



Solihull Metropolitan Borough Council

RULES FOR CONTRACTS

Version control

Version number	Author	Date	Changes
5.0	David Bailey	January 2025	To ensure compliance with the Procurement Act 2023 and its subordinate legislation

[Add rows as required]

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RULES FOR CONTRACTS

Introduction

The Local Government Act 1972 requires the Council to have standing orders with respect to the making of contracts. These Rules for Contracts are the standing orders required by the 1972 Act. They are part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for making contracts on behalf of the Council. The purpose of these Rules for Contracts is to set clear rules for the procurement of works, supplies and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach. Accordingly, these Rules for Contracts must be followed for **all** contracts (but excluding the categories listed in Appendix 1 and marked with an asterisk (*), because the Council has other procedures governing these types of contracts) for:

- supplies to the Council;
- the supply of services to the Council; and
- the execution of works for the Council.

The Council has a Procurement Strategy, setting out how the Council intends to go about procuring works, supplies and services. Conformity to these Rules for Contracts, and the Council's Codes of Conduct, will ensure that contracts are let in accordance with the *Procurement Strategy*, the *Compliant Procurement Process* and associated *User Guides and Procedures*.

This document should be read in conjunction with Financial Regulations issued by the Section 151 Officer. Of particular interest are the processes describing how to place orders and pay invoices.

Since February 2015, the Council has been subject to the United Kingdom Public Contracts Regulations 2015. However, on the 24 February 2025, these regulations will be repealed and replaced by the Procurement Act 2023 (the "Act") and its subordinate legislation. The Council will therefore need to comply with the Act for procurements started on and after the 24 February 2025. The existing legislation will apply till the new regime goes live, and will continue to apply to procurements started under the old rules.

The Council has also been subject to the Health Care Services (Provider Selection Regime) Regulations 2023 since the 1 January 2024; but these regulations apply only to the Council's procurement of user-choice health-service contracts. The Procurement Act 2023 applies to the lion's share of the Council's procurement.

Section 12 of the Procurement Act 2023 introduces new procurement objectives that apply to any "covered procurement". A "covered procurement" means the award, entry into and management of a public contract. A public contract is any of the Council's procurement contracts not exempted by the Act's Schedule 2 (see *Appendix 1*) and which has a value **at or above** the relevant threshold (see the *Quick Reference Guide Table - Financial Thresholds*). The Act also makes separate provisions regarding the following:

- a. requirements for certain below-threshold procurements (known as "regulated below threshold contracts") in Part 6 of the Act, Sections 84 to 88;
- b. non-discrimination obligations with respect to treaty-state suppliers, to satisfy international obligations on public procurement that apply to below-threshold or exempted procurements; and
- c. a duty to have regard to the National Procurement Policy Statement (NPPS).

The Act's new procurement objectives mean that during a covered procurement:

the Council must treat suppliers the same, unless a difference between them justifies different treatment; and

if different treatment is justified, the Council must not put any supplier at an unfair advantage or disadvantage.

The new procurement objectives also require the Council to "have regard to" the following during a covered procurement process:

delivering value for money;

maximising public benefit;

sharing information for the purpose of allowing suppliers and others to understand the Council's procurement policies and decisions;

acting and being seen to act with integrity; and

knowing that small and medium-sized enterprises (SMEs) may face barriers to participation in procurements, and considering whether such barriers can be removed or reduced - which includes the duty to consider dividing each procurement into lots.

“Having regard to” the procurement objectives means that the Council must carefully consider them, but ultimately has a choice about if and to what extent it will follow them. However, the Council would need a strong reason not to follow the objectives – which would be permitted only in exceptional circumstances. The Council must record how it has considered the procurement objectives during a covered procurement and file this record with the other procurement records.

These Rules for Contracts provide a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with the legislation.

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Definitions

In these Rules for Contracts:

Authorising Officer means an officer authorised to approve the placement of orders or invoices for payment

Cabinet means the Leader of the Council and the other members of the Council's Executive

Cabinet Member or Cabinet means the Member or Member body responsible for procurement decisions recommended by the Procurement Board (Constitutional responsibility for the Director of Resources & Deputy Chief Executive – B 38 “Subject to the relevant Cabinet Member or Cabinet wishing to make the decision, at the conclusion of an appropriate procurement process to enter into such agreements with preferred contractors, provided that the contractual spend is within approved budgets”)

Central Digital Platform (CDP) is a suite of tools to help with public procurement:

- **Supplier registration:** where suppliers register and store their details.
- **Find a Tender (FTS):** an enhanced version of the existing site for publishing public contract notices.
- **Supplier Information System (SIS):** a new system for suppliers to submit their business information.
- **Integrated platform:** suppliers can access FTS and SIS through the same account.
- **Planning, managing contracts, and transparency:** CDP offers tools to help with these tasks at every stage of the procurement process.

The CDP will also replace the Contracts Finder website. The Council will publish its notices, documents and other information required during a procurement here first, via CSWJETS (see definition below), and then elsewhere, such as on the Council's website. Suppliers can register and submit their basic information on the CDP and use it to access and participate in new procurement opportunities.

Conflict of interest means a perceived or real conflict between the interests of someone acting in relation to a procurement and the interests of the procurement itself. A conflict of interest does not necessarily mean that there has been any wrongdoing – it may mean only that an observer could reasonably suspect wrongdoing, even if none has occurred. A conflict of interest may be a personal,

professional or financial interest and may be direct or indirect.

Contract means the agreement between the Council and a contractor for the supply of works, supplies or services, or for any activity that generates income for the Council

Contractor means a supplier or provider of works, supplies or services to the Council

Contract change note means the document that describes changes to the original contract which have been agreed by both parties

Contract package means the scope for amalgamating like requirements/services currently operating at different parts of the organisation, to suit the supply market to achieve overall better value

Contracts under seal means contracts that are signed and sealed with the common seal of the Council giving the council a statutory limitation of 12 years i.e. claims can be made for breach of contract for 12 years

Convertible contract means a below-threshold contract that becomes a fully-regulated above-threshold contract after a modification increases its value to above the relevant threshold

Corporate contract means a contract or framework agreement for the supply of works, supplies or services to the Council

Corporate Procurement Service means the centralised procurement service for Solihull

CSWJETS means Coventry, Solihull and Warwickshire Joint Etendering System, the Council's etendering portal, which integrates with the CDP

Decision making body means the body responsible for decisions in the described situation under the Council's Standing Orders

Director means a member of the Council's Corporate Leadership Team.

