional Indemnity as appropriate to the topic in question.

The responsibility rests with the Client Officer, to assess the risk surrounding the prospective procurement and settle upon levels of indemnity appropriate and proportional to the requirement. Where required, guidance in respect of Indemnity and assessing risk must be sought from relevant officers of the Council (i.e., Insurance, Health & Safety, Legal).

Where the appropriate levels of indemnity are determined through risk assessment supported by appropriate guidance from specialist Officers, bidders through a procurement process must confirm that such indemnity will be in place must a contract be awarded.

The Contract should also include a requirement that the Contractor ensures compliance with the

above by any by sub-contractors employed in the execution of the contract and shall notify the Council of the names and addresses of all such sub-contractors.

The Council’s legal team can provide a contract rider document to be included in any

contract that incorporates these requirements.

Key Performance Indicators (KPIs)

Where the value of the contract to be awarded is estimated to be more the £5 million inclusive of VAT, before the contract is entered into, at least three KPIs must be set in order to assess supplier performance during the life-cycle of the contract. Consideration should be given as to what KPIs would be appropriate to set during the design of the requirements of the procurement and the number of KPIs ultimately set should be proportionate to the size and complexity of the contract.

Where there are more than three KPIs, when awarding the contract, the Commissioners and/or Procurement Officers must determine which three of the KPIs set are most material to the performance of the contract and a description of those KPIs and how often performance will be must be included in the Contract Details Notice to be published. Additionally, all KPIs that are set must be published. This will usually be done when the Council publishes the contract.

KPIs may only not be included in such contracts where Officers consider that, due to the nature of the goods, services or works being procured, the supplier's performance could not be assessed by reference to KPIs (e.g., where there is a one-off delivery of "off the shelf" goods). Where no KPIs are set in accordance with this provision, the reasons for that decision must be published in the Contract Details Notice.

Where the value of the contract to be awarded is estimated to be less than £5 million, KPIs are not mandatory. However, the Council's view is that KPIs are beneficial for ensuring that the contract is delivering against its objectives. Therefore, the Commissioners and/or Procurement Officers must, when designing the procurement, give careful consideration as to whether KPIs would be an appropriate mechanism for ensuring that the contract will deliver against its objectives. If so, KPIs should deliver the Procurement Objectives for the Council.

Approval in circumstances where the Conditions of Contract cannot be included

There may be circumstances in which it is not possible to include one or more of the Conditions of Contract required by this paragraph 1.2.10 in the contract being procured. Such circumstances may include where:

* the nature of a particular contract means that a particular Condition of Contract is not appropriate to be included; or
* the policy of a market leading Contractor provides no option but for the Council to operate on the standard terms of that Contractor.

Where an Officer considers that it is not possible to include any Condition(s) of Contract required by this paragraph 1.2.10 as a result of the particular circumstances before them, that Officer must seek approval from a Chief Officer not to include such Condition(s) of Contract before any such contract can be concluded. When seeking such approval, the Officer must explain to the Chief Officer why they consider that it is not possible to include the Condition(s) or Conditions of Contract in the particular circumstances. The Chief Officer must not approve an Officer to conclude a contract which does not contain all of the Conditions of Contract required by this paragraph 1.2.10 unless legal advice has been obtained.

### **1.2.11 Assignment of Contracts without Consent**

There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor shall have transferred or assigned, whether directly or indirectly, the benefit of the contract without the written consent of the Council, or if the Contractor shall have sub-let the contract (except so far as the sub-letting relates to the supply of patent or proprietary articles, raw materials or natural products) without the written consent of the Council and without following the publication of a Contract Change Notice setting out the information specified in Appendix 13 – Contract Change Notice content.

Consent may only be granted without the publication of a Contract Change Notice where assignment is required following a corporate restructuring, insolvency, or similar circumstance, or where assignment does not change the value of a contract by more than 10% (in a contract for goods or services) or 15% in a contract for works. Consent may not be granted where the assignee is an excluded supplier.

There may be circumstances in which it is not possible to include an assignment clause in the contract being procured. Such circumstances may include where:

* the nature of a particular contract means that an assignment clause is not appropriate to be included; or
* the policy of a market leading Contractor provides no option but for the Council to operate on the standard terms of that Contractor,

Where an Officer considers that it is not possible to include any Condition(s) of Contract required by paragraph 1.2.11 as a result of the particular circumstances before them, that Officer must seek approval from a Chief Officer not to include the assignment clause before any such contract can be concluded. When seeking such approval, the Officer must explain to the Chief Officer why they consider that it is not possible to include the assignment clause in the particular circumstances. The Chief Officer must not approve an Officer to conclude a contract which does not contain the assignment clause unless legal advice has been obtained.

### **1.2.12 Contract Modifications and Extensions of Contract Terms**

Below-threshold Contracts and light-touch contracts may be modified for any reason unless the modification would result in the value of the contract exceeding the relevant threshold, in which case they become **convertible contracts**.

Above-threshold and convertible contracts may only be modified in certain circumstances. If impermissible modifications are made, this can put the entire agreement at risk of being set aside, if challenged. Officers must consult the Council's Legal Team in respect of any proposed modification explaining why the modification is necessary or desired so that the Legal Team can consider whether the modification is permissible under the Procurement Act, or whether a new contract will need to be procured.

Where a modification to a contract has been approved by the Legal Team, the modification shall be made in writing and shall require prior written authorisation by the appropriate Head of Service or on their behalf by an authorised certifying Officer in accordance with the Department's Financial Scheme of Delegation. Where the contract in question has been formally sealed by the Council's Legal Team, the sealed contract copy will need to be updated to account for the modification.

Officers must consider a Contractor’s performance throughout the term of the contract when considering extensions of a contract term as per paragraph 1.12 below. Guidance on monitoring performance can be found in the Procurement Act Guidance. Officers must question not only the financial aspects of any potential term extension, negotiating with the Contractor where possible to achieve a competitive financial offering, but must also give thought to whether the quality of supplies or service being provided to the Council would continue to offer best value to the Council should a term extension be offered. Officers must be aware that markets, the providers within those markets, and the level of competition for Council business will change over the term of a contract.

Officers must consider alongside the award of any optional term extension period, what other alternatives may be available to the Council and must, when seeking approval to extend the contract, explain why such alternatives are not proposed. Officers must ensure that prior to seeking approval of any proposed contract term extension, consultation is undertaken with the Assistant Director of Corporate Services and Commercial (Strategic Support) in order to secure the Procurement Team's perspective.

A term extension requires the approval of a Head of Service, Cabinet member or Cabinet according to the applicable financial thresholds detailed herein.

The value of any contract term extension must be calculated in line with paragraph 1.1.7.

Contract terms may only be extended with approval of the appropriate Head of Service, Cabinet member, Cabinet or a person with delegated authority provided for in the contract as-awarded beyond the stated core contract period, including but not limited to where the original Tender Notice, RFQ documents or Transparency Notice provided unambiguously that the core contract term could be so extended.

Where an extension to the core contract term is sought a business case should be submitted to the appropriate Head of Service, Cabinet member, Cabinet or person with delegated authority provided for in the contract as-awarded, and written approval should be obtained, taking into consideration the factors listed above for extensions of contracts. This business case should specify which of the following conditions applies:

1. the term extension is to be made to a light touch or Below-threshold Contract (defined at paragraph 3.1.1 below) and the extension of time would not increase the value of the contract above the relevant Procurement Act threshold;
2. the extension of the term was provided for in the original Tender Notice or the Transparency Notice, as well as the contract terms as awarded, and the extension of the term is in accordance with that statement;
3. the extension of the term sought is no more than 10% of the maximum duration of the contract as awarded (including any extensions originally provided for in the contract) and would not materially change the scope or economic balance of the contract;
4. the extension of the term sought would not increase or decrease the estimated value of the contract as original awarded by more than 10% (or 15% in the case or works) and the value of the extension of the term itself would not exceed the relevant Procurement Act threshold;
5. or where none of the above apply:
   1. the extension of the term is required:
      1. due to urgency and the protection of life;
      2. due to unforeseeable circumstances;
      3. due to materialisation of a known risk (e.g. emerging cyber threats); or
      4. to enable the transfer of a contract on corporate restructuring.

Where an extension of the term is approved, a Contract Change Notice must be prepared by the Service Team Officer in consultation with the Central Procurement Team and published on the CDP. Consideration should also be given as to whether a voluntary standstill should be observed.

Where none of the above conditions are met, then the contract term cannot be extended, and the goods, services or works should be re-procured in accordance with these Contracts Procedure Rules and the Procurement Act.

Officers should proactively plan procurement of replacement goods, services and works to avoid the need to extend the term of existing contracts to enable that new procurement to be completed. Therefore, wherever possible, Officers should endeavour to plan the necessary pre-Procurement reporting, and subsequent procurement activity, in ample time to allow a replacement contract to be secured before existing contracts expire. When planning such activities, consideration should also be given to the needed to complete any necessary implementation period related to the contract and to obtain TUPE related information where relevant.

### **1.2.13 Conflicts of Interest**

All Officers involved in the evaluation of bids in a procurement process shall ensure they fully understand and comply with the Employees Code of Conduct and declare any potential Conflicts of Interest before commencing the exclusion of any bidders or evaluation of any tender responses.

The Employees Code of Conduct is available here: [**Employees Code of Conduct**](http://intranet.smbc.loc/personnel/policies-and-procedures/conduct-in-the-workplace/code-of-conduct.aspx?xpfaqs=true)

Before any Tender Notice (see Appendix 6 – Tender Notice content), Transparency Notice (see Appendix 10 – Transparency Notice content) or Dynamic Market Notice (see Appendix 7 – Dynamic Market Notices content) is published, Officers must undertake a conflicts assessment and any such published notices must state that a conflicts assessment has been prepared and revised as necessary. The conflicts assessment must include details of the actual or potential conflicts identified, and any steps taken or that will be taken to mitigate the effects of the conflict, including any appearance of a conflict even where such a conflict does not, in fact, exist.

Officers must keep the conflicts assessment under review during the procurement and update it as necessary.

## 1.3 Collaborative Arrangements

### **1.3.1 Framework Agreements / Dynamic Markets**

Contracts Procedure Rules paragraphs 2.2, 2.4, and 3 will not apply where the goods, works or services in question are to be procured by awarding a contract from a Framework Agreement or Dynamic Market which itself has been procured through compliance with these Contracts Procedure Rules or from a Central Purchasing Body for the purposes of the Procurement Act.

Where a Framework Agreement is used for the first time, a Procurement Officer shall obtain copies of the Framework's Tender and Award Notices and shall confirm the Body’s compliance with the Procurement Act.

### **1.3.2 Joint or Partnering Arrangements, Procurement of Consultants**

#### 1.3.2.1 Partnering Arrangements

A memorandum of understanding must be developed with partners to ensure that resources, support and delivery will be available throughout the development and lifetime of the proposed contract.

A single contract may be delivered by several providers. Partnering involves an integrated team working together to deliver better services to citizens through agreeing mutual objectives, devising a way for resolving any disputes and committing themselves to continuous improvement, measuring progress and sharing the gains.

All parties have a shared goal of delivering services in a cost-effective and timely way that is mutually beneficial.

Partnering Arrangements are likely to be contractually based and will need to comply with these Contracts Procedure Rules.

Partnering Arrangements will be entered into ONLY after an appropriate competitive procurement process has identified potential partners and they have been evaluated from a competitive and best value perspective.

Partnering Arrangements will need to identify the following:

* responsibility for each function to be performed,
* the element of risk undertaken by each party,
* the mutual benefits derived from the partnership,
* the individual targets and objectives of the partnership,
* the procedure for reviewing the performance of the partnership,
* the procedure for remedying disputes and the settlement of grievances

(including arbitration if required),

* the period for maintaining the partnership, and
* the exit procedure at termination of the partnership, which must

include, the responsibility for staff, premises, service provision,

any other relevant matters implications for Social Value, in terms of local supply, employment.

#### 1.3.2.2. Joint Procurement

Any joint procurement activity with other local authorities or public bodies, including membership or use of purchasing consortia, shall be agreed via Pre-Procurement Reporting requirements as outlined within paragraph 1.11.1. The Pre-Procurement Reporting requirements do not need to be complied with before a Framework or Dynamic Market is procured under which there is no guaranteed expenditure by the Council (i.e., the Council is merely named as a public authority entitled to procure from the Framework or Dynamic Market). For the avoidance of doubt, the Pre-Procurement Reporting requirements must be complied with for any subsequent awards under the Framework or Dynamic Market.

The Council may also enter into existing public sector Frameworks, where it is evident that such Frameworks represent the optimum solution to the Council in terms of service and cost.

Where any expenditure is committed using standard arrangements such as a Dynamic Market with another local authority, government department, statutory undertaker, Officers must be reasonably satisfied that the appropriate procurement procedures have been followed by the body concerned and consider appropriate use of the facility (i.e. straight forward call-off under a Framework, or mini competition under a Dynamic Market).

Where the Council is working in a joint procurement or Partnering Arrangement with another body or bodies and, under that arrangement, is the Commissioning body, these Contracts Procedure Rules shall apply to contracts entered into under that arrangement.

Where the Council is working in a joint procurement or Partnering Arrangement with another body or bodies and, under that arrangement, another body is the Commissioning body, the Contracts Procedure Rules, or equivalent, of that other body shall apply to contracts entered into under the arrangement subject to the approval of a Waiver by the Cabinet member (Regulatory, Compliance & Corporate Services). Where the body has no such Contracts Procedure Rules, the procedures applied by the other body shall comply with the principles and safeguards contained in these Contracts Procedure Rules, and this must be documented in the terms and conditions of the contract.

Where the Council is working in a joint procurement or Partnering Arrangement with another body or bodies, the Terms and Conditions for the arrangement shall include powers for the Council to have access to the records, assets, site, employees and sub-contractors of that other body for the purposes of investigating or auditing compliance with the terms of the arrangement and with the relevant procurement rules.

*Competition law considerations*

UK competition law prohibits anti-competitive agreements and arrangements, and also prevents dominant undertakings from abusing their dominance. The Council must avoid such anti-competitive practices when carrying out procurements. This will generally be achieved by complying with these Contract Procedure Rules and the requirements of procurement law. However, special considerations apply to joint procurement activity, or indeed any activity where the Council is coordinating its conduct with other economic entities (including other Councils or Government bodies).

In a joint purchasing procurement context, the most common (but not the only) types of anti-competitive agreements/behaviour to look out for are price-fixing, the exchange of commercially sensitive information and collective boycotts. To avoid these practices, officers must:

1. avoid permitting members of the consortia agreeing to coordinate their own individual negotiations and purchases with suppliers (e.g. agreeing between themselves to fix the purchase price in their individual negotiations).
2. not exchange commercially sensitive information (e.g. purchase volumes or price) with other members of the purchasing group or consortium. Such information may, in limited circumstances and subject to safeguards, be shared with other members of the purchasing group, but officers must consult the Council's Legal Team before doing so.
3. not agree with other members of the purchasing consortium not to purchase from a particular supplier without first consulting the Council's Legal Team.

UK competition law recognises that joint purchasing groups are unlikely to restrict competition if they involve genuine joint negotiations with suppliers and where the parties involved do not have market shares (in the purchasing or selling markets) of more than 15%.

The application of UK competition law to collective purchasing and similar agreements will often require a very fact-specific assessment, and so any contractual agreements relating to the entry into a joint procurement arrangement should always be referred to the Council's Legal Team before being entered into.

## 1.4 E-Procurement

Officers must employ an electronic Procurement (**e-Procurement**) method and shall use only the Chest.

The only exception to this paragraph 1.4 shall be where an Officer is using an external Framework, the use of which has been approved in accordance with paragraph 1.3. In such circumstances the Procurement work shall be carried out in compliance with the rules of the Framework as determined by the Framework owner.

## 1.5 Records

The Local Government Transparency Code 2015 requires the Council every quarter to publish details of (i) all expenditure exceeding £500 (inclusive of VAT only where the VAT is recoverable) and (ii) all invitations to tender and contracts entered into where, in either case, the value of the contract exceeds £5,000. To comply with these obligations:

All procurement opportunities published on the CDP will have the contract award details automatically promoted to the online contracts register, where the contract is valued at £5,000 or above, in line with the Government’s transparency agenda.

All spending over £500 will automatically be reported on the Council's transparency webpage (https://www.sefton.gov.uk/your-council/transparency/transparency/council-spend-other-key-documents/council-spend-over-500/).

## 1.6 Contracts Register

All contracts with a value of £5,000 or more that the Council enters into will be published on the Contracts Register available at:

<https://procontract.due-north.com/ContractsRegister/Index?p=e0cc5631-4690-e511-80fb-000c29c9ba21&v=1>

## 1.7 Central Digital Platform ("**CDP**")

The CDP is the Government's central procurement platform on which all Procurement Act notices must be published and from which all **core supplier information** will be provided (including basic supplier information, and information concerning their financial standing, connected persons and exclusion grounds). Officers must use the CDP in all procurement activity undertaken, as required.

## 1.8 Contract Payments

### **1.8.1 Contract payments/settlements**

Contract payments/settlements shall be made in accordance with procedures referred to in the Financial Procedure Rules.

[**Financial Procedure Rules (within the Council's Constitution)**](http://smbc-modgov-03/documents/s99453/Enc.%201%20for%20Financial%20Procedure%20Rules.pdf)

The terms upon which the Council will make payments to a Contractor must be detailed within the applicable contract.

Where the procurement is financed by external funding, payments should be made in accordance with the terms of the finance agreement subject to these Contracts Procedure Rules.

### **1.8.2 Prompt Payment within 30 days**

The Procurement Act implies a clause in all public contracts (except, as relevant, concession contracts and contracts awarded by schools) providing that invoices submitted by the Contractor shall be verified in a timely manner and payment of undisputed invoices shall be made within 30 days. The Council must publish a Payments Compliance Notice (see Appendix 14 – Payment Compliance Notice content) to detail the authority’s compliance with the requirement to pay invoices within 30 days of the last reporting period if, during that period, the Council made a payment under a public contract or a sum owed by the Council became payable.

Where the Contractor enters into a sub-contract the prompt payment provisions are also implied into those sub-contracts.

Where a contract contains terms requiring payment more quickly than 30 days (for example because of statutory requirements, or because the parties choose a shorter payment period) then these shorter payment periods will apply to that contract.