Duty to consider lots means the duty under the Procurement Act 2023, prior to starting a procurement, to determine if the goods, services or works to be supplied could reasonably be provided under more than one contract and whether those contracts could be awarded using lots. If such contracts could be so awarded, then lots must be used. The purpose of the duty is to break large contracts down into smaller ones, to enable more public money to be spent with small and medium-sized enterprises (SMEs) and voluntary, community and social enterprises (VCSEs) – which is a government priority.

Dynamic market means a list of suppliers that have passed conditions of participation to make them eligible to participate in future procurements (a pre-approved supplier list).

Estimates are the revenue budgets that are agreed annually through Full Council

Framework Agreement means an agreement between the Council and a contractor for the provision of estimated quantities of supplies or services. This becomes a contract when an order for a specific quantity is placed either after further competition or through the most competitive source identified in the original tender.

FTS Find a tender service – to be improved and incorporated into the CDP (see above).

Grant a sum of money given to a person or organization by the Council for a specific purpose. Grants do not need to be paid back

Head of Procurement means the Council's most senior procurement officer or his or her authorised representative.

Health Care Services (Provider Selection Regime) Regulations 2023 (the "PSR") means the set of rules for procuring user-choice health-care services in England by organisations termed relevant authorities, which include the Council. The Procurement Act 2023 does **not** apply to procurements subject to these rules. And these rules do not apply to the Council's procurement of goods or non-health-care services (unless as part of a mixed procurement). **Light Touch regime** is the process for the procurement of contracts for certain social, health, education and other public services that are subject to more flexible procurement rules. Schedule 1 of the Procurement Act 2023 specifies which services are light-touch services by description and reference to the corresponding Common Procurement Vocabulary (CPV) codes. These services are provided directly to individuals or groups of people, and therefore warrant special treatment and greater flexibility.

Mixed procurement means contracts that are not 100% goods, 100% services or 100% works. They comprise a mixture of two or more different categories. Section 5 of the Procurement Act 2023 deals with handling mixed procurements. Contact Corporate Procurement Services for more information.

Monitoring Officer means the officer designated as such under Section 5 of the Local Government and Housing Act 1989 or his or her deputy

National Procurement Policy Statement (NPPS) sets out the Government's priorities for public procurement and how contracting authorities, such as the Council, can support their

delivery. The NPPS is a statutory statement which allows the Government to set and communicate the wider policy objectives to which it expects public procurement to contribute. These might include, for example, objectives to increase skills or jobs in a certain industry or area, or to align with the pledge to achieve net zero by 2050. The Council must “have regard” to the Government’s main priorities for public procurement, which also include value for money; social value; creating resilient businesses, and opportunities for quality employment and skills development; improving innovation, supply chain resilience and security of supply; and tackling climate change and reducing waste. A breach of this statutory duty is not actionable under Part 9 of the Act (Remedies for breach of statutory duty), but the Council can be held accountable for non-compliance through the judicial review process and systemic breaches of this nature could be grounds for an investigation into the Council’s procurement under part 10 of the Act.

Officer is a person employed by the Council with authority to procure requirements in accordance with these Rules for Contracts or make procurement decisions and / or undertake contract management responsibilities.

Outcome based specifications means a specification that describes the required outcomes through service delivery and leaves the method of delivery to the third party provider.

Performance Specifications means a specification that provides details of the methods to be adopted when delivering the required outcomes

Procurement Approval Document (PAD) means the document template used to produce the rationale for recommending a particular route to market to the Procurement Board

Procurement Board means the Officer Board responsible for all procurement decisions or recommendations to the Cabinet Member or Cabinet for decision when appropriate.

Procurement Officer means an Officer who works in Corporate Procurement Services

Public Procurement Legislation means whichever of the following items of UK legislation and any amendment, re-enactment or replacement of any of them applies to the procurement: the Procurement Act 2023 and its subordinate legislation; the Public Contracts Regulations 2015; the Health Care Services (Provider Selection Regime) Regulations 2023 (the “PSR”); or the Concessions Contracts Regulations 2016.

Quotation means an offer to undertake a contract of £10,000 or more but less than

£50,000 in value

Right to challenge, the community right to challenge for services under the Localism Act 2011.

Section 151 Officer means the Officer who has the responsibility under the Local Government Act 1972 for the proper administration of the authority's financial affairs

Services contract means a contract or framework agreement for the provision of services to the Council

Simple contracts means contracts signed for each party to provide a "consideration" with a statutory limitation of 6 years i.e. claims can be made for breach of contract for 6 years.

SMART Specific, **M**easurable, **A**chievable, **R**ealistic and **T**ime-Based

Social Value means added environment, economic and social value delivered by contractors for local communities whilst providing goods, services or works for the local authority

Solicitor to the Council means the Council's most senior legal officer or his or her authorised representative.

Standstill Period means the period of at least eight working days that provides an opportunity for suppliers to raise any concerns about, or formally challenge, the award decision before the Council enters into an above-threshold contract with a supplier. It starts on the day on which the contract award notice is published.

Supplies contract means a contract or framework agreement for the sale or hire of supplies to the Council and includes, where appropriate, installation of supplies

Tender means an offer to undertake a contract of £50,000 or more in value

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 as amended or replaced

Works contract means a contract for the construction, repair or maintenance of a physical asset not defined as Services in the appropriate Public Procurement Legislation