[**Sefton Payment Acceleration Scheme**](https://client.oxygen-finance.com/sefton/#about)

The Sefton Payment Acceleration Scheme is a programme to allow suppliers to provide a discount for payment earlier than 30 days. The Scheme should be included in all tenders, unless there is justification for not including it within the procurement process (for example restrictions in Grant conditions).

### **1.8.3 Instalment Payments**

Where contracts provide for payment to be made by instalments the appropriate Head of Service shall maintain suitable records to show the state of account on each contract.

### **1.8.4 Authorisation of Payments**

Payment to Contractors shall be authorised by an authorised certifying Officer in accordance with the Department’s Financial Scheme of Delegation.

### **1.8.5 Works contracts – Final Certificate control**

No payment shall be made by the Council to the Contractor without formal purchase order/formal agreement in place. This must be facilitated by processing a purchase order onto the Council's financial system, Agresso, or the relevant operational system, against which invoices and payments can be processed and monitored. Please speak to the Council’s finance department if you need further detail on the Agresso financial system.

In the case of works contracts a final certificate shall not be issued until the Head of Service has, to the extent that it is felt necessary, examined all matters relating to the final account.

### **1.8.6 Payments before Completion of Formal Contract**

No payment shall be made by the Council to the Contractor without a formal purchase order / formal agreement in place and will only happen following the provision of supplies, services, or works.

Advance payments are not permitted, except for emergency payments made in exceptional circumstances with prior authorisation through the Waiver Process set out in these Contract Procedure Rules or where specific exceptions to this rule have been made\*.

\*Advance payments to the certain types of organisation may be made without first obtaining a waiver where it is necessary to ensure operational efficiency and support for essential services. These organisations include:

1. Small Businesses (defined as being an enterprise with fewer than 50 employees and/or an annual turnover of less than £10,000,000): Especially those that might need financial support to manage cash flow and deliver services effectively.
2. Information Technology Companies: Providing critical infrastructure and services that require upfront investment.
3. Charitable Organisations: Delivering essential community services and support.
4. Works Contractors: Engaged in construction activity where upfront investment in building materials and equipment and part payment upfront may be required.
5. Insurance Companies: Where payment in advance of requirement to ensure insurance cover is in place.

It is essential to note that the commissioning department are responsible for managing the additional risks associated with advance payments as part of the procurement and ongoing contract management. This ensures that while the organisations above benefit from the exceptions, the Council maintains robust oversight and risk management practices to safeguard public funds, including written approvals and an audit trail.

### **1.8.7 Signed Contracts**

Contracts shall be signed on behalf of the Council by a duly authorised officer in accordance with the Financial Scheme of Delegation for the relevant department. Speak to the Council’s finance department if you need further detail on the relevant Scheme of Delegation.

## 1.9 Waiver of Contracts Procedure Rules

Link to electronic Waiver form:

[How to Submit a Waiver](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fintranet.smbc.loc%2Four-council%2Fprocurement%2Fhow-to-submit-a-waiver.aspx&data=05%7C02%7CDafydd.Williams%40sefton.gov.uk%7C7601f1d71fc44a47b30a08dd07de33fc%7Cbf3a3387dc954c7d940e49cc2fc9d4f1%7C0%7C0%7C638675373128087477%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=pSLmC%2FutUqzhfjobLic%2BPg00cw8xy88hf8pgNDI9e1I%3D&reserved=0)

A Waiver is required wherever an Officer seeks to enter into a contract with a value of £5,000 or more without complying with one or more of the provisions of these Contracts Procedure Rules unless that paragraph expressly provides that a Waiver is not required.

Where any Officer is seeking a Waiver of any of the provisions of these Contracts Procedure Rules, approval for that Waiver must be secured from the Assistant Director within whose remit the procurement or contract sits.

1. Where an Assistant Director is seeking a Waiver then this application should be submitted to an Executive Director.
2. Where an Executive Director is seeking a Waiver then this application should be submitted to the Chief Executive Officer

When seeking a Waiver of any of the provisions of these Contracts Procedure Rules, the relevant Officer shall, in consultation with the Cabinet Member, complete a formal Waiver Request Report in accordance with the procedure set out below. The Waiver Request Form will be reviewed by the Procurement Service Manager to ensure compliance prior to being submitted to the Head of Service within whose remit the procurement or contract sits or will sit. This Waiver Request Report shall clearly state:

1. the particular Contracts Procedure Rule paragraph(s) to be waived
2. the period of time during which the Waiver shall be effective and related value
3. of expenditure for this period
4. Budget Approval – include Budget, Funding and Cost Centre Code
5. Business Case in support of the Waiver which must include details of how the
6. following would be achieved despite the Waiver:

i. Value for Money

ii Transparency, propriety and accountability

iii. Position of the contract under the Procurement Act

iv. How the Contractor was selected

v. Identification of potential project risks and controls

vi. How the project links with departmental and corporate objectives

vii. Whole life costs of the project including the revenue costs associated with the project

viii Social Value benefit

When considering any request for a Waiver of any of the provisions of these Contracts Procedure Rules the relevant Head of Service shall seek any necessary advice and guidance from the Procurement Team, Legal Service, Finance Service or any other specialist team before determining the Waiver request.

The Head of Service MUSTe-mail a copy of the signed Waiver form to [waivers@sefton.gov.uk](mailto:waivers@sefton.gov.uk) to be archived.

Where any provisions of these Contracts Procedure Rules are waived the relevant Officer shall comply with the remaining provisions of these Contracts Procedure Rules.

Where an Officer seeks to enter into a contract with a value below £5,000 without complying with one or more of the provisions of these Contracts Procedure Rules, the prior written approval of the Chief Officer must be obtained before that contract may be entered into. When seeking approval of the Chief Officer, the Officer must explain which paragraph they seek permission not to comply with and explain why. For the avoidance of doubt, a Waiver is not required in such circumstances. Any approval given by the Chief Officer must be emailed to [waivers@sefton.gov.uk](mailto:waivers@sefton.gov.uk%20) to be archived.

This exception to seeking a Waiver does not apply where a variation in the Council’s standard payment terms is requested. Any variation to the Council’s standard terms of payment, whatever the value of the contract, will require a Waiver to be sought, with a copy of the request sent to the Section 151 Officer.

Where any provisions of these Contracts Procedure Rules are waived, the relevant Officer shall comply with the remaining provisions of these Contracts Procedure Rules.

[**Contracts register form**](https://intranet.smbc.loc/our-council/procurement.aspx)

## 1.10 Procurement Resource Requisition Form

Early engagement of the Procurement Team within any procurement process is essential as that enables a member of the team to be allocated to a project a foundation stage.

Procurement Officer/s allocated is able to support the development of the Pre-Procurement Report that a Client Officer needs to compile and submit in order to secure approval to commence a procurement exercise.

The Procurement Resource Requisition Form enables the Client Officer to set out the building blocks of the requirement which will enable the Procurement Officer to contribute appropriate documentation. This can be found on the Intranet, and is an online submission:

[***PROCUREMENT REQUEST FORM***](https://intranet.smbc.loc/our-council/procurement.aspx)

Procurement Officers are required to upload a copy of the Procurement Risk Assessment to the Chest as a supporting document for that specific procurement exercise

## 1.11 Expenditure Approvals Process – Pre-Procurement Reporting

### **1.11.1 Pre-Procurement reporting**

All Officers requiring committing expenditure in order to acquire supplies, services or works on behalf of the Council, or a Collaborative group of Councils if in the lead role, must first consider Approval to Commit Expenditure and so to commence the Procurement process. In doing this, Officers must consider Financial Procedure Rules and any relevant budget approval process and must refer to the Executive Director of Corporate Services and Commercial where necessary.

It is a requirement of the Chief Executive Officer and the Cabinet members that approval to commit expenditure be considered, prior to commencement of any Procurement activity as follows (note all figures are VAT inclusive and accurate for the period 1 January 2024 to 31 December 2025):

|  |  |
| --- | --- |
| **Expenditure Value (all figures accurate for the period 1 January 2024 and 31 December 2025)** | **Level of approval required** |
| £30,000 or more, but less than the Spend Threshold for the Supply of Goods and Services (i.e. £30,000-£214,903 as at time of drafting). | Pre-Procurement Report is to be taken to the Officer’s Head of Service |
| 1. For goods and services contracts, the Spend Threshold for the Supply of Goods and Services to 3x the Spend Threshold for the Supply of Goods or Servies (i.e. between £214,904-£644,712 as at time of drafting); OR 2. For works contracts, the Spend Threshold for the Supply of Goods and Services to the Spend Threshold for Works (i.e. £214,904-£5,372,608 as at time of drafting)) | Pre-Procurement Report is to be taken to the Officer’s Cabinet Member |
| 1. For goods and services contracts, more than 3x the Spend Threshold for the Supply of Goods or Services (i.e. over £644,712 as at time of drafting); OR 2. For works contracts, the Spend Threshold for Works or more (i.e. £5,372,609 or more as at time of drafting | Pre-Procurement Cabinet Report (**Cabinet Report)** is to be taken to Cabinet.    \*Note that delegated authority to award any subsequent contract which meets the objectives laid out in the Cabinet Report can be given to a Chief Officer, providing the Cabinet Report specifically details the parameters of that delegated authority. |

NOTE: The ONLYexception to this table shall be where a prospective procurement satisfies the requirements of a ‘Key Decision’. The following information is reproduced from the Council’s Constitution to aid Officers in determining whether prospective procurement qualifies as a Key Decision.

A **Key Decision** is:

a) any executive decision that is not in the Annual Revenue Budget and Capital Programme approved by the Council and which requires a gross budget expenditure, saving or virement of more than £100,000 or more than 2% of a departmental budget, whichever is the greater; or

b) any executive decision where the outcome will have a significant impact on a significant number of people living or working in two or more Wards.

Where a prospective Procurement is determined to be a Key Decision then this will need to be entered onto the Council's Forward Plan via liaison with the Democratic Services Team. Officers must be mindful in such circumstances to plan additional time into the Procurement process.

A Key Decision relating to a prospective procurement will be considered by Cabinet within a Pre-Procurement Report.

A Pre-Procurement Report is usually created using the Chief Officer Report Template, except where the report requires Cabinet approval, where a Cabinet report is produced.

A **Pre-Procurement Report** must set out:-

i) The brief details of the Procurement exercise and the procurement method to be employed;

ii) the basis of evaluation; and

iii) a request that authority be delegated to a nominated Officer, such as a Head of Service, or one of their Officers, to approve the resulting post-Procurement contract award.

The following illustration summarises the pre-Procurement expenditure approval process that these Contracts Procedure Rules detail.

### **1.11.2** Pre-Procurement approval specifically in respect of adult or children’s social care support packages and placements, and substance misuse residential rehabilitation placements

It is recognised that some individual adult and children's care or support packages and placements, and some substance misuse residential rehabilitation placements cannot be fulfilled using existing Framework Agreements or Dynamic Markets and, on these occasions, will need to be procured from the open market, via the CDP.

It is also recognised that in many cases, due to ongoing care requirements, the end date of such contracts cannot be identified at the point of procurement. In such circumstances, and in accordance with the Procurement Act, the contract value should be estimated as being above the threshold for the type of contract. However, for the purposes of internal approval processes only, the length of such contracts should be considered to be 4 years.

On occasion the anticipated value of these contracts may exceed the normal delegated authority of Head of Service, and in certain circumstances the normal delegated authority of the Cabinet member too. However, due to the restricted amount of time available to procure these often urgent individual care or support service packages, it would not be possible or desirable to always obtain Cabinet Member or Cabinet pre-procurement approval.

Consequently, specific provision is made herein and within the Council’s Constitution to delegate authority in such circumstances in accordance with the relevant Department’s Financial Scheme of Delegation. Speak to the Council’s finance department if you need further detail on the relevant Scheme of Delegation.

What level of pre-approval is required in respect of Contract Value?

(Officers must ensure that you read and understand the Contracts Procedure Rules and do not simply refer to this illustration alone. Please note all figures are inclusive of VAT.)

|  |  |
| --- | --- |
| **Expenditure Value (all figures accurate for the period 1 January 2024 and 31 December 2025)** | **Level of approval required** |
| £30,000 or more, but less than the Spend Threshold for the Supply of Goods and Services (i.e. £30,000-£214,903 as at time of drafting). | Head of Service via Pre-Procurement Chief Officer Report |
| 1. For goods and services contracts, the Spend Threshold for the Supply of Goods and Services to 3x the Spend Threshold for the Supply of Goods or Servies (i.e. between £214,904-£644,712 as at time of drafting); OR 2. For works contracts, the Spend Threshold for the Supply of Goods and Services to the Spend Threshold for Works (i.e. £214,904-£5,372,608 as at time of drafting)) | Cabinet Member via Cabinet Report |
| 1. For goods and services contracts, more than 3x the Spend Threshold for the Supply of Goods or Services (i.e. over £644,712 as at time of drafting); OR 2. For works contracts, the Spend Threshold for Works or more (i.e. £5,372,609 or more as at time of drafting | Cabinet Responsibility via Cabinet Report |
| Key Decision | Cabinet Responsibility via Cabinet Report |

### 1.12 Monitoring of Contracts

All contracts must be monitored throughout the period of the contract, and the performance of Contractors and social value outcomes must be reviewed regularly. Appropriate records of contract monitoring and Contractor performance shall be maintained by the relevant service area. Guidance on monitoring performance can be found in the Procurement Act Guidance.

Where KPIs have been set in the Contract in accordance with paragraph 1.2.10, the supplier's performance must be assessed (in consultation with the Council's Legal Team, if the contract value is over £5 million) at least once every 12 months and the supplier awarded one of the following ratings:

* **Good** – Performance is meeting or exceeding the KPIs
* **Approaching Target** – Performance is close to meeting the KPIs
* **Requires improvement** – Performance is below the KPIs
* **Inadequate** – Performance is significantly below the KPIs
* **Other** – Performance cannot be described as good, approaching target, requires improvement or inadequate

Where the contract value is more than £5 million, the rating awarded must be published by the Central Procurement Team on the CDP in a Contract Performance Notice (see Appendix 8 – Contract Performance Notice content) at least once in every 12 months in the life-cycle of the contract. A Contract Termination Notice must be published upon termination. It is the responsibility of the Commissioners and/or Procurement Officers to share the necessary information with the Central Procurement Team to allow for publication of the necessary notices within these timescales.

# ****2: CONTRACTS EXCEEDING THE APPLICABLE SPEND THRESHOLDS****

## 2.0 Application

Part 2 of these Contracts Procedure Rules shall apply to all contracts exceeding applicable Spend Thresholds in value, and Officers must adhere to the Spend Thresholds (for the whole value of the contract, including any optional periods at paragraph 1.1.7) which are set out as most relevant as follows:

Goods or services: £214,904

Works contracts: £5,372,609

Light touch contracts: £663,540

*Note: A contract is a “works” contract if its main purpose is carrying out works (whether or not resulting in a complete work), or to facilitate the carrying out of works otherwise than under the contract, where those works are intended to result in a complete work specified in the contract. Note: Spend Threshold figures correct for the period 1 January 2024-31 December 2025, but subject to ongoing change, ordinarily on a two year cycle, updated every even year. Updated details of changes in threshold figures will be published on the* [*Procurement website*](http://intranet.smbc.loc/our-council/procurement.aspx)*.*

There are a number of transparency requirements under the Procurement Act which take the form of notices throughout the lifecycle of the Procurement. These Contracts Procedure Rules reference these throughout, but for ease of reference, a diagram illustrating the notice requirements is set out at Appendix 16 – Procurement Lifecycle Notices.

## 2.1 Forms of Procurement

### **2.1.1** There are five main procurement processes available for contracts exceeding Spend Thresholds:-

(a) Competitive Awards - Open Procedures

(b) Competitive Flexible Procedures

(c) Direct Awards

(d) Award under Frameworks

(e) Competitive Selection Processes Under Frameworks and Dynamic Markets

### **2.1.2** For certain social, health, education and other public services provided directly to individuals or groups of people (as set out in the Procurement Regulations 2024), you must apply the ‘light touch’ contract rules. Where a Spend Threshold is exceeded for a light touch contract, Officers shall follow the applicable Light Touch Regime with the assistance of Officers of the Corporate Procurement Unit. You must advertise light touch contracts with a Tender Notice unless a Direct Award justification applies (see paragraph 2.5 below).

### **2.1.3** A Procurement process does not remove or modify the responsibility of the relevant Head of Service to take such steps as may be reasonably necessary to safeguard the Council’s interests.

### **2.1.4** In order to determine a suitable Procurement approach to a specific market, Officers may first engage with the Procurement Team to carry out preliminary market engagement (**PME**) in order to determine the level of market interest, and numbers of providers that exist in a particular market and to determine the design and scope of the Procurement. Any such PME must (where required) be publicised through a PME Notice published on the CDP containing the content required at Appendix 5 – Preliminary market engagement (PME) Notice content. The PME must be conducted in a way that suppliers participating in the PME are not put at an unfair advantage and competition isn’t otherwise distorted. If a Procurement process is required following PME, a level playing field between bidders MUSTbe maintained.

### **2.1.5** For all above threshold tenders, the Council will publish a Tender Notice of its intention to enter into such arrangements on the CDP.

### **2.1.6** For all above threshold tenders, the Head of Service’s Evaluation Panel, shall assess all submissions using the award criteria and weightings in the published tender documents and the Procurement Officer shall maintain a copy of the marked Assessment Matrix.

## 2.2 Competitive Awards – Open Procedure

**2.2.1** Commissioners and/or Procurement Officers shall use the Open Procedure specifically where the market for the requirement is identified as limited in terms of supplier numbers, and so the number of submitted bids is likely to be low.

**2.2.2** The Tender Notice must provide for a "tendering period" during which tenderers prepare and submit their bids. Officers must determine an appropriate tendering period having regard to the Procurement Act Objectives and (i) the nature and complexity of the contract, (ii) the need for site visits, physical inspections and other practical steps, (iii) the need for sub-contracting, and (iv) the importance of avoiding unnecessary delay. Officers must not set a tendering period which is shorter than:

1. 10 days where a qualifying Planned Procurement Notice was published or there is a state of emergency;
2. 25 days where all tenders are to be submitted electronically and all of the associated tender documents are provided at the same time as the Tender Notice;
3. 30 days where all tenders are to be submitted electronically but not all of the associated tender documents are provided with the Tender Notice
4. 30 days where all tenders are to be submitted non-electronically and all of the associated tender documents are provided at the same time as the Tender Notice; or
5. 35 days where all tenders are to be submitted non-electronically but not all of the associated tender documents are provided with the Tender Notice;

### **2.2.3** Tender Notices for an Open Procedure must not be published unless the Commissioners and/or Procurement Officers are satisfied that the Tender Notice or associated tender documents contain sufficient information to allow suppliers to prepare their tenders including details of the goods, services or works required by the Council.

### **2.2.4** Tender Notices for Open Procedures must also contain the information included at Appendix 6, Table 1: **Tender Notices: Open Procedure**.

## 2.3 Competitive Awards – Competitive Selection under Framework

### **2.3.1** Where an Officer identifies a Corporate Contract or other Framework Agreement procured by others from which the Council can call off contracts, a Competitive Selection under Framework process must be carried out.

### **2.3.2** Before Commissioners and/or Procurement Officers issue a Tender Notice for a competition under a Framework that was procured by a third party, you must confirm that:

1. the Framework was established by another contracting authority;
2. the Council is clearly identified as a contracting authority permitted to use the Framework;
3. the goods, services or works sought to be procured can be procured from the Framework;
4. the total value of call-off contracts awarded under the Framework to date does not exceed the estimated value of the Framework; and
5. the Framework remains in term.

### **2.3.3** Before issuing a Tender Notice, you must also identify:

1. the award criteria used to assess tenders when the Framework was awarded;
2. the price payable or the mechanism for determining the price payable under call-off contracts;
3. the selection processes for selecting a supplier for a call-off contract;
4. any applicable liability provisions;

have been set by the Framework. If so, Officers must adhere to those provisions during the Procurement.

### **2.3.4** A Tender Notice should be issued to all Framework providers containing setting out the information required under Appendix 6, Table 3 **Tender Notices: Frameworks**.

The award criteria for a Competitive Selection under Framework must be based on the award criteria used to select suppliers to be included on the Framework. Those criteria may be refined, for instance, by the inclusion of sub-criteria.

Conditions of Participation may be the same as or different to those used when procuring the Framework. However, suppliers may only be assessed against Conditions of Participation if the Framework provides for that as a selection process. Suppliers that do not meet Conditions of Participation do not need to be excluded from submitting a tender under the procurement but their tenders must be disregarded and they must not be awarded the contract.

### **2.3.5** Whilst suppliers on a Framework will have previously been assessed against the exclusion and debarment rules, Procurement Officers and/or Commissioners must not rely on such previous assessments and must consider the position again in accordance with paragraph 2.10 in every Competitive Selection process. Where the Framework was procured by another contracting authority, Procurement Officers or Commissioners should be asked whether the supplier has become an excluded supplier since the award of the Framework but their answers do not remove the need to comply with paragraph 2.10.

### **2.3.6** Unsuccessful suppliers should be told why they have not been awarded the call-off contract. Officers should provide feedback to suppliers in the same form as an assessment summary.

## 2.4 Competitive Awards – Competitive Flexible Procedure

### **2.4.1** Commissioners and/or Procurement Officers shall follow a Competitive Flexible Procedure specifically where there is likely to be a substantial number of providers in the marketplace and so a high number of responses would be expected, or the supplies, works or services are of a specialist nature and where it would be desirable to limit the number of participating suppliers who proceed to final assessment or to the refine the award criteria following engagement with tenderers.

### **2.4.2** The Competitive Flexible Procedure allows the Council to design a multi-stage process tailored to its needs for the procurement. There is no set process that must be followed in every case, but broadly there can be up to three stages:

1. **Participation** – whereby objective criteria or Conditions of Participation are used to limit the number of suppliers who submitted a request to participate that will be invited to take part in the Procurement
2. **Evaluation** – whereby initial tender submissions can be assessed and the contract requirements, award criteria or the draft contract can be refined.
3. **Award** – whereby suppliers are invited to submit final tenders which are then assessed against the award criteria and the contract awarded.

### **2.4.3** Within the Evaluation stage, the Council can incorporate a range of processes including:

1. **Intermediate Assessment** – where bids are assessed at a stage part way through the tendering process either to reduce the number of suppliers or to provide feedback to suppliers to help improve the quality of all bids.
2. **Dialogue** – where there is a discussion between the Council and suppliers about any aspect of the procurement, for instance to enable the Council better to understand the capabilities of the market in order to develop the requirements
3. **Negotiation** – where there is a discussion between the contracting authority and a supplier with a view to improving the content of tenders
4. **Site Visit or Demonstration** – whereby aspects of the proposed bid can be viewed and tested
5. **Presentations**

### **2.4.4** The Council does not have to design a Procurement process which utilises all three stages available in a Competitive Flexible Procedure nor all process available. It can choose to utilise the Participation Stage and/or the Evaluation stage. However, the decision on the design of the procurement (i.e. the stages and associated processes) must be taken before the Tender Notice is issued. The Tender Notice must clearly explain the stages and associated processes involved in the Procurement.

### Within a Competitive Flexible Procedure the opportunity must be made available to the marketplace for at least the minimum periods set out at paragraph 2.4.6 below.

### **2.4.5** Where the procurement includes a Participation Stage, Procurement Officers, must include in the Tender Notice or Tender Documentation appropriate Conditions of Participation or objective criteria which will be used to shortlist suppliers that submit requests to participate. Such conditions or criteria could be pass/fail criteria or be used to score suppliers to create an initial shortlist. Where a supplier fails to meet the Conditions of Participation (i.e., is not shortlisted) their tender must be excluded or disregarded.

### **2.4.6** The minimum period of time that must be afforded to shortlisted bidders, within a Competitive Flexible Procedure, at Tender Notice stage is 25 calendar days.

### **2.4.7** The Tender Notice must include the information detailed at Appendix 6, Table 2 **Tender Notices: Competitive Flexible Procedure**. In addition, where Procurement Officers or Commissioners want to:

1. Exclude suppliers during the Evaluation stage, the Tender Notice must clearly set out the criteria against which initial tenders will be assessed and the associated assessment methodology, how many suppliers will be taken to the award stage (where tenders will be evaluated on their merits) and what stage in the process that will happen. The Tender Notice must also contain a provision stating that where fewer suppliers meet the minimum requirements of any stage of the procurement, the Council will be able to continue with the procurement;
2. Be able to refine the award criteria and associated weighting, the Tender Notice must provide the Council with power to do so;
3. Be able to refine the requirements of the procurement or draft contract, the Tender Notice must provide the Council with power to do so, or
4. Include any particular process, such as negotiation or dialogue, it must set that out in the Tender Notice.

Before setting the procedure for the procurement, Officers must consult the Central Procurement Team to seek their views.

**2.4.8** Wherever the Tender Notice provides for suppliers to be excluded at any stage of the procurement, the number of suppliers that should be taken through to the next stage should be minimum number appropriate to ensure genuine competition in the circumstances. However, as a general guide:

1. where the Competitive Flexible Procedure is straightforward and does not involve dialogue or negotiation, at least the top five suppliers who submitted a request to participate within the participation period.
2. Where the Competitive Flexible Procedure is more complex and will involve extensive dialogue or negotiation, at least the top three suppliers who submitted a request to participate within the participation period.

Where suppliers are excluded from the procurement or their bids are disregarded before the award stage, they must be informed as soon as practicable and:

1. where supplier's bid was disregarded at the Participation Stage, they must be given a clear explanation as to why they were excluded in light of the Conditions of Participation and any criteria against which they were assessed; or
2. If the supplier's bid was excluded following an intermediate assessment, they must be given feedback, in a similar form to an assessment summary, to explain why their bid was excluded in light of the intermediate assessment criteria.

**2.4.9** Where Procurement Officers or Commissioners have reserved the power to refine the award criteria and associated weighting during a Competitive Flexible Procedure, the award criteria must:

1. only be refined in accordance with the provisions of Tender Notice;
2. not be refined after invitations to submit final tenders have been issued;
3. not be refined if the effect of such refinement would be that a supplier excluded at an earlier stage would not have been excluded at that stage if the refinement had been made earlier in the process.

Following any refinement of the award criteria, a new Tender Notice and new versions of any associated tender documents must be published reflecting the refinement.

## 2.5 Direct award

### **2.5.1** Direct Awards may only be made where:

1. a special justification applies,
2. a competitive procurement process has failed to attract any suitable bids, or
3. a Framework Agreement sets an objective mechanism for supplier selection and the core terms of the call-off contracts to be awarded.

### **2.5.2** The special justifications which enable a Direct Award to be made are where the contract concerns:

1. **prototypes:** the contract concerns the production of a prototype, or supply of other novel goods or services, for the purpose of (a) testing the suitability of the goods or services, (b) researching the viability of producing or supplying the goods or services at scale and developing them for that purpose, or (c) other research, experiment, study or development;
2. **artworks:** the contract concerns the creation or acquisition of a unique work of art or artistic performance;
3. **exclusivity:** a particular supplier has IP or other exclusive rights, and only that supplier can supply the goods, services or works required, and there is no reasonable alternative;
4. **technical exclusivity:** due to an absence of competition for technical reasons, only a particular supplier can fulfil the contract, and there is no reasonable alternative;
5. **extension or replacement:** the contract concerns the extension or partial replacement of existing goods, services or works, and a change of supplier would result in different or incompatible results;
6. **similar contracts:** the contract concerns the supply of similar goods, services or works, where the existing goods, services or works were supplied under a public contract awarded under a competitive tendering procedure within the last 5 years (ending on the day on which the Transparency Notice is published), and the tender documentation of that earlier contract stated an intention to carry out a subsequent procurement of similar goods, services or works in reliance on this direct justification award;
7. **commodity markets:** the contract concerns goods purchased on a commodity market;
8. **supplier insolvency:** the award of the contract to a particular supplier will ensure terms particularly advantageous to the Council due to the fact that a supplier (whether or not it is the one to whom the contract is to be awarded) is undergoing insolvency proceedings;
9. **urgency:** the goods, services or works to be supplied are strictly necessary for reasons of unavoidable and extreme urgency and, as a result, the contract cannot be awarded under a competitive procedure; or
10. **user choice preference:** the contract is for the supply of user choice services where the individual to whom the services are to be supplied (or their carer) have expressed a preference as to the supplier, and the Council considers that it is not in the best interests of the individual to award the contract under a competitive procedure.

There are specific justifications for Direct Awards related to defence and security services contracts. In the unlikely event you believe such a justification may be relevant, you should speak to the Council’s Legal Team.

### **2.5.3** Where you have embarked on a competitive procedure for a procurement but have not received any suitable tenders or requests to participate, and you consider that a Competitive Award is no longer possible, you may award a contract directly to a non-excluded supplier.

A tender or request to participate would not be suitable if you consider that:

* it would be disregarded because it (a) does not satisfy the Conditions of Participation, (b) it is not a UK or supplier from a State party to the Agreement on Government Procurement 1994[[1]](#footnote-2), or intends to subcontract the performance to a non-UK or a supplier from a State party to the Agreement on Government Procurement 1994, (c) the price offered is abnormally low, or (d) the tender breaches a procedural requirement;
* it does not satisfy the requirements or award criteria of the procurement, when assessed by reference to the assessment methodology;
* there is evidence of corruption or collusion between suppliers, or between supplies and contracting authorities; or
* it materially breaches a procedural requirement in the Tender Notice or associated tender documents.

Goods, services or works may only be procured from a Framework Agreement without competition if the conditions in paragraph 2.5.1 for the use of a Direct Award are met and where the Framework sets (a) sets objective criteria for the selection of suppliers without competition and (b) the core terms of the contract.

### **2.5.4** Before directly awarding a contract because of a special justification or where a Competitive Award is no longer possible, you must publish a Transparency Notice stating that the Council intends to award a contract directly, and including the information specified at Appendix 10 – Transparency Notice content.

After awarding the contract, you must publish a Contract Award Notice with the information as specified in Appendix 11 – Contract Award Notice content. Publication of a Contract Award Notice will trigger the standstill period, except for user choice contracts and Direct Awards made on the basis of urgency or to protect life.

### 2.6 Competitive Award by reference to Dynamic Markets

### **2.6.1** Where Officers seek to procure goods, services or works from a Dynamic Market which is open to the Council, a Competitive Flexible Procedure must be run in accordance with paragraph 2.2 as augmented by this paragraph 2.6.

### **2.6.2** Officers must include in the Tender Notice a condition of participation requiring suppliers to be a member of the Dynamic Market (or relevant part) before either (i) the end of the participation period where the Participation Stage is used, or (ii) the tendering period where no Participation Stage is used.

### **2.6.3** The Tender Notice must provide for a participation or tendering period which is no less than 10 days.

### **2.6.4** Between the Tender Notice being published and before the end of the participation or tendering period Officers must take the following steps:

1. where the Dynamic Market is controlled by the Council, request that the Procurement Team determine any applications to become a member of the Dynamic Market that have been received or are received before the end of the participation or tendering period and take reasonable steps to check that the relevant applications have been determined.
2. where the Dynamic Market is controlled by another contracting authority, Officers must contact that contracting authority and request that they determine any applications to become a member of the Dynamic Market that have been received or are received before the end of the participation or tendering period and take reasonable steps to check that the relevant applications have been determined.

In making such a request, Officers must provide the relevant person with details of (i) the relevant Dynamic Market and (ii) when the participation or tendering period ends. This paragraph does not apply where there are such exceptional circumstances relating to the complexity of the particular procurement which means that the Council is unable to take the steps mentioned above. Where Officers consider such circumstances exist, they must consult with the Legal Team before taking that decision. If it is deemed that such exception circumstances exist, Officers must record in writing the reasons for that decision.

### **2.6.5** In addition to the normal rules for exclusions and debarment, Officers must exclude any supplier who is not a member of the relevant Dynamic Market (or part of a Dynamic Market) before the end of the participation or tendering period. Excluded suppliers must be told that they were excluded because they were not a member of the relevant Dynamic Market.

## 2.7 Tender Notices and Interim Custody of Tenders

### **2.7.1 Tender Notices**

#### 2.7.1.1All Tender Notices shall, in addition to the requirements set out in Appendix 6 – Tender Notice content include the following:

1. that the Council will only be issuing and receiving Invitations to Tender electronically. Tenders submitted by any other means shall not be considered;
2. a requirement for tenderers to complete fully and sign or otherwise authorise the Form of Tender;
3. all electronic responses will be held within a secure online sealed tender box that is only accessible by the appointed Verifier after the specified fixed time and date;
4. all Invitations to Tender must specify the goods, services or works that are required in sufficient detail to enable the submission of competitive offers, together with the terms and conditions of the contract that will apply;
5. any Conditions of Participation that apply;
6. a description of the Award Procedure and a definition of the award criteria in objective terms and in descending order of importance with weighting;
7. that Tenders are submitted to the Council on the basis that they are compiled at the supplier’s risk and expense; and
8. notification that amendments must not be made to the draft contract documents by the supplier.
9. require all suppliers to confirm that they are registered on the CDP and their core supplier information is up-to-date and available to the Council:
   1. in the case of an Open Procedure or a Competitive Flexible Procedure, before the end of the tendering or participation period and again before contract award.
   2. in the case of an Award under Framework or a Direct Award, before contract award.

This information is automatically stored on the Chest.

#### 2.7.1.2An electronic contract register must be maintained by the Procurement Team and circulated to the Strategic Leadership Board by the Assistant Director of Corporate Services and Commercial (Strategic Support).

### **2.7.2 Conditions of Participation**

Before issuing a Tender Notice, Officers must set proportionate Conditions of Participation which are essential for the contract to be delivered which suppliers must meet to be considered for contract award. In considering what conditions would be proportionate (i.e. appropriate to achieving their aim, but no more burdensome than necessary to either party), Officers should have regard to the nature, cost and complexity of the contract to be awarded. The conditions of practice may only relate to a supplier's legal and financial capacity or technical ability (including qualifications and experience) to perform the contract and must not:

1. relate to anything other than a supplier's legal and financial capacity or technical ability to perform the contract;
2. require submission of audited accounts except from suppliers who are obliged by statute to have their accounts audited;
3. require suppliers to have previously been awarded to a contract by a particular contracting authority;
4. require suppliers to have insurance relating to the performance of the contract in place before award;
5. breach the requirements in the Procurement Act on technical specifications (see further below); and
6. require a particular qualification without allowing for their equivalents.

Officers must also set criteria explaining what suppliers must provide to the Council to meet each condition and how that information will be assessed. When setting those criteria, Officers should consider whether it is proportionate to require evidence that is verifiable by a third party in order to satisfy a condition.

In determining whether a supplier meets the Conditions of Participation, Officers must check each supplier's core supplier information contained on the CDP as well as any other information provided with the supplier's tender submission. They must also determine if a supplier associated with the supplier satisfies a condition. Where a supplier does not meet the Conditions of Participation, their bid must be disregarded and they should be informed should generally be excluded from the procurement at the earliest possible stage.

Officers must not use Conditions of Participation to assess the tenders.

### **2.7.3 Award criteria and assessment methodology**

2.7.3.1 Achieving value for money in public procurement remains focused on securing the best mix of quality and effectiveness to deliver the requirements of the contract, for the least outlay over the period of use of the goods, services or works bought.

The Head of Service, or their representative, must define award criteria and the assessment methodology appropriate to the procurement or commission to select the Most Advantageous Tenderer (**MAT**), which must be included in the Pre-Procurement Report and published in the Tender Notice.

The MAT will be the supplier which provides the best value for money which will not necessarily be the supplier offering the lowest cost. Therefore, in setting the procurement strategy, drafting the contract terms and evaluating tenders Officers should take a broad view of value or money over the whole life of the contract that includes, amongst other things, the improvement of social value.

Award criteria must be set to secure an outcome which achieves best value for money for the Council over the lifetime of the subject of the contract. The Client Officer, Commissioner, and Procuring Officer are advised to consider the desired outcome of a Commissioning / procurement exercise, in order to determine a suitable assessment methodology.