RULES FOR CONTRACTS Quick Reference Guide – Financial Thresholds inclusive of VAT	
<i>at and above £5,372,609</i>	<i>Competitive tenders and compliance with the Procurement Act 2023 are required for works supplies and services contracts, concession contracts and light-touch contracts that are also concession contracts. Compliance with the PSR is required for the procurement of user-choice health-care services – so inviting competitive tenders might not be appropriate. Contracts in the form of Deeds must be sealed by the Legal Department and signed by the Solicitor to the Council or an Authorised Signatory. All other contracts are signed by the Director and Head of Procurement</i>
<i>at and above £663,540</i>	<i>Competitive tenders and compliance with the Procurement Act 2023 are required for supplies and services contracts. Threshold relates to light-touch regime contracts for health and social care services. Contracts in the form of Deeds must be sealed by the Legal Department and signed by the Solicitor to the Council or an Authorised Signatory. All other contracts are signed by the Director and Head of Procurement</i>
<i>at and above £214,904</i>	<i>Competitive tenders and compliance with the Procurement Act 2023 are required for supplies and services contracts (excluding light-touch regime contracts for health and social care services, which are subject to the £663,540+ threshold; and user-choice health-services contracts, which are subject to the PSR). Contracts in the form of Deeds must be sealed by the Legal Department and signed by the Solicitor to the Council or an Authorised Signatory. All other contracts are signed by the Director and Head of Procurement.</i>
<i>£50,000+</i>	<i>Competitive tenders required. Contract on standard form of contract or bespoke form of contract. Contract signed by Head of Procurement or authorised deputy</i>
<i>£10,000 - £49,999</i>	<i>Competitive quotations required. Contract on official order form or standard form of contract. Contract signed by Head of Procurement or authorised deputy.</i>
<i>Below £10,000</i>	<i>Competitive quotations advisable however not mandated. Must either use corporate contracts where one exists or show value for money. Use official order form. See guidance in section 12.3</i>
NB Any requirement over £10,000	Use a corporate contract where one exists unless there is good reason not to; and refer the requirement to Corporate Procurement Service if over £50,000.

NB: Procurement Act 2023 (the “Act”) thresholds	<i>The Act’s thresholds are revised either every 2 years in January or when the UK has a VAT rate change. Figures quoted above for works, concessions and light-touch regime contracts that are also concessions (£5,372,609+), light-touch regime contracts (£663,540+) and supplies and services contracts (£214,904+) are applicable from the 24 February 2025. All figures in this table include VAT.</i>
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Summary of Rules for Contracts – quick reference guide including approval levels.

Procurement Process	All expenditure equal to or above the Procurement Act 2023 (the “Act”) threshold for works (£5,372,609 inc. VAT) and supplies and/or services (£214,904 inc. VAT) require compliance with the Act, unless they are user-choice health-care services which require compliance with the PSR – in which case inviting tenders might not be appropriate	Over £50,000 and below the Procurement Act 2023 threshold for supplies and/or services (at or above £214,904 inc. VAT)	£10,000 to £49,999	Below £10,000
Requirement to be referred to	Procurement Board	Corporate Procurement Service	N/A	N/A
Approval	Through Estimates and compliance with Rules for Contracts, Procurement Board for approval	Director approval.	Director approval or delegated authority to budget holder.	Budget holder
Invitation to tender / quote	£5,372,609 and above including VAT works contracts, concession contracts, and light-touch contracts that are also concession contracts require a minimum of 3 competitive tenders which must be advertised on the Central Digital Platform via CSWJETS. £663,540 and above including VAT, light-touch regime contracts for health, education and social care, and which are not subject to the PSR, require a minimum of 3 competitive tenders which must be advertised on the Central Digital Platform via CSWJETS. £214,904 and above including VAT supplies and services contracts require a minimum of 3 competitive tenders (unless they are services contracts subject to the PSR), which must be advertised on the Central Digital Platform via CSWJETS.	Competitive tenders. Aim for a minimum of 3, which must be advertised through CSWJETS and via it on the Central Digital Platform.	Minimum of 3 written competitive quotations Where appropriate, a minimum of 2 should be local.	Use of corporate contract or demonstrate value for money (obtaining 3 written quotations is the most effective way of demonstrating value for money. See further guidance on how to demonstrate value for money in Section 12.3)
Social Value	Social Value to be considered at the commissioning stage of the procurement. TOMs to be used with a recommended weighting of 15% to 20% in the evaluation. Exceptions to this rule must be authorised by the Procurement Board through the Procurement Approval Document (PAD)	Include Social Value Themes Outcomes and Measures (TOMs) with a weighting of 5% to 10% in the evaluation	Light touch social value with a suggested weighting of 5% in the evaluation	N/A
Opening of tenders	Electronic opening ceremony on CSWJETS	Electronic opening ceremony on CSWJETS	Electronic opening ceremony on CSWJETS when applied	N/A
Form of Contract	Standard or bespoke Form of Contract. Where contracts are in the form of Deeds they must be sealed.	Standard or bespoke Form of Contract.	Official purchase order form or Standard Form of Contract.	Official order form or Council procurement card

Contract to be endorsed /signed by	Director or Head of Procurement or authorised deputy Contracts under seal to be signed by the Solicitor to the Council or Authorised Signatory	Head of Procurement or authorised deputy	Head of Procurement or authorised deputy.	Budget holder
Exceptions to the Rules for Contracts	Not available as the Procurement Act 2023 or the PSR dictate the procurement processes that are to be followed	Approval for exceptions to these Rules may be granted by Procurement Board or relevant Director as documented in Procurement Board Terms of Reference.	Approval for exceptions to these Rules may be granted by Procurement Board or relevant Director as documented in Procurement Board Terms of Reference.	No exceptions required

The Section 151 officer in consultation with the Procurement Board, subject to conditions, may grant an exception to the Rules for Contracts. An exception cannot be granted where a breach of any relevant legislation would be incurred.

1. Objectives

The Rules for Contracts exist to achieve the aims set out below and to assist and protect the interests of the Council and individual Officers.

It is important that they are viewed as ***an aid to good management.***

Followed properly they provide protection for Officers against criticism and support good procurement practice.

Officers must be able to demonstrate that they followed procedure or had obtained the necessary authority for not doing so, in order to:-

- ✓ *ensure value for money is obtained;*
- ✓ *ensure probity in the award of Council contracts;*
- ✓ *ensure fairness, equity, openness and transparency in the treatment of contractors/suppliers;*
- ✓ *ensure that procedures for placing contracts/orders comply with legislation;*
- ✓ *ensure records are kept which demonstrate compliance with Rules for Contracts.*

2. Scope of Rules for Contracts

All purchases and contracts made in the name of and binding the Council, (including contracts let by schools where schools are using grant money or money other than from their delegated budgets) must comply with these Rules for Contracts, and also any contract that involves income to the Council. This includes contracts where the expenditure is grant aided by a third party. These rules also apply to a company which is controlled by the Council for the purposes of the Local Government and Housing Act 1989. Any arrangement where the Council pays or receives money or equivalent value, other than a contract to employ staff, must comply with these Rules.