Officers have broad flexibility in deciding what the award criteria should contain. However, the award criteria must be:

1. clear;
2. measurable;
3. specific;
4. non-discriminatory;
5. related to the subject-matter of the contract;
6. comply with the rules on technical specifications;
7. a proportionate means of assessing tenders having regard to the nature, complexity and cost of the contract; and
8. Conditions of Participation.

The minimum number of award criteria is one. However, it is unlikely to be appropriate to have a single award criteria for most contracts and the number of criteria set must be proportionate to the contract.

Once the award criteria have been set, they must not be amended. However, if the procurement uses the Competitive Flexible Procedure, it is possible to refine the award criteria during the procurement process, but only if that possibility has been stated in the Tender Notice and only before inviting final tenders. This is most likely to be appropriate in multi-stage procurements where all of the detail is not known at the first stage (See further paragraph 2.4.2).

Where you set more than one award criteria, you must explain or summarise their relative importance in the Tender Notice. This should usually be done by assigning a percentage to each criterion (or where a specific percentage is not possible, such as in a Competitive Flexible Procedure where you intend to refine the award criteria, a range of percentages). However, you may use numerical ranking or descriptors (e.g. high, medium, low) where a percentage is not appropriate or possible (e.g. in a Competitive Flexible Procedure where you intend to refine the award criteria). Where only a summary is included in the Tender Notice, further details of the award criteria must be published in any associated tender documents.

An assessment methodology, or a summary of the methodology, must also be included in the Tender Notice. The assessment methodology must describe how tenders are to be assessed in accordance with the award criteria. This should include:

1. how each criterion will be assessed by reference to scores,
2. what scores are available to each criterion,
3. whether there are any minimum thresholds that need to be met in relation to any of the criteria, and
4. whether any of the award criteria are "pass/fail" such that a score of "fail" would result in a tender being disqualified.

Where only a summary is included in the Tender Notice, full details of the assessment methodology must be published in any associated tender documents.

#### 2.7.3.2 Where an interview or presentation stage is used, the assessment methodology should explain:

1. that there will be an interview or presentation stage,
2. the overall marks available for the interview or presentation,

(c) that all bidders invited to present or be interviewed will be informed, ahead of the presentation or interview, via Chest, of:

i. in the case of a Presentation, the theme that the bidder must present on. Such theme must be relevant to the subject matter of the procurement;

ii. in the case of an interview, how many questions will be asked and the marks available for each; and

iii. how long the supplier will have to present or how long the interview will last.

There are three broad procurement approaches available to Officers to determine the MAT:

**Cost / Quality/Social Value** – In this method 100% of the score available is divided across cost and quality.

The Commissioner/Officer must determine an appropriate split commensurate with available budget and desired quality levels (quality meaning, product quality, or service quality, or a combination of the two).

Examples could include:

1. 40% Cost, 50% Quality, 10% Social Value
2. 30% Cost, 60% Quality, 10% Social Value
3. 50% Cost, 35% Quality, 15% Social Value
4. Or any other derivative the Commissioner/Officer deems appropriate (subject to the Council’s policy that Social Value should generally comprise a minimum of 10% and a maximum of 15% of the evaluation criteria).

**Cost only** – In this method, evaluation is carried out on the basis of 100% Cost, where the bidder meets a pre-determined minimum standard of quality.

Only the bidder’s cost will be evaluated, i.e. an increased quality offering above the pre-determined minimum is not acknowledged as providing any additional value because the minimum specification is sufficient for the Council’s needs. Cost only assessment methodology is unlikely to be appropriate for most contracts other than "off the shelf" products.

**Quality only** - In this method, evaluation is carried out on the basis of 100% quality, where the Commissioner/Officer identifies and publishes a fixed cost that will be committed in full, irrespective of which bidder is awarded the contract. Only the bid quality will be evaluated with an award being made to the bidder demonstrating the highest quality submission for the budget that the Council intends to commit. Bids with costs exceeding the published budget would be regarded as non-compliant, and so not evaluated.

Evaluation criteria and respective weightings shall be predetermined and clearly indicated in the pre-procurement report and Tender Notice. In addition, the criteria shall be strictly observed at all times throughout the procurement exercise by any Officer involved in the evaluation process, so as not to expose the Council to risk of challenge through deviation from the published criteria and weightings.

Nevertheless, it is expected that in most procurements, Officers will use a mix of cost, quality and social value to determine the MAT as that is likely to be the best way to achieve value for money.

2.7.3.3 If the cost element of a tender evaluation involves a Cost Model, Basket of Goods, or Basket of Works, then you must consider whether to publish that detail within the procurement documentation before you commence the procurement exercise. Where it is considered inappropriate to publish this detail then you must consider lodging that detail with the Legal Team for the duration of the bidding period and only allowing bidders access to that detail once the bidding period has closed. Where a Cost Model, Basket of Goods or Basket of Works is employed in the Cost element of an evaluation, the content MUST NOTbe changed once bids are received.

A Best and Final Offer stage must not be used.

### **2.7.4 Technical specifications**

Technical specifications are technical requirements for the goods, services or works that are required. They could relate to quality, performance, safety, dimensions, the process and methods of the production, packaging, marking and labelling. They can be used to drive up quality and ensure value for money. They can also be used to ensure that the Council complies with its wider legal obligations such as the public sector equality duty or specific regulatory requirements.

Officers can use technical specifications when designing the:

1. requirements for the procurement;
2. Conditions of Participation; or
3. award criteria.

Officers must, however, also comply with other relevant requirements relating to the setting of requirements, Conditions of Participation or award criteria when doing so.

Officers should consider whether it is appropriate to set technical specifications when planning the procurement activity. In doing so, Officers should consult with the relevant subject matter experts within the Council to identify any applicable standards (whether legal requirements, policy requirements of best practice) to the goods, services or works being procured. Alternatively, if there is no such internal expertise, Officers should consider whether it is appropriate to undertake PEM to better identify and understand the relevant applicable standards.

There is no prescribed list of what technical specifications can include. Officers have flexibility in deciding what technical specifications should to set. However, the effect of the technical specifications set must not be to unnecessarily limit or distort competition, or to discriminate against supplier from a State party listed in Schedule 9 of the Procurement Act. Therefore, when setting technical specifications, Officers must adhere to the following requirements:

1. The effect of any technical specifications set must not unnecessarily narrow the pool of suppliers. This means that, if there is another way to set the specifications which increases the pool of potential suppliers without impacting on the standards required by the Council, then that alternative should be used.
2. Specifications should relate to the performance or function desired rather than to a particular design, licensing model or descriptions of characteristics. Officers should, where possible, refer to the outcome they seek to achieve, not the way in which it is achieved.
3. If standards are set Officers must refer to:
   * 1. Internationally-recognised standards if they exist.
     2. If there are no internationally-recognised standards, standards set by the British Standards Institution for use in the UK. However, the Procurement documents must provide that standards the Council considers to be equivalent will also be accepted.
     3. If no British Standards Institution standards exist, another appropriate UK standard. However, the Procurement documents must provide that standards the Council considers to be equivalent will also be accepted

Where standards are set, the Tender Notice must state whether the supplier needs to meet the relevant standard before the end of the tendering or participation period or contract award and how they can demonstrate it has been met (e.g. through relevant certification or other evidence).

Officers must not refer to particular trademarks, trade names, patents, designs, types, places of origin, producers or suppliers unless it would not be able to understand the requirements of the tender otherwise. Where such matters are referred to, the relevant Procurement documentation must provide that equivalent standards will also be accepted.

Officers must also ensure that all tender documents comply with this paragraph including in relation to technical specifications which are not contained in the requirements, Conditions of Participation or award criteria.

## 2.8 Closing Date for Receipt of Tenders

Tenders received after the specified close date and time for submission of tenders should not be considered, and this should be stated in the Tender Notice.

## 2.9 Opening sealed tenders

In respect of tender submissions received electronically, ONLY a designated verifying Officer within the Chest will have permission to open online sealed tender submissions.

## 2.10 Exclusion and debarment

Under the Procurement Act, suppliers may, or in some circumstances must, be excluded from participating in procurements through their inclusion on the Debarment List or if any of the grounds for exclusion apply. A flowchart explaining the procedure to be followed in deciding whether to exclude a supplier from a procurement is set out in Appendix 17.

Officers must exclude suppliers where they are automatically debarred or, in the reasonable opinion of Officers, they should be excluded.

When procuring or awarding a contract, Officers must check the Cabinet Office's Debarment List and the supplier's exclusion grounds information contained on the CDP to determine whether the supplier should be excluded (i) before allowing a supplier to participate in the procurement and (ii) immediately before contract award to determine whether a supplier or a "connected person" (i.e. someone with significant control over the supplier, a director or shadow director of the supplier or a parent, subsidiary or predecessor of the supplier) and the grounds for their being listed.

## 2.11 Evaluation of Tenders

### **2.11.1 Evaluation Panel**

#### 2.11.1.1 You must establish an Evaluation Panel before the issue of the Tender Notice and associated documents to ensure that the Evaluation Panel members are engaged with the process and understand the evaluation criteria and weightings.

#### 2.11.1.2 Evaluation Panels must include representation from the client department/key Stakeholders and must consist of a minimum of two Officers or external evaluators in addition to any Procurement Officer. Where technical specifications are set, at least one of the members should have relevant expertise to assist with the evaluation of those technical requirements.

#### 2.11.1.3 Where an interview or presentation session has been planned into an evaluation, the Evaluation Panel members must be consistent with the panel members that have undertaken other elements of the evaluation. Ahead of any interview/presentation session, Evaluation Panel members must ensure that they are familiar with the content of the tender submissions of the bidders invited to that session. All interview/presentation sessions must be attended by a Procurement Officer to ensure the evaluation approach is complied with.

#### 2.11.1.4 All bids must be scored consistently against the award criteria and assessment methodology set out in the Tender Notice. Evaluation Panel members must not employ any award criteria or assessment methodology which differs from that published in the Tender Notice. For example, Evaluation Panel members must not introduce half marks where these do not exist within the published scoring scheme, and for which there is no published narrative.

#### 2.11.1.5 Where an evaluation contains an interview/presentation stage involving shortlisted bidders, quality scores attributed up to that point must be moderated before deciding to invite a shortlist of bidders to interview/presentation to ensure the decision is based on correct and accurate scoring. Comprehensive contemporaneous notes of all interview/presentation sessions must be recorded and fed into the Evaluation Matrix as these will be required to support the evaluation process and enable feedback to be given to unsuccessful bidders.

#### 2.11.1.6 In considering the pricing element of Tenderers' bids, the Evaluation Panel must give investigate any bids which include prices that appear to be abnormally low. An abnormally low price is one which raises doubts over the Tenderer's ability to perform the contract at the price proposed. If the Evaluation Panel considers a pricing offer to be abnormally low, it may be disregarded. However, before a bid can be disregarded for comprising an abnormally low tender, the Evaluation Panel must first notify the Tenderer of their concern and invite the Tenderer to demonstrate how it will be able to perform the contract for the price proposed. The Evaluation Panel must consider the Tenderer's response and decided whether they are satisfied that the Tenderer will be able to perform the contract for the price offered: if so, the Tenderer may not be disregarded, if not, the Tenderer may (but not must) be disregarded. A written record of the reasons for the decision taken must be kept.

#### 2.11.1.7 All scores and notes made by the Evaluation Panel must be recorded in writing contemporaneously and must explain why each evaluator considers each score awarded is justified with reference to the award criteria and assessment methodology.

### **2.11.2 Moderation**

#### 2.11.2.1 Following evaluation, the Evaluation Panel must meet to discuss their individual scores in the presence of a moderator. The Evaluation Panel must reach agreement on a moderated panel score and the reasons justifying the agreed score with reference to the award criteria and assessment methodology.

#### 2.11.2.2 The agreed moderated scores and justifying comments must be recorded in the Evaluation Matrix accompanying the procurement.

### **2.11.3 Post Tender Clarification**

2.11.3.1 Post Tender Clarifications open the Council up to legal risk as they could result in a breach of the Procurement Act Objectives, in particular equal treatment. Therefore, unless the Tender Notice makes express provision to seek clarification in relation to a specific element of a bid, a Post Tender Clarification should be sought only in exceptional circumstances.

Under these Contracts Procedure Rules, a Post Tender Clarification may only be sought where there is an error or ambiguity in a tender which is obvious to Officers and is material to the outcome of the competition.

If you consider there to be such an error or ambiguity, you must consult with the relevant Procurement Officer, and must also be satisfied that seeking the Clarification in accordance with the Procurement Act Objectives and you must record your reason for asking the question.

You must not use a Post Tender Clarification to allow a bidder to submit some element of their submission which has been omitted or to materially amend their bid such that they would, in reality, be making a substantial change to their bid or submitting a new tender.

#### 2.11.3.2 All clarification questions and responses must be recorded and any amended scores which result from clarification must be updated in the assessment methodology.

### **2.11.4 Award of Contracts**

Once the MAT has been selected, Officers must check that the MAT is not an excluded or excludable supplier. Once Officers are satisfied that the MAT is eligible to be awarded the contract, the Officer must seek approval from by the Officer with appropriate delegated authority, as authorised in any Pre-Procurement Report, to award the contract.

Once approval has been obtained a Contract Award Notice containing the information set out in Appendix 11 – Contract Award Notice content must be sent to all bidders together with an "assessment summary" (except in the case of a Direct Award). The assessment summary must, amongst other things, provide written feedback to all unsuccessful bidders explaining why their bid achieved the score that it did on each question and sub-question with reference to the award criteria and assessment methodology. The assessment summary must also provide a copy of the successful bidder's assessment summary (redacted for confidentiality where required).

For Direct Awards, a Transparency Notice must be published containing the information set out in Appendix 10 – Transparency Notice content. As there are no other bidders in a Direct Award, an Assessment Notice is not required.

### **2.11.5 Acceptance of tenders**

It shall be clearly stated in all tender / quotation documents that the Council:

* reserves the right to accept a tender / quotation other than the MAT or cheapest
* reserves the right to decline to accept any tender / quotation
* reservices the right not to award a contract
* will not be liable for any costs or expenses incurred by Tenderers

during the procurement process.

Where a bidder’s tender/quotation is not accepted then a formal written record must be made detailing the reason/s why.

Where a bidder's tender is determined not to comply with the requirements of the Tender Notice (i.e. a non-compliant bid), their bid should be excluded from the procurement unless there are exceptional circumstances justifying a different approach. If an Officer considers that there may be exceptional circumstances, they must seek approval from Chief Officer Level before deciding not to exclude the bidder. The Chief Officer must not give such approval unless they have first obtained legal advice.

**Mandatory Standstill Period**

Under the Procurement Act, in most cases following a Contract Award Notice being published, an eight-working day Mandatory Standstill Period must be observed before the contract can be entered into.

The purpose of the standstill period is to inform all bidders of the outcome of the procurement exercise, and, if they think that the contract award decision is wrong, to provide bidders with an opportunity to challenge the decision before contract has been signed and sealed.

The applicable legislation allows bidders to question the procurement exercise and assessment process during the Mandatory Standstill Period and commence a formal legal challenge at court. If the legal challenge is submitted during the Mandatory Standstill Period, the Council will automatically be prevented from entering into the contract and Officers should not sign or seal the contract until confirmation is received from the Officer. If a legal challenge is submitted after the Mandatory Standstill Period has come to an end, the Council will not automatically be prevented from signing and sealing the contract and so if no challenge has been brought once the Mandatory Standstill period has concluded Officers may sign and seal the contract.

If Officers wish to extend the mandatory standstill period to provide time to engage in correspondence with a bidder, the Contract Award Notice or Transparency Notice must be re-published including details of the extended standstill period and all affected suppliers must be informed of the extension directly through the Chest. Any decision to extend the standstill period must be taken in consultation with the Council's Legal Team.

There may be circumstances where a legal challenge is brought after the Mandatory Standstill Period has ended. Where such a challenge has been brought and a contract has not yet been signed and sealed, Officers should seek urgent advice from the Council's Legal Team in accordance with the procedure set out below before signing and sealing the contract.

A Mandatory Standstill Period does not need to be observed for the following types of contracts:

1. Directly awarded contracts in extreme or unavoidable urgency
2. Directly awarded contracts to protect life
3. Private utility contracts switched to a Direct Award
4. Contracts awarded under a Framework
5. Contracts awarded by reference to a Dynamic Market
6. Light touch contracts
7. Service user choice contracts

However, voluntary standstill periods may nevertheless be observed, particularly for contracts of greater value or which are considered by the Procurement Officer as more likely to be challenged. If you consider that a voluntary standstill period should be observed where one is not required, you should speak to the Council’s Legal Team.

If in any doubt as to the application of the Mandatory Standstill Period then the Corporate Procurement Unit or Legal Team must be contacted for guidance.

IMPORTANTLY:

Officers must be mindful of a challenge to an award decision and the impact that they can have, if legal proceedings are brought, on the Council including in relation to time and cost that the Council and its Officers will need to expend on the litigation and the potential for reputational damage.

Where an informal challenge to an award decision is received, Officers must at the very least ensure that:

1. The circumstances surrounding the challenge are assessed and considered and the relevant decision is quality checked.
2. Advice must be sought from the Council’s Legal Team
3. Communication with the challenging bidder/s or their representative/s must only be carried out in writing via the Chest. Verbal communication with challenging bidder/s or their representative/s (including face to face debrief meetings) must not be entertained. If verbal feedback is sought by the challenging bidder/s, the Officer must decline to give such feedback and ask the challenging bidder/s to put their query in writing.
4. Written responses must be quality checked for accuracy and content and signed off by the Council's Legal Team.

### **2.11.6** Tenders may be accepted by the relevant Officer to whom delegated authority to approve a contract award was sought in a related Pre-Procurement Report.

### **2.11.7** There may be instances where, due to the dynamics of a marketplace, or the specifics of the Council’s requirements, only one tender bid is received. The Council is able to consider a single bid however Officers may naturally be concerned as to maintaining a competitive position for the Council where there is an apparent lack of competition within a marketplace, except where a Direct Award is appropriate and permitted, as under 2.5.1 above.

### Any subsequent negotiation when a single tender is received must be carried out in writing via the CDP.

### **2.11.8** Where an Officer proposes to reject a tender despite meeting the stated criteria, the Officer must seek the approval of the Head of Service following advice from the Procurement Team.

### **2.11.9** A Contract Award Notice must be published including the information set out in Appendix 11 – Contract Award Notice content and within 30 days of entering into a contract, a Contract Details Notice must be published including the information set out in Appendix 12 – Contract Details Notice content. Where the contract has an estimated value of more than £5 million inclusive of VAT, a copy of the contract must be published within 90 days of entering into the contract.

## 2.12 Transfer of Undertakings (Protection of Employment) (**TUPE**) Regulations 2006 (the **TUPE Regulations**)

**2.12.1** The TUPE Regulations apply to a business transfer but more regularly within the Authority it applies to service provision changes. This means that Officers/Commissioners Commissioning / procuring Services must be aware of the impact of the TUPE Regulations. The TUPE Regulations impose a number of obligations on relevant parties and a failure to address the demands of TUPE could result in significant penalties, decisions and awards being made against the Authority which we clearly want to avoid. An outsourcing will likely carry TUPE implications and even if TUPE is deemed not to apply, the potential implications must be considered as early as possible.

Another purpose of the TUPE Regulations is to ensure that in a situation where contractual delivery of a service is moving from one provider to another, i.e., by way of a procurement exercise, then affected workers’ employment rights and entitlements are protected. This can include pension rights. In such circumstances the Authority may be deemed to be the client however the Council must be aware of the potential implications and requirements of the legislation and acknowledge these appropriately within Tender/outsourcing documentation and contracts.

The Council’s Procurement and Legal Teams and HR must be consulted in order to fully understand any potential impact on a procurement in order to protect the Council’s position and address TUPE in writing, where appropriate.

Additionally, clauses within any contract where TUPE is likely to apply must be included relating to ensuring that the Council can request staffing information at any point throughout the duration of the contract.

### **2.12.2** Pensions issues when transferring out staff.

This is a high-level summary of the pensions issues that the Council must consider when looking to outsource a function where that outsource may potentially involve a TUPE transfer of staff (a **relevant transfer**)and where those staff are either active members of the Local Government Pension Scheme (**LGPS**) or have a right to join the LGPS but have not done so.

Best value authorities in England are required to include provision for pension protection in their outsourcing agreements as required by the Best Value Authorities Staff Transfers (Pensions) Direction 2007. There is an obligation placed upon employers to ensure that current LGPS members retain the right to continue to pay into the LGPS, and eligible members retain the right to join the LGPS or alternatively, that such employees are provided with access to an occupational pension scheme which is certified as a broadly comparable to the LGPS.

This is very likely to be an issue where a service of function is outsourced for the first time from the Council to a new service provider (a first-generation transfer).

It may also be an issue where there is a subsequent transfer from one service provider to another (a second, third, or subsequent generation transfer). A second generation transfer by the Council to another service provider should transfer the obligations, but liabilities may remain for the Council.

For the avoidance of doubt this issue will only arise where both of the following elements are present:

1. employees are in line to transfer from the Council or from an existing service provider (to whom they have transferred from the Council previously) to a new service provider; and
2. some or all of those employees are either current LGPS members or are eligible to join LGPS, or are members of a broadly comparable scheme.

If the above elements are present, you should take advice from the Council's HR and / or Legal Teams in relation to these issues before you commence the procurement process as they will need to be dealt with in either the A RFQ or the ITT.

There are various obligations and implications that must be considered and these can be addressed in part in the contractual documentation.

New Contractors will need to consider, amongst other things, the following:

1. the fact that if they select to participate in the LGPS, they are likely to be required to enter into an admission agreement whereby the new Contractor becomes an admitted body (a type of Scheme Employer) in the LGPS. The other parties to this agreement must be the Administering Authority (Wirral Borough Council for the Merseyside Pension Fund) and the Scheme Employer (the Council);
2. the fact that they will need to know what obligations and responsibilities are placed upon them when they become an admitted body. They must know this before they submit a proposal as this can have significant costs and implications for them; and
3. the relevant information for the staff transferring, including what pension arrangements they are entitled to under their contracts of employment and / or previous outsourcing arrangements. The quality of this data is an important factor in pricing and the ability for competitive leverage.

For example:

1. they will need to know the level of employer pension contributions they will be required to pay, and this will depend on the demographic of the transferring members and the number
2. there may be the requirement for a guarantee or bond to be put in place to cover certain associated risks to the LGPS; and
3. there is likely to be a requirement to obtain an actuarial valuation in relation to the affected employees and they will need to budget for this and build this into their timeframes.

Alternatively, the Contractor may provide access to a broadly comparable pension scheme with similar benefits to the LGPS. If this option is selected, it will need to be certified by the Government Actuary's Department.

The choice of becoming an admitted body under the LGPS or offering a broadly comparable pension scheme is the choice of the Contractor. It will be important to ascertain what the preferred route is in relation to pensions as early as possible to take the relevant steps.

It is unwise to assume that the potential new Contractors understand the risks and it is worthwhile verifying that this is the case. It is not likely to be in the Council's best interests or those of either the new Contractor or the affected employees to rely on the ignorance of a potential Contractor. It is important that both parties have understood the risks involved so that no unexpected issues

arise during, or at the end of, the contract term.

In addition, should any other public sector pension schemes be relevant (including but not limited to the NHS Pension Scheme – see further below) advice should be taken from the Council's HR and / or the Council's Legal Teams in relation to these issues before the you commence the procurement process.

Similar principles apply if an employee is a member of, or eligible to be a member of, the NHS Pension Scheme, as is the case for the LGPS. However, the process and ability of Contractors to participate in the NHS Pension Scheme is different than in relation to the LGPS and is not as commonly followed or straightforward. Therefore, time and prior consideration should be given where employees are members of, or eligible to be members of, the NHS Pension Scheme and the additional complexities of the NHS Pension Scheme must be taken into account. Contractors may be more likely to use a broadly comparable pension scheme in these circumstances. Officers must consult the Council's Legal Team if this issue arises.

## 2.13 Terminating the Procurement

### **2.13.1** There may be circumstances where you decide it is either necessary or desirable not to award a contract and instead to terminate the procurement. This could be for a number of reasons including that the Council's business needs have changed meaning you no longer need the contract or you identify a flaw in the procurement document or process.

### **2.13.2** Terminating a procurement is a significant decision. It means that Council will not be awarding a contract which it has previously decided it needed to award, potentially in order to perform its core functions. The time and expense incurred by the Council in preparing for and conducting the procurement may be wasted if the procurement is terminated. Further, Tenderers are likely to be aggrieved by the decision and may seek to challenge it to seek damages, particularly if the decision to terminate is taken at the end of the procurement process. Therefore, the process needs to be carefully handled and it is vital that any decision is clearly justified. This section applies to all decisions to terminate a regulated procurement.

### **2.13.2.1** You must first check the tender documents to ensure that provision was made, in accordance with paragraph 2.11.5, reserving the right to the Council not to award the contract. If no such discretion was provided in the tender documents, you must consult the Legal Team for advice on the options available to you before taking any further decisions in respect of the procurement.

### **2.13.2.2** If the Council reserved the right not to award the contract, you must seek approval from the relevant Chief Officer before the procurement may be terminated. When seeking approval you must set out in writing:

1. The provisions of the tender documents which entitle the Council not to award the contract.
2. The current status of the procurement.
3. The reasons why you consider the procurement should be terminated and any evidence or advice received which supports that decision.
4. The reasons why alternatives to terminating the procurement (e.g. rescoring) are not viable or satisfactory.
5. Whether there have been any indications that a Tenderer might challenge the process or decision to terminate (e.g. correspondence received via the Council's procurement portal).
6. What you plan to do following the termination of the procurement – i.e. whether you plan to abandon the procurement altogether or to rerun it.

The relevant Chief Officer must not approve a decision to terminate the procurement unless they have first consulted with the Legal Team.

2.13.2.3 Once the relevant Chief Officer’s approval has been obtained, a written record of the approved reasons must be made and kept.

2.13.2.4 If the decision to terminate the procurement is taken following the publication of a Transparency Notice, a Tender Notice or a Contract Award Notice, a Procurement Termination Notice must be published. The Procurement Termination Notice must be published on the CDP as soon as possible after the decision is taken. The Procurement Termination Notice must include the details set out in Appendix 8. The Procurement Termination Notice should also include a brief statement of the reasons why the procurement has been terminated which reflect the approved reasons for the decision kept by the Council.

2.13.2.5 Where the decision to terminate relates only to one or more lots of a procurement that has been divided into lots (i.e. some lots will progress to contract award, but some lots will not), the decision must be communicated by completing the "ceased lot information" in the Contract Award Notice.

2.13.2.6 Where the decision to terminate relates to:

1. a selection process under a framework under which a contract will not be awarded;
2. a process to establish a dynamic market that has been terminated; or
3. a procurement the Council has publicised (e.g. following a Planned Procurement Notice, Preliminary Market Engagement Notice or Pipeline Notice) but which will not be commenced by publishing a Tender Notice or Transparency Notice,

A Procurement Termination Notice is not mandatory, however, the Council considers that a Procurement Termination Notice should nevertheless be published in such circumstances in accordance with Procurement Objectives. The Council therefore expects officers to publish Procurement Termination Notices (modified as necessary to reflect the particular circumstances) for all such termination decisions.

# ****3: CONTRACTS UP TO BUT NOT EXCEEDING THE SPEND THRESHOLDS****

## 3.1 Competition Requirements

**3.1.1** This part applies to procurement activity where the value of the contract is more than £30,000 (inclusive of VAT) but less than the relevant Procurement Act threshold (**Below-threshold Contracts**).

### **3.1.2** As fewer statutory obligations apply to Below-threshold Contracts than to covered procurements, the Council has considerable flexibility in considering how to procure goods, services and works in Below-threshold Contracts and many approaches can be taken and a competitive process need not be undertaken. However, in order to achieve best value for money, Officers must undertake some form of competition for Below-threshold Contracts but open competition (in the sense that anyone from the market can bid) need not be undertaken in every circumstance. Further, Officers can consider restricting the contract opportunity to suppliers based within the Council's administrative area. However, in considering what approach to take, Officers must have regard to the National Procurement Policy Statement.

In order to determine a suitable procurement approach to a specific contract, Officers may first choose to carry out non-committal soft market testing in order appreciate the level of interest, and numbers of providers that exist in a particular market. This should be done in a way which removes or reduces barriers to small and medium-sized enterprises participating in any competition for the contract.

**3.1.3** The approach Officers are required to follow depends on the value of the contract to be procured. Where the value of the contract (including any extensions) is:

3.1.3.1 less than £30,000 (inclusive of VAT): the Client Officer must obtain at least two written quotations before selecting a supplier. Copies of those quotations must be stored by the Central Procurement Team for audit purposes.

3.1.3.2 Between £30,000 (inclusive of VAT) and the applicable Spend Threshold (a **Regulated Below-threshold Contract**): a procurement risk assessment must be submitted to the Procurement Team, which will determine the appropriate route to market. As a minimum, at least three suppliers should be invited to quote or tender for the opportunity.

* + - 1. For Regulated Below-threshold Contracts the following additional requirements apply:

1. Where the contract opportunity is open only to particular or pre-selected suppliers, the publicity on the CDP must clearly state that the contract is only open to those suppliers to submit a tender.
2. Where the contract opportunity is to be subject to open competition, a Below-threshold Tender Notice setting out the information in Appendix 6, Table 7: **Tender Notices: Below-threshold notices** must be published on the CDP and the opportunity must not be advertised in any way before the Tender Notice is published. Any time limits set by a Below-threshold Procurement Notice must be reasonable in all the circumstances and apply equally to all suppliers.
3. Where the contract is to be awarded other than through a Framework, Officers must consider whether any barriers to small and medium-sized enterprises competing for the contract can be removed or reduced before publishing the opportunity.
4. Conditions of Participation must not be set in order to narrow a marketplace in a competitive procedure unless the value of the contract is £214,904 (inclusive of VAT) or more.
5. As soon as practicable after the contract has been awarded, a Contract Details Notice setting out the information in Appendix 12 – Contract Details Notice content. Reasonably practicable would generally be within 90 days of the contract being entered into.

3.1.3.4 In the case of Below-threshold Contracts relating to commercial activities, as defined within the Council’s Financial Procedure Rules, the appropriate shareholder meeting or officer board must be consulted and will provide guidance on the appropriate procurement processes to be undertaken. The appropriate shareholder meeting or officer board will also oversee the procurement as it progresses.

## 3.2 Evaluation of Quotations

### **3.2.1** Whatever procedure is followed, the Evaluation and Award of Below-threshold contracts must be undertaken fairly.

### **3.2.2** Award criteria

The Head of Service, or their representative, must define how contracts are to be awarded in accordance with paragraph 2.7.3 above.

Where the Below-threshold Contract is an Award under Framework, the provisions relating to the award of call-offs from that Framework must be complied with.

#### Quotations or tenders shall be evaluated and awarded in accordance with the criteria and weightings set out in the procurement documentation or Below-threshold Procurement Notice and must not be changed at any time during the process.

#### 3.2.2.2 The award criteria must provide that quotations or tenders will be evaluated and awarded on the basis of the value for money they offer to the Council using one of the following options:

1. Cost and Quality - in a ratio reflecting the risk and value of the contract
2. Lowest Cost - where a detailed requirement specification is met as determined and documented in advance of quotations being invited
3. Highest Quality – where the budget that the Council is willing to commit is published to bidders and bidders are assessed on the quality that they can offer for that budget

#### 3.2.2.3 Should the cost element of a quotation evaluation involve a Cost Model, Basket of Goods, or Basket of Works, then that detail must be included in the Procurement document or Below-Threshold Procurement Notice.

#### 3.2.2.4 Where a Cost Model, Basket of Goods or Basket of Works is employed in the cost element of an evaluation, the content MUST NOT be changed once bids are received.

#### 3.2.2.5 Interviews/presentations

Where an interview/presentation stage forms part of the evaluation, all suppliers must be given the same information and time to prepare in advance of the interview/presentation.

In particular, where a presentation is required, all suppliers must be informed, via the Chest, of:

1. The subject matter, which must be relevant to the subject of the procurement, that the supplier must present on; and
2. How long the supplier will have to present for.

### **3.2.3 Evaluation Panel**

#### 3.2.3.1 Evaluation Panels must be established prior to the issue of the Procurement documents or Below-Threshold Procurement Notice, to ensure that they are engaged with the process and understand the evaluation criteria and weightings.

#### 3.2.3.2 Evaluation Panels for procurements based on a mix of cost and quality must include representation from the client department or key Stakeholders, and must consist of a minimum of two Officers. Where the basis of evaluation is cost only then the Procurement Officer can be one of the evaluators.

#### 3.2.3.3 Where an interview/presentation session has been planned as part of the evaluation, the Evaluation Panel members must be the same as the Evaluation Panel members that have undertaken other elements of the evaluation. Ahead of any interview/presentation session, Evaluation Panel members must ensure that they are familiar with the content of the quotations of the bidders invited to that session.

### **3.2.4 Evaluation Matrix**

#### 3.2.4.1 The Evaluation Matrix will consist of defined evaluation criteria and weightings. Marks and scores must be brought through from the quotation document to reflect what is material to the award of a particular contract.

#### 3.2.4.2 Criteria shall have a number of marks allocated to signify to bidders the relative importance of each criterion.

#### 3.2.4.3 Scores – All bids must be scored consistently against a scoring model which must be included in the quotation document.

#### 3.2.4.4 All scores and notes made by the Evaluation Panel must be recorded in writing and used for reference if further moderation is required. Individual Panel Member’s scores and associated notes along with moderated Evaluation Panel scores and final justifying notes must be uploaded to the CDP or where a tender is taking place outside of the Chest to align with the relevant Framework approach, must be held in a secure storage location.

Comprehensive notes of all interview/presentation sessions must be recorded and fed into the Evaluation Matrix as these will be required to support the scoring allocated, and enable feedback to be given to unsuccessful bidders

3.2.4.5 Paragraph 3.2.5 of these Contracts Procedure Rules advises on the need for moderation, and this is essentially to manage out subjectivity in an evaluation process.

### **3.2.5** Moderation

3.2.5.1 The Evaluation Panel will discuss their individual scores and must reach agreement on a moderated panel score and justifying comments.

Where an evaluation contains an interview/presentation stage then quality scores attributed up to that point must be moderated in order to ensure that any decision taken to invite a shortlist of bidders to interview/presentation is based on correct and accurate scoring.

3.2.5.2 Any moderated scores and applicable justifying comments must be recorded in the Evaluation Matrix accompanying the procurement.

3.2.5.3 All notes may be the subject of information requests including from the Public Procurement Review Service (a Cabinet Office body which provides a route for suppliers to raise concerns about public procurement practice). It is crucial that accurate notes justifying awarded scores are maintained throughout and relate solely to the relevant award criteria.

### **3.2.6** Post Quotation Clarification

#### 3.2.6.1 Post Quotation Clarification is to be requested and returned via the Chest, or where a tender is taking place outside of the Chest to align with the relevant Framework approach, communication should be shared by email and held in a secure storage location.

#### 3.2.6.2 Post Quotation Clarification may only be sought in the same circumstances as paragraph 2.12 above.

### **3.2.7** Best and Final Offer (**BAFO**)

#### 3.2.7.1 For Below-threshold Contracts which are not call-offs under a Framework, Officers may use a BAFO stage within a procurement exercise.

#### 3.2.7.2 The purpose of the BAFO stage is to enable the Officer to afford an opportunity to all bidders in a procurement exercise, that have not failed any pass/fail element of the evaluation, a final opportunity to improve their overall offer to the Council. This should enable the Council to seek best value.

Where a BAFO stage is to be used, this should be set out in the Procurement documentation or the Below-threshold Procurement Notice.

#### 3.2.7.3 The BAFO stage must be conducted through the Chest, it must be provided to all ‘compliant’ bidders equally (i.e. those bidders that have passed all pass/fail elements of the evaluation), and must set a deadline for submission of BAFO’s, to be returned via the Chest.

#### 3.2.7.4 Upon receipt of any number of BAFO’s the Officer will examine the contents of each BAFO.

#### 3.2.7.5 BAFOs will likely result in suppliers improving one or more elements of their ‘offer’ i.e. it may contain, for example;

* A lower cost
* An improvement in the quality offering
* A value added element (such as an extended warranty on supplies), or
* any combination of these.

3.2.7.6 Where BAFOs are submitted, the bids must be re-evaluated in accordance with the award criteria and Evaluation Matrix.