This includes contracts for:

- a) buying and selling supplies;
- b) any work being carried out;
- c) services (including financial and consultancy services);
- d) hire, rental or lease (of supplies); and
- e) concession agreements.

- 2.1 To receive and deal with expressions of interest (through the Procurement Board) from relevant bodies in providing or assisting in providing a relevant service on behalf of the Council in accordance with Part 5, Chapter 2 of the Localism Act 2011 and to consult with the relevant Cabinet member on each expression of interest that is received

3. Compliance

- 3.1 Every contract entered into on behalf of the Council must comply with these Rules for Contracts and all relevant legislation.
- 3.2 The only areas excluded from these rules are internally recharged services (ie those where no third party is involved) and those services defined in Appendix 1 and marked with an asterix (*).
- 3.3 All contracts must be in writing. Contracts under £50,000 in value must be made on an official Council purchase order form or standard form of contract, as appropriate, approved by a designated Authorising Officer, with the Council's standard terms of trading endorsed or referred to. For works contracts, one of the standard forms of contract, such as the NEC, JCT or ICC forms may be appropriate. Legal Services will advise on other suitable forms of contract.
- 3.4 Responsibility for compliance with Rules for Contracts remains at all times with Council officers. Directors and the Head of Procurement will be responsible for monitoring compliance against these rules, aided by internal or external audits or inspections which will be carried out as appropriate.

4. Justification of Need

- 4.1 Before any purchase is made consideration must be given to:
- a) whether the expenditure is really necessary;
 - b) whether it can be met from within existing resources or whether it is being funded through grants or other approved income sources; and
 - c) the revenue consequences of any capital investment.

- 4.2 If the purchase is justified, then the exact requirements must be defined and an appropriate specification drawn up by the service.

5. The Procurement Board

5.1 Composition of the Procurement Board:

- (a) Appointment and removal of Procurement Board members: from time to time in accordance with its approved terms of reference and its members must include the Chief Executive, the Section 151 Officer and the Directors.
- (b) How the Procurement Board is to conduct itself: as determined by the Procurement Board from time to time, acting reasonably and in good faith, and in any case, lawfully.

5.2 The Procurement Board shall have the following powers:

- (a) To determine whether to approve or refuse any proposed procurement processes
- (b) To monitor compliance with contract rules and monitor spend and contracts; to achieve savings;
- (c) To deal with expressions of interest from a relevant body exercising the right to challenge for a relevant service under Part 5, Chapter 2 of the Localism Act 2011;
- (d) The Section 151 Officer has the power to vary the terms of reference of the Procurement Board

5.3 When reporting to the Procurement Board for tendering and contract extensions, Officers must complete the [Procurement Approval Document](#) (PAD) or [Extension Procurement Approval Document](#) template issued by the Head of Procurement.

PROCUREMENT GOVERNANCE

6. Exceptions to Rules for Contracts

- 6.1 An exception to the Rules for Contracts is a permission to let a contract without complying with one or more of the Rules. An exception to Rules for Contracts may be granted subject to conditions. An exception cannot be granted where a breach of relevant legislation would be incurred.
- 6.2 Only the Section 151 Officer in consultation with the Procurement Board may grant an exception to these Rules for Contracts or as detailed in the Procurement Board Terms of Reference. Applications for exceptions must be made in writing to the Procurement Board in a format agreed by Procurement Board detailing the exception that is requested and the justification for the exception.
- 6.3 The Section 151 Officer will keep a register of all exceptions to Rules for Contracts, which shall be available by appointment for inspection by members of the Council and the public. Exceptions granted will be recorded on the Procurement Board decision log and the Exceptions register.
- 6.4 An application for an Exception to Rules for Contracts to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an Exception to Rules for Contracts. If an application is granted, the Director responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.
- 6.5 An exception to Rules for Contracts may be granted in the following circumstances:
- (a) it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;
 - (b) if a grant from a public body includes a recommendation as to the supplier or is time limited;

- (c) if in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules; and
- (d) if there are exceptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure or another Rule for Contract.
- (e) if there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years; or
- (f) if value for money can be achieved by the purchase of used vehicles, plant, equipment or materials.

6.6 An exception to Rules for Contracts is granted and separate authorisation is not required to place an order in the following circumstances:

- if it is with a single supplier under an existing corporate contract or framework agreement that expressly permits such an order;
- if it is against a contract/framework agreement that expressly permits such an order and which has been let by another Public Buying Organisation where such a contract or framework agreement has been let to allow collaboration, e.g. let by Yorkshire Purchasing Organisation or Eastern Shires Purchasing Organisation etc.
- if a fully-approved sourcing strategy expressly states that a direct award has appropriate benchmarks to prove value for money and that it also complies with the relevant Public Procurement Legislation.

Central Procurement Services ("CPS") check the following for compliance with the relevant Public Procurement Legislation: section 41 (and one or more of the justifications in Schedule 5), section 42 or section 43 (or schedule 2 for exempted contracts – see Appendix 1 of this document) of the Procurement Act 2023; Part 2, Chapter 2, Section 6, Regulation 72 of the PCR 2015; Part 2, Regulations 13 and 14 of the PSR; and Regulation 43(1) of the Concessions Contracts Regulations 2016. Such compliance will be the case for contracts for user-choice

health services subject to the PSR. For contracts subject to the Procurement Act 2023, a direct award for a non-exempted contract needs to be justified in accordance with one or more of the following:

1. Urgency:

- a) the goods, services or works to be supplied are strictly necessary for reasons of extreme and unavoidable urgency; and
- b) as a result the contract cannot be awarded on the basis of a competitive tendering procedure - even one in accordance with the shortened timescales allowed for urgency.

urgency is “unavoidable” if it: (a) is not attributable to an act or omission of the Council; and (b) could not have been foreseen by the Council.

2. Single supplier:

if due to a particular supplier having intellectual property rights or other exclusive rights, only that supplier can supply the goods, services or works required; and there are no reasonable alternatives to those goods, services or works. For example, where software was developed and provided by one supplier and it owns the IPR and is the only supplier able to provide security updates, patches and bug fixes.

3. Single supplier:

if the public contract concerns the creation or acquisition of a unique work of art, museum artifact, manuscript, archive collection item or artistic performance. For example, where the identity of the artist intrinsically determines the unique character and value of the art, and therefore the requirement can be met by only one artist.