## 3.3 Award of Contracts

Unsuccessful suppliers must be given a proportionate level of feedback explaining why they were not successful.

## 3.4 Terminating a Below-threshold Contract

The procedure set out at paragraph 2.13 should be followed if Below-threshold Contracts are to be terminated. A Procurement Termination Notice is not mandatory but the Council expects such a notice, or at least similar information, to be published for all decisions to terminate a Below-threshold Contract.

# ****4: APPROVAL TO AWARD CONTRACTS****

|  |  |
| --- | --- |
| **Contract Value** | **Level of approval required** |
| £1 to £29,999 | Client Officer who will ensure that the Budget Holder is aware of the award |
| £30,000 or more, but less than the Spend Threshold for the Supply of Goods and Services (i.e. £30,000-£214,903 as at time of drafting). | The approval shall be articulated in a Chief Officer Report approved by the Head of Service |
| 1. For goods and services contracts, the Spend Threshold for the Supply of Goods and Services to 3x the Spend Threshold for the Supply of Goods or Servies (i.e. between £214,904-£644,712 as at time of drafting); OR 2. For works contracts, the Spend Threshold for the Supply of Goods and Services to the Spend Threshold for Works (i.e. £214,904-£5,372,608 as at time of drafting)) | The approval shall be approved by the relevant Cabinet Member in consultation with the relevant Head of Service. |
| 1. For goods and services contracts, more than 3x the Spend Threshold for the Supply of Goods or Services (i.e. over £644,712 as at time of drafting); OR 2. For works contracts, the Spend Threshold for Works or more (i.e. £5,372,609 or more as at time of drafting | Approval shall be articulated in a Cabinet Report approved by Cabinet.  \* Where defined in the pre-procurement report or in a Cabinet delegation a Chief Officer Report can be used to articulate the award, with approval by the Head of Service in consultation with the relevant Cabinet member and where appropriate with the Executive Director of Corporate Services and Commercial. |

## Award under Framework

Where an Award under Framework is being undertaken, approval shall be subject to the same provisions of the above table.

# ****APPENDICES****

## Appendix 1 - What level of procurement activity is required in respect of contract value?

|  |  |  |  |
| --- | --- | --- | --- |
| **Value** | **£1 - £29,999** | **£30,000 or more but less than the relevant Spend Threshold** | **The relevant Spend Threshold or more** |
| Sourcing requirements | 2 written quotes | Minimum 3 quotes or tender advertised | Open to the marketplace via the CDP |
| Responsibility to lead sourcing activities | Client Officer | Procurement | Procurement |
| Sourcing document | Not required | RFQ | Tender Notice |

Where a Procurement begins but the Council subsequently decides not to enter into a contract, a Procurement Termination notice must be published, including the content proscribed at Appendix 9 – Procurement Termination Notice content.

## Appendix 2 – Glossary of Terms

**Advanced Request for Quotation (ARFQ)**

Initiating step of a procurement process in which providers are invited to submit quotations for the supply of specific and clearly defined supplies, services, or works during a specified timeframe, the value of which falls below the applicable Spend Threshold.

**Agent**

Where the Council has authority to enter into contracts either jointly with or on behalf of another contracting authority (for instance acting under Part VI of the Local Government Act 1972).

**Annual Revenue Budget**

The Council's approved annual budget for the current financial year.

**Assignment**

The transfer of the benefits and obligations of a contract from one Contractor to another.

**BAFO** and **Best and Final Offer**

The step of inviting providers that have submitted compliant proposals within a procurement process to refine their offering, either by an improvement of the cost, the quality, value added benefits, or a combination of these factors.

Whilst the use of a BAFO step is permitted and encouraged in procurement exercises with a value below the Spend Threshold, it is forbidden in the majority of over Spend Threshold exercises.

**Capital Programme**

The Council's approved plan for capital expenditure on assets, such as construction, maintenance and improvements. The Council regularly publishes its Capital Programme, which is available online.

**Central Purchasing Body**

A Central Purchasing Body is a contracting authority that:

* acquires supplies or services intended for one or more contracting authorities, or
* awards public contracts for works, supplies or services intended for one or more Contracting Authorities; or

concludes Framework Agreements for works, supplies or services intended for one or more contracting authorities for one or more Contracting Authorities

**Commercial Activities**

Relates solely to activities meeting the definition of “commercial activities” within the

Council’s Financial Procedure Rules

**Client Officer**

The Officer who is responsible for defining the requirements and approvals required for any tender exercise.

**Commissioning**

Commissioning is the process by which we decide how to use and prioritise the total resources available in order to improve outcomes for citizens in the most efficient, effective and sustainable way. The process covers the entire cycle of assessing the needs of people, designing and securing a cost-effective approach in order to deliver better outcomes, and monitoring performance to determine whether the approach commissioned is fit for purpose, or needs to be replaced with a more effective redesigned approach. This may include the procurement of goods, works or services. A **Commissioner** is the person(s) responsible for carrying out Commissioning activities.

**Concession contracts**

A concession contract is a contract for services or works for a pecuniary interest where:

1. the supplier will gain the right to derive revenue from the services or work as at least part of its consideration; and
2. there is a transfer of real operating risk from the authority to the supplier.

**Contracting Authority**

The State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law and includes central government authorities.

**Contracting Authority Information**

This is the information published by Contracting Authorities on the CDP and in notices. This includes:

* The name of the contracting authority
  + Where there is a joint procurement, the name of each contracting authority, and the name of the contracting authority that is the lead authority;
* A contact postal and email address for (each) contracting authority
* The unique identifier for (each) contracting authority
* For any person carrying out the procurement, or part of the procurement, on behalf of one or more contracting authorities:
  + The person's name
  + The person's contact postal and email address
  + The person's unique identifier
  + A summary of the person's role
* The name, and the contact postal and email addresses of the person who should be contacted in the event of an enquiry about the notice.

**Contractor**

Any person or organisation awarded a contract. This includes any consultant appointed by the Council to provide advice on any project.

**Contract Payment Profile Retention**

Amounts are deducted from payments due to the Contractor (retention) over the course of the contract, the value of such deductions may be dependent on the achievement of performance milestones; at the end of the contract, any such retentions are released to the Contractor on satisfactory completion (including any relevant defects period).

**Core Supplier Information**

This is the information published by suppliers on the CDP which must be kept up to date. This includes:

* name;
* unique identifier;
* registered or principal office address;
* contact postal and email addresses;
* nature of establishment (e.g., private company limited by shares) and the laws by which it is governed (e.g., England and Wales);
* VAT registration number;
* relevant qualification or trade assurance;
* small and medium-sized enterprise status (or similar);
* economic and financial standing information, including copies of accounts;
* connected person information, including persons with significant control over the company; and
* any exclusion grounds which apply to the supplier (for example, corporate manslaughter convictions).

**Deposited Cash Bond**

A payment made by a Contractor ‘up-front’ (or deducted from a first payment due) that is held by the Council as security until the contract is satisfactorily complete

**Dynamic Markets**

A method for commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the Contracting Authority and is open throughout its duration to any Contractor which satisfies the selection criteria. Suppliers may also apply to join Dynamic Markets.

**E-Procurement**

A method of carrying out a procurement exercise using an electronic internet based tool such as the Chest.

**Economic Operator**

Any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market.

**Establishment Control Panel**

A body within the Council with responsibility for and oversight of decision making and governance on staffing establishment changes at a strategic level.

**Evaluation Matrix**

A Microsoft Excel based document which sets out the evaluation criteria and weightings detailed within a Procurement document and against which bidders’ submissions and scores are recorded.

**Exclusion and debarment**

The Cabinet Office maintains two lists of suppliers excluded from procurements. Suppliers included on the mandatory Debarment List must be excluded from all procurement for a specified period of time. Suppliers included on the discretionary Debarment List may be excluded from particular procurements by public authorities without that public authority having to offer the supplier an opportunity to make representations, or to notify the supplier of the reason for their exclusion.

**Financial Procedure Rules**

The Council's approved rules and procedures for managing its financial affairs, applying to relevant decisions made by every Member and Officer of the Council and anyone acting on its behalf.

**Framework Agreement**

An agreement which establishes the terms under which a Contractor will enter into contracts with the Contracting Authority throughout the duration of the Framework. A Contractor may be awarded a contract which extends beyond the termination of the Framework, provided the contract is entered into before the Framework expires and it is proportionate. Contracts awarded at the end of Framework that have a disproportionate duration may amount to an abuse of the Procurement Act.

**Grant Funding**

A financial award made for a specific purposes but without condition of repayment.

**Invitation to Tender (ITT)**

Initiating step of a competitive tendering process in which providers are invited to submit sealed bids for the supply of specific and clearly defined supplies, services, or works during a specified timeframe

**Key Performance Indicators (KPIs**)

A factor or measure against which a supplier’s performance of a contract can be assessed during the life-cycle of the contract, as governed by section 52 of the Procurement Act**.**

**Light Touch Regime (LTR)**

A specific set of requirements for certain service contracts including certain social, health and education services as set out in the Procurement Act.

**Liquidated Damages**

A pre-determined level of damages (calculated as a genuine pre-estimate of loss), which the Council shall be entitled to deduct from the Contractor in the event of his failure to complete the contract within a specified time.

**Moderation Matrix**

A document which sets out the evaluation criteria and weightings detailed within a Procurement document and against which bidders’ submissions and scores are discussed by the Evaluation Panel and moderated recorded

**Officer**

Any unelected Council employee who is appointed under the power of the Constitution and Local Government Act 1972.

**Open Procedure**

A procurement procedure which makes the opportunity available to the marketplace as a whole.

**Parent Company Guarantee**

A parent company guarantee is a declaration provided by the parent company of the main Contractor which commits the parent to stepping in and honouring the terms of the contract if the Contractor must fail to do so and /or paying compensation (up to a stated maximum) in respect of loss incurred by the Council as a result of non- performance.

**Performance Bond**

A performance bond is a guarantee provided by a surety (usually a bank or insurance co. to pay compensation (up to a stated maximum sum) in respect of loss suffered by the Council should a Contractor fail to fulfil its contractual obligations.

**Procurement**

The acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose.

**Procurement Officer**

The lead individual Officer in the Central Procurement Team accountable for the relevant Procurement.

**Public service mutuals**

A public service mutual is an organisation which has left the public sector, continues to deliver public services and aims to have a positive social impact, and has a significant degree of staff influence or control in the way it is run.

**Restricted Procurement**

A procurement process that first narrows the marketplace in order that quotations or tenders are sought from a limited group of providers

**Request for Quotation (RFQ)**

Initiating step of a procurement process in which providers are invited to submit quotations for the supply of specific and clearly defined supplies, services, or works during a specified timeframe, the value of which falls below the applicable Spend Threshold. RFQ’s are generally evaluated on 100% cost.

**Small and medium-sized enterprises**

Small and medium-sized enterprises are non-subsidiary, independent firms which employ less than a given number of employees, or have less than a given turnover or balance sheet total. As of date of adoption, section 123 of the Procurement Act 2023 defines a small and medium-sized enterprise as a supplier than has fewer than 250 staff, and either an annual turnover less than or equal to £44 million or a balance sheet total less than or equal to £38 million.

**Social Value**

Seeks to maximise the additional benefits that can be created by providing benefits above and beyond the core services. Award criteria can include social, economic, and environmental matters, although these must be linked to the subject matter of the contract.

**Surety**

A person or organisation who takes responsibility for another’s performance of an undertaking.

**Treaty State Supplier**

A Tenderer entitled to benefits, including by virtue of the place of origin of goods, works or services supplied, in relation to the procurement being carried out or challenged pursuant to an international treaty included in Schedule 9 to the Procurement Act 2023. However, a Tenderer entitled to benefits pursuant to such international treaty only by reference to the UK being a party to that agreement or which is established in, or controlled or mainly funded from, the United Kingdom, a British Overseas is not a Treaty State Supplier.

## Appendix 3 - Pipeline Notice Content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| Contracting Authority information |  |
| Title of the procurement |  |
| Unique identifier for the procurement |  |
| **Contract subject-matter** (*as far as is known at date of publication*)**:** |  |
| Supply of goods, services or works? |  |
| Description of kind of supply |  |
| Summary of how goods, services or works will be supplied |  |
| Estimated date or period of supply |  |
| Relevant CPV codes |  |
| Geographical classification (for UK see *International Geographies, Office for National Statistics*; otherwise country/ region) |  |
| Estimated date when the tender notice for the public contract will be published |  |
| Estimated date when the transparency notice for the public contract will be published |  |

The Council may publish any other relevant information.

## Appendix 4 – Planned Procurement Notice content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| Contracting Authority information |  |
| Title of the procurement |  |
| Unique identifier for the procurement |  |
| **Contract subject-matter** (*as far as is known at date of publication*)**:** |  |
| Supply of goods, services or works? |  |
| Description of kind of supply |  |
| Summary of how goods, services or works will be supplied |  |
| Estimated date or period of supply |  |
| Relevant CPV codes |  |
| Geographical classification (for UK see *International Geographies, Office for National Statistics*; otherwise country/ region) |  |
| Estimated date when the tender notice for the public contract will be published |  |
| Estimated date by when suppliers will be asked to submit requests to participate in any tender procedure or tenders |  |
| Which of the following procedures is expected to be used:   * Open procedure * Competitive flexible procedure |  |
| Whether the public contract will be awarded by reference to suppliers' membership of a dynamic market |  |
| Estimated date when the public contract will be awarded |  |
| How documents relating to the procurement may be obtained |  |
| A statement explaining how and when an interest in the contract may be expressed |  |
| Any other available information that would ordinarily be published under a tender notice for the relevant type of procedure |  |

The Council may publish any other relevant information.

## Appendix 5 – Preliminary market engagement (PME) Notice content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| Contracting authority information |  |
| Title of the procurement |  |
| Unique identifier for the procurement |  |
| Contract subject-matter |  |
| The date when the Council intends to close the PME OR the date when the PME closed |  |
| A description of the process by which the Council proposes to engage, or has engaged, with suppliers during the PME | [*Relevant information may include the location, date and time of events, or any period for the submission of expressions of interest and information by suppliers*] |

## Appendix 6 – Tender Notice content

## **Tender Notices: Open Procedure**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| Contracting authority information |  |
| Title of the procurement |  |
| Unique identifier for the procurement |  |
| A statement that the Tender Notice is for the award of a public contract through an Open Procedure in accordance with section 20(1) and (2)(a) of the Procurement Act |  |
| Whether the Tender Notice relates to a special regime contract:   1. concession contract; 2. defence and security contract; 3. light touch contract; or 4. utilities contract. | [*Please specify which applies*] |
| The contract subject matter |  |
| The estimated value of the public contract |  |
| Where the contract is for goods, services or works which the Council expects will be needed after the expiry of the contract:   1. whether the contracting authority intends to carry out a subsequent procurement of similar goods, services or works in reliance on the Direct Award justification in paragraph 8 of Schedule 5 to the Procurement Act, or 2. an estimate, if possible, of the date when any subsequent Tender Notice will be published |  |
| Whether an electronic auction will be used and, if so, the technical details of how suppliers may participate in the electronic auction |  |
| How tenders may be submitted and the date by when they must be submitted |  |
| The award criteria, or a summary of the award criteria, for the public contract |  |
| The languages in which tenders or enquiries in connection with the tendering procedure may be submitted |  |
| Whether the public contract is a contract for which the United Kingdom has obligations under the Agreement on Government Procurement 1994 |  |
| Whether the public contract is a contract for which the United Kingdom has obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**)[[2]](#footnote-3) |  |
| Whether the public contract is awarded by reference to lots and, if so, for each lot:   1. the title of the lot; 2. the distinct number given to the lot; 3. a description of the kinds of goods, services or works which will be supplied; 4. a summary of how those goods, services or works will be supplied; 5. the estimated date when, or period over which, the goods, services or works will be supplied; 6. the estimated amount of goods, services or works which will be supplied; 7. the estimated value of the lot; 8. the relevant CPV codes; 9. the relevant award criteria in relation to the lot; 10. any option in relation to the lot; 11. the geographical classification, where it is possible to describe this; 12. whether a supplier may only submit a tender for a maximum number of lots and, if so, the maximum number; 13. whether a supplier may only be awarded a maximum number of lots and, if so, the maximum number; and 14. whether the authority will award multiple lots to the same supplier in accordance with criteria and, if so, a summary of the criteria. |  |
| Where the Council considers that the public contract could be awarded by reference to lots but it is not, the reasons for this, except in the case of a utilities contract or a light touch contract |  |
| A description of any option which will be included in the public contract to supply additional goods, services or works, or to extend or renew the term of the contract |  |
| Whether the Council proposes to set the shortest minimum tendering period by reference to one of the entries in the table in section 54(4) of the Procurement Act | [*Please specify which entry*] |
| Whether the Council considers that the public contract or any lot forming part of the contract may be particularly suitable to be awarded to a small and medium-sized enterprise, or to a value-driven NGO which principally reinvests its surplus to further social, environmental or cultural objectives | [*Please specify which body*] |
| Whether associated tender documents are being provided in accordance with the Tender Notice at the same time that the Notice is published and, if so:   1. the title of each associated tender document; 2. whether each associated tender document is attached to the Tender Notice; and 3. if an associated tender document is not attached to the Tender Notice, a link to the web page where it is provided. |  |
| Whether an associated tender document is being, or may be, provided in accordance with the Tender Notice after the date when that Notice is published and, if so, a link to the web page where it will be provided, or an explanation of how the document will be provided |  |
| A description of any technical specifications which are expected to be met or a cross reference to where they can be accessed |  |
| A description of any Conditions of Participation under section 22 of the Procurement Act |  |
| Any payment terms |  |
| A description identifying any risk that the contracting authority considers could jeopardise the satisfactory performance of the public contract, but because of its nature, may not be addressed in the public contract as awarded, and may require a subsequent modification to the public contract under paragraph 5 of Schedule 8 to the PA 2023 (modification of contract following materialisation of a known risk) |  |
| The estimated date when the public contract will be awarded |  |