4. Additional or repeat goods, services or works:

the contract concerns the supply of goods, services or works by the existing supplier which are intended as an extension to, or partial replacement of, existing goods, services or works (both those already supplied and those that are contracted to be supplied) in the following circumstances:

- (a) where a change in supplier would result in the Council receiving goods, services or works that are different from, or incompatible with, the existing goods, services or works; and
- (b) the difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance.

For example, the Council may need to award a contract to an existing supplier in order to update some of the Council's hand-held communications devices for street-patrol operatives to ensure that the new devices are compatible with the existing devices.

5. Commodities:

where goods are purchased on a commodity market. In this case, the price and availability are generally driven by demand in the market, which means requiring suppliers to tender in the usual manner is unnecessary and may not drive the best outcome for the Council. This could be, for example, fuel if it is bought from local agents somewhere where only short-term quotations are available.

6. Advantageous terms on 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 the one to whom the contract is to be

awarded, is undergoing insolvency proceedings.

7. If awarding a contract directly is necessary to protect human, animal or plant life or health; or to protect public order or safety; however, this exception applies only if a minister of the crown has made regulations to allow it.

8. Prototypes and development:

the contract concerns the production of a prototype, or supply of other novel goods or services, for the purpose of the following:

testing the suitability of the goods or services;

researching the viability of producing or supplying the goods or services at scale and developing them for that purpose; or

other research, experiment, study or development.

“novel goods or services” means goods or services designed or developed at the Council’s request.

- 9 Where the Council has previously awarded a contract under a compliant competitive tendering procedure and the tender notice and tender documents expressly set out that the intention was to carry out a subsequent procurement of similar goods, services or works by direct award. Broadly speaking, the direct award must be made within five years of the original competitively tendered contract having been awarded.

10 The proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the Public Procurement Legislation, eg in accordance with section 19 *Contract modifications*.

- if it is for a single quotation compliant with Public Procurement Legislation and benchmarked for value for money against published frameworks or Public Buying Organisations’ catalogues.

- if it is as part of a compliant partnering contract that contemplates a series of contracts with a single supplier;
- if it is for a subscription if only one supplier can deliver the contract due to intellectual property or other exclusive rights, no reasonable alternative or substitute exists, and the Director responsible for the contract is satisfied that the subscription represents best value for money.
- if legislation requires the Council to let a contract differently from these Rules for Contracts; and
- if it is for all utilities contracts since all of these must be let through the Corporate Procurement Service and in line with the procedures dictated by the Head of Procurement.

A flowchart describing the Exceptions approval process can be found [here](#)

7. Valuation of contracts and Aggregation of Requirements

7.1 The Director responsible for each contract must record an estimated value for the contract before any offers are sought.

7.2 The value of a contract is the value of all contracts where the goods, services or works to be supplied could reasonably be supplied under a single contract, unless the Council has good reasons not to procure using a single contract. The Council must not value a contract with a view to avoiding any requirement in the Act or in these Rules for Contracts.

7.3 The Director responsible for each above-threshold contract must comply with the Council's duty to consider lots (see Definitions). This means the Director or his or her nominated Officer must consider, in consultation with the Procurement Officer, whether the goods, services or works to be supplied could sensibly be delivered under more than one contract (without deliberately splitting it to avoid a particular procedure, or disregarding these Rules for Contracts). If lots are not used the Council must provide publicly written reasons for not using them. A competitive tendering procedure may limit the number of lots for which a supplier can tender. The Council must provide an objective mechanism for supplier selection in circumstances where a supplier would otherwise exceed the lot limit – eg the supplier will be awarded only the

number of lots permitted in which it achieved its highest scores.

8. Duties of Directors and the Head of Procurement

- 8.1 The Director is responsible for ensuring that all expenditure involving procurement activity complies with the Rules for Contracts, in conjunction with the Head of Procurement. He/she is also responsible for ensuring that contracts within his/her directorate are managed and operated within the terms of the contracts themselves.
- 8.2 The Head of Procurement is responsible for maintaining an up to date register of contracts. Contracts for less than £10,000 or one off contracts need not be recorded in the register. The contracts register is to be published on the Council's website in accordance with the [Local Government Transparency Code](#)
- 8.3 As soon as practicable after the Council's budget has been set and in any event before the end of March in each financial year, the Director must notify the Head of Procurement of all contracts (including values) worth at or above £214,904 including VAT that his/her directorate plans to enter into during the following financial year. This will enable the Head of Procurement where appropriate, to publish the Council's planned procurement notices on the Central Digital Platform in accordance with the Procurement Act 2023 . These optional notices have the benefit of reducing tendering timescales (see Section 8.6). The Head of Procurement will decide which planned procurement notices are appropriate to publish, based on his or her view as to the appropriate Procurement Act 2023 threshold that applies to each procurement.
- 8.4 As soon as practicable after the Council's budget has been set and in any event before the end of March in each financial year, the Director must also notify the Head of Procurement of all contracts worth at or above £2,000,000 including VAT that his or her directorate plans to enter into during the following eighteen months. This will enable the Head of Procurement to publish the Council's pipeline notice by the 26 May in each financial year. This notice must cover all planned contracts worth at or above £2,000,000 including VAT where the Council intends to publish a tender notice or a transparency notice, and

cover the period of 18 months from 1 April in the financial year when the notice is published.

- 8.5 Where a Contract is to be awarded with a value of at or above £50,000 including VAT the Director's team must notify Corporate Procurement Service ASAP to ensure that a below-threshold contract notice is issued, if required.
- 8.6 Where the total contract value is at or above the appropriate threshold value in the Act, it introduces different notices and publication requirements. Corporate Procurement Service will help the Director to comply with the Act by helping him or her to publish the following notices:
- **UK1 Pipeline notice** - mandatory, because the Council's annual spend is above £100,000,000. The notice is a once-a-year forward look at planned procurements at or above £2,000,000 including VAT over each 18 month period from the 1 April each year. The notice must be published by the 26 May each year.
 - **UK2 Preliminary market engagement notice** - mandatory if engagement has or will take place for an above threshold contract; alternatively the Council can explain in the relevant tender notice why it hasn't taken place. This notice is optional for below threshold contracts. And there is no requirement to explain non-publication of a preliminary market engagement notice in a below-threshold tender notice.
 - **UK3 Planned procurement notice** – optional; it advises the market of an upcoming above-threshold procurement and can reduce its tender timescale from 30 days to only 10 days, if published at least 40 days, but not more than 12 months, before the day on which the tender notice is published. The Council may also voluntarily publish a planned procurement notice for below threshold contracts, to provide advance notice of the procurement to suppliers - especially SMEs; however, in these circumstances this will not result in a reduction in the tendering period, as there is no minimum tendering period for below-threshold procurements anyway.

- **UK4 Tender notice** - mandatory for all open and competitive flexible procedures for above-threshold contracts. Tender notices are also required to establish framework agreements; to procure using dynamic markets; and to procure notifiable below-threshold contracts, which for the Council have a value at or above £30,000 including VAT. A tender notice is not required if the Council advertises a notifiable below-threshold contract to pre-selected suppliers only.
- **UK5 Transparency notice** - mandatory to start the eight-working-day standstill period prior to awarding an above-threshold contract without competition (used only in exceptional and closely defined circumstances). The mandatory standstill period does not apply to contracts that are user-choice contracts or any other contracts subject to voluntary standstill periods for direct awards covered by the UK6 Contract award notice (see below). A voluntary standstill period may be applied if there is no requirement to observe a standstill period. Like any required standstill period, a voluntary standstill period must be at least eight working days. If a voluntary standstill period is applied, the Council must not enter into the contract before the end of that voluntary standstill period. The Council may wish to consider applying a voluntary standstill period as a means to manage the risk of the contract being set aside (cancelled) by the courts.
- **UK6 Contract award notice** - mandatory to start the eight-working-day standstill period prior to awarding an above-threshold contract after an open or a competitive flexible procurement competition. This notice can also be used to start a voluntary eight-working-day standstill period for direct awards – eg for contracts awarded directly for: 1. extreme and unavoidable urgency; 2. direct award to protect life; 3. call-offs awarded under a framework; 4. contracts awarded under a dynamic market; and 5. light-touch contracts. The Council may wish to consider applying a voluntary standstill period as a means to avoid the risk of the contract being set aside (cancelled) by the courts.

- **UK7 Contract details notice** – mandatory to publish details of an awarded above-threshold contract within 30 days of contract signature - or 120 days for light touch contracts. This notice is also required for regulated below-threshold contracts at or above £30,000 including VAT and all contracts procured by direct award. The contract itself must also be published for public contracts worth at or above £5,000,000 including VAT.
- **UK8 Contract payment notice** – mandatory to publish details every quarter of any payment over £30,000 including VAT made against an above-threshold non-exempted contract (a “quarter” means a period of three months ending on the 31 March, 30 June, 30 September or 31 December in any year). This notice is not needed for concession contracts.
- **UK9 Contract performance notice** – mandatory to publish at least once a year the three most important KPI scores at that time for public contracts worth at or above £5,000,000. The Council must also publish this notice within 30 days of an instance of supplier poor performance or a breach of contract leading to damages or a settlement agreement in an above-threshold non-exempted contract. This notice does not apply to framework agreements, light-touch contracts or concession contracts. It does apply to call-off contracts from framework agreements.
- **UK10 Contract change notice** - mandatory to publish before modifying an above-threshold contract or a convertible contract. Any such modification must be: 1. a permitted modification under the Act’s Schedule 8 (Procurement Act 2023); or 2. not a substantial modification; or 3. a below-threshold modification. Under the Procurement Act 2023, the modification itself must be published for contracts at or above £5,000,000 including VAT. This notice does not apply to light-touch contracts. As best practice, a voluntary standstill period should be held, if possible, before the modification is signed.

- **UK11 Contract termination notice** - mandatory to publish within 30 days of an above-threshold contract coming to an end for any reason. Optional publication of this notice is allowed for below-threshold contracts.
- **UK12 Procurement termination notice** – Mandatory to publish if, after publishing a tender or transparency notice, the process is terminated without the award of a contract. A procurement termination notice may be published voluntarily to inform the market that a below-threshold procurement or a selection process under a framework has been terminated, and a contract will not be awarded, or to publicise the fact that a process to establish a dynamic market has been terminated.
- **UK13-16 Dynamic market notices** – mandatory to publish and update when advertising, establishing, changing or terminating a dynamic market. Dynamic market notices include: 1. a notice to say that a dynamic market will be established, which will also invite suppliers to join it; 2. a notice to say that a dynamic market has been successfully established; 3. a notice to say if a dynamic market has changed; and 4. a notice to say if a dynamic market has ceased to operate. A tender notice is required to advertise a procurement under a dynamic market. The Council is not required to observe a mandatory standstill period when awarding a contract under a dynamic market, but may choose to apply a voluntary one.
- **UK17 Payments compliance notice** – mandatory to publish twice a year details of the Council's performance against its new mandatory 30-day payment terms.

8.7 The Director must use corporate contracts, where they are in place. The corporate contracts register can be found here - [Contracts register](#) To do otherwise would be unlikely to give value for money for the Council and may be in breach of the Procurement Act 2023 or other Public Procurement Legislation.

If no corporate contract is found then the compliant procurement process must be followed - [Compliant Procurement Process Step by Step Guide](#)

8.8 If there is an in-house service available, the Director must consider, in accordance with Value for Money principles, whether that service should be used or whether a contract should be let to an external provider, although all resource implications e.g. TUPE implications and/or redundancies for directly employed staff, must be considered as part of the best value assessment. If the Director believes the Council should award a contract to an external provider that is part of the Council's corporate family, then he or she must contact the Head of Procurement to ensure that the proposed contract is lawful in accordance with the Procurement Act 2023 (ie that the *Teckal* exemption applies). If the Director wants the Council to award a contract to an external provider that is another contracting authority (ie a body subject to public procurement law, as the Council itself is), then the Director must contact the Head of Procurement to ensure that the proposed contract is lawful in accordance with the Procurement Act 2023 (ie that the *Hamburg* exemption applies). Please see the first two paragraphs of Appendix 1.