## **Tender Notices: Competitive Flexible Procedure**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| Title of the procurement |  |
| Unique identifier for the procurement |  |
| A statement that the Tender Notice is for the award of a public contract through a Competitive Flexible Procedure in accordance with section 20(1) and (2)(a) of the Procurement Act |  |
| Whether the Tender Notice relates to a special regime contract:   1. concession contract; 2. defence and security contract; 3. light touch contract; or 4. utilities contract. | [*Please specify which applies*] |
| The contract subject matter |  |
| The estimated value of the public contract |  |
| Where the contract is for goods, services or works which the Council expects will be needed after the expiry of the contract:   1. whether the contracting authority intends to carry out a subsequent procurement of similar goods, services or works in reliance on the Direct Award justification in paragraph 8 of Schedule 5 to the Procurement Act, or 2. an estimate, if possible, of the date when any subsequent Tender Notice will be published |  |
| Whether an electronic auction will be used and, if so, the technical details of how suppliers may participate in the electronic auction |  |
| A description of the process to be followed during the procedure, including:   1. whether the procedure may include negotiation at any stage; and 2. if the contracting authority proposes to rely on section 24 of the Procurement Act (refining award criteria), a summary of how it will rely on that section |  |
| The award criteria, or a summary of the award criteria, for the public contract |  |
| The languages in which tenders or enquiries in connection with the tendering procedure may be submitted |  |
| Whether the public contract is a contract for which the United Kingdom has obligations under the Agreement on Government Procurement 1994 |  |
| Whether the public contract is a contract for which the United Kingdom has obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership |  |
| Whether the public contract is awarded by reference to lots and, if so, for each lot:   1. the title of the lot; 2. the distinct number given to the lot; 3. a description of the kinds of goods, services or works which will be supplied; 4. a summary of how those goods, services or works will be supplied; 5. the estimated date when, or period over which, the goods, services or works will be supplied; 6. the estimated amount of goods, services or works which will be supplied; 7. the estimated value of the lot; 8. the relevant CPV codes; 9. the relevant award criteria in relation to the lot; 10. any option in relation to the lot; 11. the geographical classification, where it is possible to describe this; 12. whether a supplier may only submit a tender for a maximum number of lots and, if so, the maximum number; 13. whether a supplier may only be awarded a maximum number of lots and, if so, the maximum number; and 14. whether the authority will award multiple lots to the same supplier in accordance with criteria and, if so, a summary of the criteria. |  |
| Where the Council considers that the public contract could be awarded by reference to lots but it is not, the reasons for this, except in the case of a utilities contract or a light touch contract |  |
| A description of any option which will be included in the public contract to supply additional goods, services or works, or to extend or renew the term of the contract |  |
| Whether the Council proposes to set the shortest minimum tendering period by reference to one of the entries in the table in section 54(4) of the Procurement Act | [*Please specify which entry*] |
| Whether the Council considers that the public contract or any lot forming part of the contract may be particularly suitable to be awarded to a small and medium-sized enterprise, or to a value-driven NGO which principally reinvests its surplus to further social, environmental or cultural objectives | [*Please specify which body*] |
| Whether associated tender documents are being provided in accordance with the Tender Notice at the same time that the Notice is published and, if so:   1. the title of each associated tender document; 2. whether each associated tender document is attached to the Tender Notice; and 3. if an associated tender document is not attached to the Tender Notice, a link to the web page where it is provided. |  |
| Whether an associated tender document is being, or may be, provided in accordance with the Tender Notice after the date when that Notice is published and, if so, a link to the web page where it will be provided, or an explanation of how the document will be provided |  |
| A description of any technical specifications which are expected to be met or a cross reference to where they can be accessed |  |
| A description of any Conditions of Participation under section 22 of the Procurement Act |  |
| Any payment terms |  |
| A description identifying any risk that the contracting authority considers could jeopardise the satisfactory performance of the public contract, but because of its nature, may not be addressed in the public contract as awarded, and may require a subsequent modification to the public contract under paragraph 5 of Schedule 8 to the PA 2023 (modification of contract following materialisation of a known risk) |  |
| The estimated date when the public contract will be awarded |  |
| Where the number of suppliers is, or may be, no more or no less than an intended maximum number of suppliers, generally or in respect of particular tendering rounds or other selection processes, the intended maximum or minimum number of suppliers and (where there is a maximum number) the criteria used to select the limited number of suppliers |  |
| Where the Tender Notice is being used for the purpose of inviting suppliers to submit a request to participate, how requests to participate may be submitted and the date by which they must be submitted |  |
| Where the Tender Notice is being used for the purpose of inviting suppliers to submit their first, or only, tender, how any tenders may be submitted and the date by which they must be submitted |  |
| Whether the Tender Notice is being used to reserve a contract to supported employment providers or to public service mutuals |  |

## **Tender Notices: Frameworks**

Where an Open Procedure is being used, the same information referred to in Table 1 of Appendix 3 must be included. Where a Competitive Flexible Procedure is being used, the same information referred to in Table 2 of Appendix 3 must be included.

The following additional information must also be included for notices for the award of a Framework:

|  |  |
| --- | --- |
| **Information required** | **Response** |
| Details of the selection process to be applied on the award of contracts |  |
| The term of the Framework |  |
| The contracting authorities entitled to award contracts in accordance with the Frameworks | [*Please list the authorities by name, or provide a description of the different categories of authorities*] |
| Whether the Framework is being awarded under an open Framework and, if so, the unique identifier for the procurement of the last Framework awarded under the open Framework (unless no Framework has previously been awarded under the open Framework), and the estimated end date of the open Framework |  |
| Whether the intention is to award the Framework to a single supplier, a maximum number of suppliers (in which case, please state this number), or an unlimited number of suppliers |  |
| Whether the Framework provides for the charging of fees under section 45(7) of the Procurement Act and, if so, the fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the Framework and any other information needed in order to enable suppliers to understand how fees will be charged |  |
| Whether the Framework is being awarded by reference to suppliers’ membership of a Dynamic Market, and if so:   1. the unique identifier for the Dynamic Market against which the public contract is being awarded; 2. a statement that the Tender Notice is for the award of a public contract which is to be awarded by reference to suppliers’ membership of a Dynamic Market; and 3. where the public contract is being awarded under an appropriate part of a Dynamic Market, the title of that part and the distinct number given to it by the person who established the Dynamic Market |  |

## **Tender Notices: Dynamic Markets except qualifying utilities Dynamic Markets**

The same information referred to in Table 3 of Appendix 3 must be included.

The following additional information must also be included for notices for the award of a Dynamic Market except qualifying utilities Dynamic Markets:

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The unique identifier for the Dynamic Market against which the public contract is being awarded |  |
| A statement that the Tender Notice is for the award of a public contract which is to be awarded by reference to suppliers’ membership of a Dynamic Market |  |
| Where the public contract is being awarded to suppliers that are members of an appropriate part of a Dynamic Market, the title of that part and the distinct number given to the part by the person who established the Dynamic Market |  |

## **Tender Notices: qualifying utilities Dynamic Markets**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| Unique identifier for the Dynamic Market against which the public contract is being awarded |  |
| The contract subject-matter |  |
| Where the public contract is for goods, services or works which the contracting authority expects will be needed after the expiry of the contract, an estimate, if possible, of the date when any subsequent Tender Notice will be provided |  |
| A description of any option which will be included in the public contract to supply additional goods, services or works, or to extend or renew the term of the contract |  |
| Whether an electronic auction will be used |  |
| How requests to participate may be submitted and the date by when they must be submitted |  |
| How tenders may be submitted and the date by when they must be submitted |  |
| Whether the contracting authority proposes to rely on one of the following minimum tendering periods mentioned in the table in section 54(4) of the Procurement Act | [*Please specify which minimum tendering period entry*] |
| A description of the kinds of goods, services or works which will be supplied |  |
| The estimated amount of goods, services or works which will be supplied |  |

## **Associated Tender Documents**

An associated tender document may include any information supplementing the Tender Notice including, where appropriate, information duplicating the information mentioned in Appendix 3, Tables 1-5.

## **Tender Notices: Below-threshold notices**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| The contract subject-matter |  |
| The estimated value of the contract |  |
| How tenders may be submitted and the date by when they must be submitted |  |
| Whether the Notice is being used to invite tenders for a special regime contract and, if so, whether that contract is a defence and security contract or a light touch contract |  |
| Whether the Council considers that the public contract or any lot forming part of the contract may be particularly suitable to be awarded to a small and medium-sized enterprise, or to a value-driven NGO which principally reinvests its surplus to further social, environmental or cultural objectives | [*Please specify which body*] |
| An explanation of the criteria against which the award of the contract will be assessed |  |
| A description of any Conditions of Participation in relation to the award of the contract |  |

## Appendix 7 – Dynamic Market Notices content

## **To be published on intention to establish a Dynamic Market**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The name(s) of the person(s) establishing the Dynamic Market | [*Where there is more than one person who are jointly establishing the Dynamic Market, please specify which person is the lead*] |
| A contact postal and email address for each person establishing the Dynamic Market |  |
| The unique identifier for each person establishing the Dynamic Market |  |
| The name of any person establishing the Dynamic Market on behalf of another person, that person's contact postal and email addresses, unique identifier and summary of their role in relation to the Dynamic Market |  |
| The name and contact postal and email addresses of any person who can be contacted in the event of an enquiry about the Dynamic Market |  |
| The title of the Dynamic Market |  |
| The unique identifier for the Dynamic Market |  |
| In the case of a qualifying utilities Dynamic Market Notice:   * a statement that only members of the market, or part of the market, will be notified of a future intention to award a contract by reference to suppliers' membership of the market, or part of the market, and provided with a Tender Notice; and * as much of the information as would be published in a Tender Notice that is available when the qualifying utilities Dynamic Market Notice is published |  |
| How documents relating to the Dynamic Market may be obtained |  |
| How an application to join the Dynamic Market can be made |  |
| Whether the Dynamic Market is mainly for the supply of goods, services or works | [*Please provide a description of the kinds of goods, services or works to which the Dynamic Market relates, given in such detail that a potential supplier can determine if they wish to apply to join the Dynamic Market, or part thereof*] |
| The relevant CPV codes |  |
| The conditions for membership of the Dynamic Market or part thereof |  |
| A description of the methods that will be used to verify whether a supplier meets the conditions for membership, including any different conditions for different kinds of goods, services or works |  |
| Whether the Dynamic Market may be used to award a contract for which the UK has obligations under the Agreement on Government Procurement 1994 or CPTPP |  |
| Whether the Dynamic Market may be used to award a special regime contract | [*If so, whether the contract is a concession contract, a defence and security contract, a light touch contract, or a utilities contract*] |
| Where the Dynamic Market is divided into appropriate parts for the purpose of excluding suppliers that are not members of an appropriate part:   * the title of each part; * a description of each part, including any relevant CPV codes; and * the distinct number given to each part |  |
| A list or description of the categories of the public authorities that will, or may apply to, use the Dynamic Market |  |
| The geographical classification (where it is possible to describe this) |  |
| If relevant, the estimated date when the Dynamic Market will be established and when it will cease to operate |  |
| If the Dynamic Market is open-ended, a statement confirming this fact and the estimated date when the Dynamic Market will be established |  |
| Whether the Dynamic Market provides for the charging of fees | [*If so, please provide the fixed percentage to be applied to the estimated value of any public contract awarded to a supplier under the Dynamic Market, and any other information needed in order to enable suppliers to understand how fees will be charged*] |

## **To be published on the establishment of a Dynamic Market**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The name(s) of the person(s) establishing the Dynamic Market | [*Where there is more than one person who are jointly establishing the Dynamic Market, please specify which person is the lead*] |
| A contact postal and email address for each person establishing the Dynamic Market |  |
| The unique identifier for each person establishing the Dynamic Market |  |
| The name of any person establishing the Dynamic Market on behalf of another person, that person's contact postal and email addresses, unique identifier and summary of their role in relation to the Dynamic Market |  |
| The name and contact postal and email addresses of any person who can be contacted in the event of an enquiry about the Dynamic Market |  |
| The title of the Dynamic Market |  |
| The unique identifier for the Dynamic Market |  |
| The date on which the Dynamic Market was established |  |
| For each supplier that is a member of the Dynamic Market:   * the supplier's name; * the supplier's contact postal and email addresses; * the unique identifier for the supplier; and * whether the supplier is an small and medium-sized enterprise, or a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives |  |
| Where the Dynamic Market is divided into parts, the part of which each of those suppliers is a member |  |

## **To be published on modification of a Dynamic Market**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The name(s) of the person(s) establishing the Dynamic Market | [*Where there is more than one person who are jointly establishing the Dynamic Market, please specify which person is the lead*] |
| A contact postal and email address for each person establishing the Dynamic Market |  |
| The unique identifier for each person establishing the Dynamic Market |  |
| The name of any person establishing the Dynamic Market on behalf of another person, that person's contact postal and email addresses, unique identifier and summary of their role in relation to the Dynamic Market |  |
| The name and contact postal and email addresses of any person who can be contacted in the event of an enquiry about the Dynamic Market |  |
| The title of the Dynamic Market |  |
| The unique identifier for the Dynamic Market |  |
| The date from which the modification has effect |  |
| If a supplier is being admitted to the market, a statement of this and:   * the supplier's name, contact postal and email addresses, and unique identifier; and * where the Dynamic Market is divided into parts, the part of which the supplier is a member * whether the supplier is a small and medium-sized enterprise, or a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives |  |
| If a supplier is being removed from the market, a statement of this and:   * the supplier's name, contact postal and email addresses, and unique identifier; and * where the Dynamic Market is divided into parts, the part of which the supplier is a member |  |
| A summary of any other modification(s) being made |  |

## **To be published on cessation of a Dynamic Market**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The name(s) of the person(s) establishing the Dynamic Market | [*Where there is more than one person who are jointly establishing the Dynamic Market, please specify which person is the lead*] |
| A contact postal and email address for each person establishing the Dynamic Market |  |
| The unique identifier for each person establishing the Dynamic Market |  |
| The name of any person establishing the Dynamic Market on behalf of another person, that person's contact postal and email addresses, unique identifier and summary of their role in relation to the Dynamic Market |  |
| The name and contact postal and email addresses of any person who can be contacted in the event of an enquiry about the Dynamic Market |  |
| The title of the Dynamic Market |  |
| The unique identifier for the Dynamic Market |  |
| The date on which the Dynamic Market ceased to operate |  |

## Appendix 8 – Contract Performance Notice content

*To be published at least once in every period of 12 months during the life-cycle of the contract*

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The contracting authority information |  |
| The title of the procurement |  |
| The unique identifier for the contract and the procurement |  |
| The KPIs of the contract |  |
| A statement that the Notice is being used to set out the Council's assessment of performance against the KPIs |  |
| For each supplier whose performance has been assessed against the KPIs:   * the supplier's name; * the supplier's contact postal and email addresses; and * the unique identifier for the supplier |  |
| The Council's assessment of performance against the KPIs in accordance with the following ratings:   * **Good**: performance is meeting or exceeding the KPIs * **Approaching target**: performance is close to meeting the KPIs * **Requires improvement**: performance is below the KPIs * **Inadequate**: performance is significantly below the KPIs * **Other**: performance cannot be described as good, approaching target, requires improvement or inadequate |  |

*Where the supplier has breached the contract and the breach has resulted in either (1) termination or partial termination of the contract, (2) the award of damages, or (3) a settlement agreement between the supplier and the Council* ***OR*** *where the Council considers that a supplier is not performing the contract to the satisfaction of the Council, has been given proper opportunity to improve performance, and has failed to do so, the following information must also be published within 30 days of the breach or failure to perform first arising:*

|  |  |
| --- | --- |
| **Information required** | **Response** |
| For each supplier that has committed the breach or failure to perform:   * the supplier's name; * the supplier's contact postal and email addresses; and * the unique identifier of the supplier |  |
| The fact that section 71(5) of the Procurement Act applies | [*Please state whether section 71(5) applies by virtue of a breach or a failure to perform*] |
| Where the supplier has breached the contract, whether (1) partial termination of the contract, (2) an award of damages, or (3) a settlement agreement between the supplier and the Council applies | [*Please also provide the date of partial termination, the award of damages, or the settlement agreement*] |
| Where the supplier is failing to perform the contract, the date on which the Council considers that the supplier had failed to improve its performance |  |
| An explanation of the nature of the contractual obligation which has been breached or unsatisfactorily performed |  |
| An explanation of the nature of the breach or failure to perform | [*Please include an explanation of the impact and/or consequences, the duration and whether it is ongoing, any steps taken by the supplier to mitigate the impact and/or consequences, any steps taken by the Council to notify the supplier of the breach or failure to perform (including any warning notices or opportunities to improve performance) and what steps, if any, the supplier has taken to improve the situation and why these were not sufficient*] |
| Where the breach has resulted in partial termination of the contract, a description of which part, or to what extent, the contract has been partially terminated |  |
| Where there has been an award of damages or payment of other monies:   * confirmation of this fact; * the amount of damages or monies; * the basis on which any damages were awarded or other monies were paid (for example, in accordance with a court or tribunal decision, or in accordance with a negotiated settlement); and * where there is a recorded decision of a court or tribunal finding that there was a breach, a link to the webpage where the decision can be accessed or a copy of the decision |  |

## Appendix 9 – Procurement Termination Notice content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The contracting authority information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| A statement that, following the publication of a Tender Notice or Transparency Notice in respect of the contract, the Council has decided not to award the contract |  |
| The date when the Council decided not to award the contract |  |