9 Selection of Procurement Route

9.1 When selecting the most appropriate procurement route to secure value for money, the Director, in consultation with the Head of Procurement, shall adhere to the following principles:

- (a) All practical options for contract packages and methods of procurement should be analysed and evaluated, with the object of selecting the option that most effectively ensures value for money is achieved. The preferred option must provide full, fair, transparent and open competition and be identified as the most advantageous route to market.
- (b) The scope of contract packages should take into account similar themes and outcomes across services and Directorates identified by strategic, policy and service reviews. Stakeholders within and outside the Council should be consulted about service standards

and specifications and an investigation of the market undertaken; these consultations and market investigations must be carried out in accordance with the Procurement Act 2023's requirements relating to pre-market engagement (see Section 9.3, below). Performance under any current contract should be appraised and prospective performance considered in the light of consultations and investigations.

- (c) The contract package should seek to stimulate diversity and innovation, enhance choice for service users and attract new suppliers.
- (d) Collaboration with and partnerships between the public, private and voluntary sectors should be sought- provided they are established in accordance with the applicable legislation, such as the Procurement Act 2023 - which demonstrate a shared commitment to objectives that benefit users of the Council's services.

9.2 The Council has a [Compliant Procurement Process Step by Step Guide](#) that sets out minimum requirements for reporting and decision-making with regard to contracts and the key stages and actions the Council requires major procurements to follow, including market assessment and analysis, user consultation, risk analysis and project planning and management – all in accordance with applicable legislation, such as the Procurement Act 2023. The Compliant Procurement Process details how contracts should be let and minimum requirements for ongoing contract monitoring and management. Embedded in the Compliant Procurement Process are links to intranet pages which describe the mandatory processes to be followed for:

- (a) The Corporate Approach to Contract Management, which is now subject to obligations in the Procurement Act 2023; and
- (b) All procurement, including the Appointment of Consultants.

Officers must comply with these processes before expenditure is committed through telephone calls, negotiations, purchase orders or contracts.

9.3 Subject to any advice provided by Corporate Procurement Services and / or Legal Services, the officer should hold, prior to starting the procurement process, general pre-market engagement consultations with potential suppliers about the

nature, level and standard of the proposed contract and its deliverables. Market views and intelligence should be sought to aid the planning and conduct of the procurement process, provided that this does not result in either non-compliance with the principles set out in the Act, or any prejudice against any interested supplier(s) that is not consulted, and / or result in any distortion of competition. The officer must take and keep adequate written records. He or she must always consult with Corporate Procurement Services and / or Legal Services and take their advice and comply with their requirements, before starting any pre-market engagement for above-threshold procurements. This is to ensure that the proposed method of engaging the market does not preclude suppliers from participating in any subsequent procurement activity and to minimise the risk of any legal challenge. Suppliers consulted during pre-market engagement must be excluded from the procurement process only where there is no other way to ensure compliance with the Act. Potential suppliers must always be given the opportunity to prove that their involvement in pre-market engagement will not distort competition.

10 Authority to enter into a contract

- 10.1 Officers of the Council have no authority in their own right to enter into any contract on behalf of the Council. They may only enter into a contract if authority is delegated to them or by specific decision of the Council, the Cabinet or a Committee or Sub-Committee.
- 10.2 Unless an officer has been given authority to enter into a contract, all contracts involving capital expenditure must be authorised by a specific decision of the Cabinet or a Cabinet member.
- 10.2 Unless an officer has been given authority to enter into a contract, all contracts involving revenue expenditure must be authorised by a specific item in the approved revenue budget for the relevant year. A specific item in the approved revenue budget is deemed to be an authority for the relevant Director to enter into a contract up to the value estimated.
- 10.3 All contracts will be let in accordance with these Rules with the involvement of the Corporate Procurement Service in consultation with service users and

technical experts. For expenditure under £50,000 including VAT the request for quotation process should be followed and advice can be sought from the Corporate Procurement Service.

11 Specifications

11.1 The Director in conjunction with the Head of Procurement must ensure that an appropriate technical specification is prepared for every contract, which sets out clearly the Council's requirements with regard to the works, supplies or services to be provided. The specification must comply with the Procurement Act 2023. Ask Corporate Procurement Service for guidance; but here are a few key points:

Specifications should be based on functional or performance requirements. In other words, output-based specifications are preferred, rather than overly prescriptive specifications that state precisely how outputs are to be achieved.

Only if the contracting authority considers it **essential** to make its requirements understood can the procurement documents refer to a particular:

- (a) trademark, trade name, patent, design or type,
- (b) place of origin, or
- (c) producer or supplier.

Any reference to the matters mentioned above must be on a wholly exceptional basis (a last resort). If they are referred to, the procurement documents must also state that tenders demonstrating equivalent quality or performance will not be disadvantaged.

All works, supplies and services must be specified by reference to relevant standards as appropriate. Non-discrimination duties apply - eg UK technical standards may be used **only** if internationally recognised equivalents are also permitted or if there are no internationally recognised equivalents.

11.2 Not used.

11.3 Specifications should incorporate SMART performance criteria

to enable the contract to be monitored and managed, and should build in a capacity for flexibility and innovation, to secure sustained improvements and the ability to meet changing local and national circumstances. In accordance with the Procurement Act 2023, before entering into a public contract with an estimated value at or above £5,000,000 including VAT, the Council must set and publish in the contract details notice at least three key performance indicators (KPIs) in respect of the contract. The KPIs are then used to assess contract performance. This requirement will not apply if the Council considers that the supplier's performance could not appropriately be assessed by reference to KPIs; and it also does not apply to light-touch contracts and framework agreements. A contract performance notice must be published at least once every 12 months during such a contract and on its termination. This notice is used to assess the performance of a supplier against the relevant KPIs and must be rated either "good", "approaching target", "requires improvement", "inadequate" or "other". Consult with Corporate Procurement Service for further guidance.

- 11.4 Where appropriate, specifications should identify and allocate the risks inherent in the contract.
- 11.5 If a contract may involve the transfer of employees (from the Council to a contractor or from one contractor to another), the specification should include all relevant anonymised information relating to those employees to enable tenderers to price their bids accurately. Personal data is disclosed to the winning bidder only after the Council has a written guarantee from it of the confidentiality of such personal information.
- 11.6 The Director must obtain all necessary professional and technical advice and assistance in preparing a specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. Consultants or other third parties who assist in the preparation of a specification must not be invited to tender or quote for the contract if the unfair advantage that such assistance has given them cannot be avoided: ie if steps cannot be taken to avoid any unfair advantage or if

the supplier refuses to take the necessary steps.