## Appendix 10 – Transparency Notice content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The contracting authority information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| Where the procurement has been switched from a Competitive Selection Process under Framework to a Direct Award, the unique identifier allocated to the procurement before the switch to Direct Award |  |
| The unique identifier for the contract (if known at the time of the Transparency Notice’s publication) |  |
| The contract subject matter (as set out at 2.2.3 above) |  |
| Whether the contract is a special regime contract | [*Please specify whether it is a concession contract, a defence and security contract, a light touch contract, or a utilities contract*] |
| Whether the contract is being awarded to a supplier pursuant to a special justification (as set out as 2.4.2 above) | [*Please specify which justification applies and explain why you consider that it applies*] |
| Whether the contract is being awarded to an excluded supplier | [*Please specify the offence or other event by virtue of which the supplier is excluded, and why there is an overriding public interest in awarding the contract to that supplier*] |
| Whether the contract is being awarded directly to protect life, etc | [*Please specify the title and registration number of the statutory instrument containing the Regulations relied upon*] |
| Whether the contract is being awarded directly because a competitive procedure was not possible | [*Please specify why you consider that a competitive procedure was not possible*] |
| Whether the contract is being awarded by reference to lots | [*Please specify the title and distinct number of each lot*] |
| Whether you consider that the contract or any constituent lot may be particularly suitable to be awarded to a small or medium-sized enterprise, or to an NGO that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives |  |
| A description identifying any risk that you consider could jeopardise the satisfactory performance of the contract but because of its nature may not be addressed in the contract as awarded |  |
| A description identifying any known but unmaterialised risk that may require a subsequent modification to the contract |  |
| Whether suppliers have been selected for the award of the contract | [*If so, please provide the supplier’s name, unique identifier and contact postal and email addresses*]  [*Where a unique identifier is not available (given the urgency of the contract), unique information such as a company registration number may be provided instead*] |
| The estimated date when the contract will be entered into |  |
| Where the contract is a Framework:   1. The term of the Framework 2. Whether the Framework applies for fees to be charged to a supplier and, if so, details of the fixed percentage by which they will be charged 3. The contracting authorities entitled to award contracts in accordance with the Framework (whether listed by name or by describing categories of authorities) |  |

## Appendix 11 – Contract Award Notice content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The title of the procurement |  |
| The unique identifier for the procurement, the public contract, any relevant Framework, and any relevant Dynamic Market |  |
| The contract subject-matter (as set out at 2.2.3 above) |  |
| For each supplier awarded:   1. the supplier’s name; 2. the supplier’s contact postal and email address; 3. the unique identifier for the supplier, or (where a contract has been awarded directly due to urgency) unique information of the supplier, such as a company registration number; 4. whether the supplier is an association or consortium of companies; 5. whether the supplier is a small and medium-sized enterprise; 6. whether the supplier is a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; 7. Whether the supplier is a supported employment supplier; and 8. whether the supplier is a public service mutual; |  |
| For each associated person of the supplier:  the person’s name and contact postal address |  |
| The supplier’s connected person information, if an individual:   * the person’s name; * date of birth; * service postal address; * and the person's country, state or part of the UK where usually resident.   Or, if an other relevant legal entity:   * the person's name; * registered or principal office address; * service address; * legal form and jurisdiction; * date of becoming a relevant legal entity; * and registration number, where applicable. |  |
| The date when the Council decided to award the public contract |  |
| If the public contract is being awarded by reference to lots, for each lot:   1. the name of the supplier being awarded the lot; 2. the title of the lot; 3. the distinct number given to the lot by the Council; 4. a description of the kinds of goods, services or works which will be supplied; 5. a summary of how those goods, services or works will be supplied; 6. the estimated date when, or period over which, the goods, services or works will be supplied; 7. the estimated amount of goods, services or works which will be supplied; 8. the estimated value of the lot; 9. the relevant CPV codes; and 10. the geographical classification, where it is possible to describe this |  |
| Where the public contract is being awarded in accordance with a Framework, details of whether the award was made under a Competitive Selection under Framework or an award without further competition. |  |
| Where the public contract is a Framework that is being awarded under an open Framework, the unique identifier for the procurement of the last Framework awarded under the open Framework (unless no Framework has been previously awarded under the open Framework) |  |
| Where the public contract is being awarded under an appropriate part of a Dynamic Markets, the distinct number given to that part by the person who established the Dynamic Market. |  |
| Whether the public contract is a special regime contract and, if so, whether it is:   1. a concession contract; 2. a defence and security contract; 3. a light touch contract; or 4. a utilities contract | [*Please specify which special regime applies*] |
| Whether the Council has provided an assessment summary to each supplier that submitted an assessed tender and, if so, the date when those assessment summaries were provided |  |
| The estimated value of the public contract |  |
| In respect of public contracts with an estimated value of £5 million or less:   1. the total number of tenders submitted by the Council’s deadline for submitting tenders (discounting tenders submitted but subsequently withdrawn); 2. the total number of tenders assessed by the Council; and 3. the total number of tenders assessed by the Council which were submitted by small and medium-sized enterprises and/or non-governmental organisations that are value driven and which principally reinvest their surpluses to further social, environmental or cultural objectives   Note: this is not required for Direct Awards |  |
| In respect of public contracts with an estimated value of more than £5 million:   1. the total number of tenders submitted by the Council’s deadline for submitting tenders (discounting tenders submitted but subsequently withdrawn); 2. the name of each supplier that submitted an assessed tender and was not awarded the public contract, and their unique identifier (or other unique information), postal address, whether they are a small or medium-sized enterprise and/or a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives   Note: this is not required for Direct Awards |  |
| Where the public contract is a Framework or awarded other than in accordance with a Framework, details of whether an Open, Competitive Flexible, or Direct Award Procedure was followed. |  |
| Whether a Tender Notice was used to reserve the contract to supported employment providers, and whether the contract was awarded to such a supplier |  |
| Whether a Tender Notice was used to reserve the contract to public service mutuals and whether the contract was awarded to such a supplier |  |
| The end date of any standstill period or, if no standstill period applies, any date before which the Council has determined not to enter into the contract |  |
| The estimated date when the contract will be entered into |  |
| Where the public contract is being awarded in accordance with a Framework which is arranged by reference to lots, the distinct number given by the Council to the lot under which the contract is being awarded |  |
| Where the public contract is being awarded by reference to lots, and the Council is using the Contract Award Notice to give notice that it is ceasing to procedure all of the goods, services and works set out in one or more of those lots, or any lots under future contracts, the following information:   1. For each ceased lot: the title of the lot; the distinct number given to the lot by the Council; the relevant CPV codes; and a description of the kinds of goods, services or works which were to have been supplied under the lot 2. The date when the contracting authority decided to cease the procurement under the lot. |  |
| Where a public contract is being awarded directly:   1. whether the contract is being awarded directly to a supplier that is not an excluded supplier because a Direct Award justification applies; 2. the Direct Award justification which applies and an explanation of why the Council considers that it applies; 3. whether the contract is being awarded directly to a supplier that is an excluded supplier because the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier and, if so: the offence or other Schedule 6 Procurement Act event by virtue of which the supplier is an excluded supplier, and which ground in section 41(5) of the Procurement Act applies and an explanation of why the Council considers that it applies; 4. whether the contract is being awarded directly to a supplier to protect life, etc, under section 42 of the Procurement Act, and the title and registration number of the relevant regulations; 5. whether the contract is being awarded directly to a supplier that is not an excluded supplier by switching to a Direct Award under section 43 of the Procurement Act and, if so, the reason the Council considers there were no suitable tenders or requests to participate, and why it considers that an award under section 19 is not possible. |  |

## Appendix 12 – Contract Details Notice content

## **Open or Competitive Flexible Procedures**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| The unique identifier for the public contract |  |
| Where the public contract was awarded by reference to a supplier's membership of a Dynamic Market, the unique identifier for that Dynamic Market |  |
| The contract subject-matter |  |
| For each supplier party to the contract:   * the supplier's name; * the supplier's contact postal and email addresses; * the unique identifier for the supplier; * whether the supplier is (a) a small and medium-sized enterprise; (b) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; (c) a supported employment provider; or (d) a public service mutual |  |
| Whether the contract was awarded following an Open Procedure or a Competitive Flexible Procedure |  |
| Whether the contract was reserved to supported employment providers or public service mutuals |  |
| If the contract was awarded by reference to lots:   * the title of the lot; * the distinct number of the lot; * a description of the kinds of goods, services or works which will be supplied; * a summary of how those goods, services or works will be supplied; * the estimate date when, or period over which, the goods, services or works will be supplied; * the estimated amount of goods, services or works which will be supplied; * the estimated value of the lot; and * the relevant CPV codes |  |
| The estimated value of the contract |  |
| The date when the contract was entered into |  |
| A description of any option in the contract to supply additional goods, services or works, or to extend or renew the term of the contract |  |
| Where the contract was awarded under an appropriate part of a Dynamic Market, the distinct number given to that part |  |
| Whether the contract is a special regime contract | [*Please specify whether it is a concession contract, a defence and security contract, a light touch contract, or a utilities contract*] |
| Whether the UK has obligations under the Agreement on Government Procurement 1994 or the CPTPP in relation to the contract |  |
| Where key performance indicators (KPIs) have been set, a description of each KPI and how often the Council will assess performance against the KPIs  OR  Where KPIs have not been set, an explanation of why the Council considers that performance of the contract could not appropriately be assessed by reference to KPIs |  |

## **Frameworks**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| The unique identifier for the public contract |  |
| Where the public contract was awarded by reference to a supplier's membership of a Dynamic Market, the unique identifier for that Dynamic Market |  |
| The contract subject-matter |  |
| For each supplier party to the contract:   * the supplier's name; * the supplier's contact postal and email addresses; * the unique identifier for the supplier; * whether the supplier is (a) a small and medium-sized enterprise; (b) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; (c) a supported employment provider; or (d) a public service mutual |  |
| Whether the contract was reserved to supported employment providers or public service mutuals |  |
| If the contract was awarded by reference to lots:   * the title of the lot; * the distinct number of the lot; * a description of the kinds of goods, services or works which will be supplied; * a summary of how those goods, services or works will be supplied; * the estimate date when, or period over which, the goods, services or works will be supplied; * the estimated amount of goods, services or works which will be supplied; * the estimated value of the lot; and * the relevant CPV codes |  |
| The estimated value of the contract |  |
| The date when the contract was entered into |  |
| A description of any option in the contract to supply additional goods, services or works, or to extend or renew the term of the contract |  |
| Where the contract was awarded under an appropriate part of a Dynamic Market, the distinct number given to that part |  |
| Whether the contract is a special regime contract | [*Please specify whether it is a concession contract, a defence and security contract, a light touch contract, or a utilities contract*] |
| Whether the UK has obligations under the Agreement on Government Procurement 1994 or the CPTPP in relation to the contract |  |
| The contracting authorities entitled to award contracts in accordance with the Framework (either by listing the names of those authorities, or by describing categories of authorities) |  |
| The term of the Framework |  |
| Whether the Framework is awarded under an open Framework | [*If so, please provide the unique identifier for the procurement of the last Framework awarded under the open Framework (if relevant), and the estimated end date of the open Framework*] |
| Whether the contract was awarded following an Open Procedure, a Competitive Flexible Procedure, or directly |  |
| Whether the Framework provides for fees to be charged to a supplier in accordance with the Framework | [*If so, please detail the fixed percentage by which they will be charged*] |
| The price payable, or the mechanism for determining the price payable, under a contract awarded in accordance with the Framework |  |
| Details of the selection process to be applied on the award of a contract in accordance with the Framework |  |

## **Public contracts awarded in accordance with Frameworks**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| The unique identifier for the public contract |  |
| The contract subject-matter |  |
| For each supplier party to the contract:   * the supplier's name; * the supplier's contact postal and email addresses; * the unique identifier for the supplier; * whether the supplier is (a) a small and medium-sized enterprise; (b) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; (c) a supported employment provider; or (d) a public service mutual |  |
| Whether the contract was reserved to supported employment providers or public service mutuals |  |
| If the contract was awarded by reference to lots:   * the title of the lot; * the distinct number of the lot; * a description of the kinds of goods, services or works which will be supplied; * a summary of how those goods, services or works will be supplied; * the estimate date when, or period over which, the goods, services or works will be supplied; * the estimated amount of goods, services or works which will be supplied; * the estimated value of the lot; and * the relevant CPV codes |  |
| The estimated value of the contract |  |
| The date when the contract was entered into |  |
| A description of any option in the contract to supply additional goods, services or works, or to extend or renew the term of the contract |  |
| Whether the contract is a special regime contract | [*Please specify whether it is a concession contract, a defence and security contract, a light touch contract, or a utilities contract*] |
| The unique identifier for the procurement of the Framework in accordance with which the public contract is being awarded |  |
| Whether the Framework is a defence and security Framework |  |
| Where the Framework is arranged by reference to lots, the distinct number given to the lot under which the contract is being awarded |  |
| Whether a Competitive Selection under Framework or an award without further competition was used to award the public contract | [*If an award without further competition was used, explain why the Council considered that this was appropriate*] |

## **Direct Awards**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| The unique identifier for the public contract |  |
| The contract subject-matter |  |
| For each supplier party to the contract:   * the supplier's name; * the supplier's contact postal and email addresses; * the unique identifier for the supplier; * whether the supplier is (a) a small and medium-sized enterprise; (b) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; (c) a supported employment provider; or (d) a public service mutual |  |
| Whether the contract was reserved to supported employment providers or public service mutuals |  |
| If the contract was awarded by reference to lots:   * the title of the lot; * the distinct number of the lot; * a description of the kinds of goods, services or works which will be supplied; * a summary of how those goods, services or works will be supplied; * the estimate date when, or period over which, the goods, services or works will be supplied; * the estimated amount of goods, services or works which will be supplied; * the estimated value of the lot; and * the relevant CPV codes |  |
| The estimated value of the contract |  |
| The date when the contract was entered into |  |
| A description of any option in the contract to supply additional goods, services or works, or to extend or renew the term of the contract |  |
| Whether the contract is a special regime contract | [*Please specify whether it is a concession contract, a defence and security contract, a light touch contract, or a utilities contract*] |
| Whether the UK has obligations under the Agreement on Government Procurement 1994 or the CPTPP in relation to the contract |  |
| Where key performance indicators (KPIs) have been set, a description of each KPI and how often the Council will assess performance against the KPIs  OR  Where KPIs have not been set, an explanation of why the Council considers that performance of the contract could not appropriately be assessed by reference to KPIs |  |
| Whether the contract was awarded directly to a supplier that is not an excluded supplier because a Direct Award justification applies | [*If so, please specify which justification applies and explain why the Council considers that is applies*] |
| Whether the contract was awarded directly to a supplier that is an excluded supplier | [*If so, please state what overriding public interest ground applies and explain why the Council considers that is applies*]  [*If so, please state the offence or other event by virtue of which the supplier is excluded*] |
| Whether the contract was awarded directly to a supplier to protect life, etc | [*If so, please state the title and registration number of the applicable statutory instrument*] |
| Whether the contract was awarded directly to a supplier by switching from another procedure | [*If so, please state why the Council considered that there were no suitable tenders or requests to participate, and why it considers that a competitive procedure is not possible*] |

## **Below-threshold Contracts**

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| The unique identifier for the contract |  |
| For each supplier party to the contract:   * the supplier's name; * the supplier's contact postal and email addresses; * if available, the unique identifier for the supplier; * whether the supplier is a small and medium-sized enterprise or a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives |  |
| The contract subject-matter |  |
| Whether the contract was awarded by reference to lots | [*If so, please state the title and distinct number given to each lot*] |
| Whether the contract is a defence and security contract, or a light-touch contract |  |
| The estimated value of the contract |  |
| The date when the contract was entered into |  |
| A description of any option in the contract to supply additional goods, services or works, or to extend or renew the term of the contract |  |

## Appendix 13 – Contract Change Notice content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The title of the procurement |  |
| The unique identifier for the procurement |  |
| The unique identifier for the contract |  |
| For each supplier party to the public contract or convertible contract:   1. the supplier’s name; 2. the supplier’s contact postal and email addresses; and 3. the unique identifier for the supplier |  |
| Whether the contracting authority is permitted to modify the contract under Schedule 8 of the Procurement Act | [*Specify which paragraph of Schedule 8 applies*] |
| An explanation of why the modification falls within the above paragraph of Schedule 8 |  |
| Details of any change as a result of the modification to:   1. the estimated value of the contract immediately prior to the modification, or 2. the term of the contract |  |
| Where the modification is one which is described in paragraph 9 to Schedule 8 (transfer on corporate restructuring), the following information for each new and former supplier:   1. the supplier’s name; 2. the supplier’s contact postal and email addresses; and 3. the unique identifier for the supplier |  |
| The estimated date when the contract will be modified and when the modification will have effect |  |
| Whether a voluntary standstill period applies and, if so, the duration of that period |  |

## Appendix 14 – Payment Compliance Notice content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| The Council’s information |  |
| The dates of the first and last days of the reporting period to which the Payments Compliance Notice relates |  |
| In respect of sums paid by the Council under public contracts during the reporting period:   * the average number of days taken to make those payments (where day 1 is the first day after the invoice day); * the percentage of those payments which were made within (a) 30 days, (b) 60 days, and (c) after 60 days |  |
| In respect of sums which became payable under public contracts during the reporting period, the percentage of those payments which were not made within the reporting period |  |
| A statement of the director or similar officer of the Council who is responsible for the Council's finances setting out that they approve the payments compliance notice | [*Please include the name and job title of the person making this statement*] |

## Appendix 15 – Below-threshold Tender Notices content

|  |  |
| --- | --- |
| **Information required** | **Response** |
| Contracting Authority information |  |
| Title of the procurement |  |
| Unique identifier for the procurement (*optional*?) |  |
| **Contract subject-matter** (*as far as is known at date of publication*)**:** |  |
| Supply of goods, services or works? |  |
| Description of kind of supply |  |
| Summary of how goods, services or works will be supplied |  |
| Estimated date or period of supply |  |
| Relevant CPV codes |  |
| Geographical classification (for UK see *International Geographies, Office for National Statistics*; otherwise country/ region) |  |
| Estimated value of the contract |  |
| How can tenders be submitted |  |
| Date by when tenders must be submitted |  |
| Whether the notice is being used to invite tenders for a special regime contract and, if so, whether that contract is a defence and security contract or a light touch contract |  |
| Whether the contracting authority considers that the contract or any lot forming part of the contract may be particularly suitable to be awarded:   * to a small and medium-sized enterprise, or * to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives? |  |
| Explanation of the criteria against which the award of the contract will be assessed |  |
| Description of any Conditions of Participation in relation to the award of the contract |  |

## Appendix 16 – Procurement Lifecycle Notices



## Appendix 17 – Supplier Exclusion Flowchart

A diagram of a flowchart

AI-generated content may be incorrect.

A diagram of a flowchart

AI-generated content may be incorrect.

A diagram of a flowchart

AI-generated content may be incorrect.

1. The list of State parties to the Agreement on Government Procurement 1994 is available here: https://www.wto.org/english/tratop\_e/gproc\_e/memobs\_e.htm [↑](#footnote-ref-2)
2. If you have queries about whether the CPTPP applies, please contact the Council's Legal Team. [↑](#footnote-ref-3)