12 Contract procedures

- 12.1 The Director in conjunction with the Head of Procurement must establish whether Public Procurement Legislation applies to a proposed contract. If in doubt, the Solicitor to the Council will advise whether the legislation applies. When Public Procurement Legislation does apply, the Director/Head of Procurement must use the most relevant procedure as agreed by the Procurement Board. Whenever possible, a competitive procedure must be adopted.
- 12.2 The Head of Procurement will place all notices relating to contracts in the Central Digital Platform first via CSWJETS, and then elsewhere, such as on the Council's website.
- 12.3 It is strongly recommended that the Director should obtain at least 3 written quotations for contracts of less than £10,000 in value, however, the Director need not obtain competitive quotations but must in any event demonstrate that the Council is receiving value for money (see the “*Quick Reference Guide*” Table on page 8).

Where three quotations are not obtained then value for money could be demonstrated by the following:

- Using a corporate contract
- Direct award against an existing framework
- Benchmarking a single quotation against prices paid by colleagues in other departments/authorities
- Benchmarking a single quotation against published frameworks or Public Buying Organisations’ catalogues
- Ordering direct from a Public Buying Organisation catalogue
- Using a previous quotation exercise for similar goods/services within the last 3 months (checks should be made to ensure that total expenditure doesn’t exceed thresholds for higher value purchases where different procurement processes should be followed)
- Using internet price comparison sites once the quality of goods required has been established (screen shots to be saved)

- Using buyers' indices for benchmarking quoted prices

All relevant documentation demonstrating value for money will need to be retained for audit or scrutiny purposes in line with Council policy.

- 12.4 There is an additional process that needs to be followed when procuring consultants. The guidance issued by the government for off payroll working through an intermediary (IR35) needs to be considered together with the authority's procedure for authorisation to appoint consultants – [Using Consultants](#)

13. Invitation to Formal Tender

- 13.1 If the Procurement Act 2023 applies to a contract, the selection of suppliers to be invited to tender for the contract must follow the requirements of that legislation. A procedure conducted in accordance with a tender notice and associated tender documents must be used to award the contract to the supplier(s) that submits the most advantageous tender. The procedure must be either an open procedure or a competitive flexible procedure. The open procedure is a single-stage tendering procedure without any restriction on who can submit tenders. The competitive flexible procedure is any competitive tendering procedure (other than an open procedure) that is compliant with all parts of the Act and which the Council considers appropriate for awarding the contract. The procedure must be a proportionate means of awarding the contract having regard to its nature, complexity and cost.
- 13.2 Conditions of participation may be used to assess each supplier's ability to meet the Council's requirements for minimum standards of supplier suitability, legal status, and financial standing. Conditions of participation should be included within procurement documentation for all contracts with a total contract value at or above threshold. Conditions of participation must not include award criteria (see 13.3), and criteria that are not related and proportionate to the subject matter and value of the contract. The conditions of participation assess the supplier; the award criteria assess the tender. The selection of suppliers must only be on the basis of the conditions of participation and the requirements of the Act. The Officer may reject suppliers that fail against the mandatory and/or discretionary criteria as

detailed within the Conditions of Participation, but only in conjunction with the advice of the Procurement Officer and / or Legal Services.

- 13.3 The procedure must also state the contract award criteria and the associated assessment methodology to be used to identify the most advantageous tender. The award criteria must relate to the subject matter of the contract; be sufficiently clear, measurable and specific; must not break the rules on technical specifications; must have their relative importance or weighting expressly stated; and must be a proportionate means of assessing tenders having regard to the nature, complexity, and cost of the contract. Inclusion of criteria such as whole life and environmental costs and social considerations is encouraged. The Council is now actively encouraged to include in its contract award criteria factors that will enhance the natural environment, improve air quality and reduce carbon emissions. A specific intention of the Procurement Act 2023 is to promote environmental sustainability, including efforts to achieve net-zero emissions.
- 13.4 The Council may refine any award criterion as part of a competitive flexible procedure if the tender notice or associated tender documents provided for refinement and the Council has not yet invited suppliers to submit tenders. The Council may not refine an award criterion if it would enable a supplier that did not pass a selection process to do so. The Council must modify or republish a tender notice and any associated tender documents affected by refinements.
- 13.5 The Council must have regard to the National Procurement Policy Statement (NPPS) in its procurements and must not discriminate against a treaty supplier (but in below-threshold procurements only to the extent that they are covered by an international agreement set out in Schedule 9 of the Act); the NPPS also does not apply to procurements awarded under a framework or dynamic market, or to contracts that are exempt from the Procurement Act 2023 under its Schedule 2. The Council must also comply with the below-threshold noticing requirements that apply to all procurements costing at or above £30,000 including VAT. The Council must publish a below-threshold tender notice and contract details notice on the central digital platform (CDP) first via CSWJETS, and then elsewhere, such as on the Council's website.

- 13.6 If in accordance with the Procurement Act 2023 the contract is classified as a “regulated below threshold” contract and its estimated contract value is greater than £50,000 including VAT at least three potential contractors, who have expressed an interest against the contract notice placed on the Central Digital Platform , should be invited to tender Where appropriate those invited to tender should include at least two local suppliers.
- 13.7 The number of contractors invited to tender should ensure full competition is achieved. The placing of the tender notice should aim to achieve maximum interest amongst contractors. If less than three contractors express an interest, the decision-making body must agree to proceed, and the steps taken to try and obtain the minimum number of tenderers documented.
- 13.8 The Council may not include a separate pre-qualification **stage** in any procurement for a regulated below-threshold contract. This means the Council cannot restrict the submission of tenders by reference to a supplier’s suitability to perform the contract. This includes an assessment of a supplier’s legal status, financial capacity or technical ability, for example through use of conditions of participation. Examples of this include assessment of a supplier’s experience, financial accounts, or considering any relevant convictions, professional misconduct or whether the supplier has been or is insolvent or bankrupt. This means that there cannot be a separate suitability stage before the submission of tenders as a way of reducing the number of suppliers who are invited to tender. This does not prevent the Council asking for this information in a bid and assessing suitability at the award stage if it wishes; and it could support this assessment with data available to it on the CDP (if the supplier is registered). This prohibition reflects the fact that assessment of technical capacity, legal status and financial standing can be disproportionate and resource intensive and a particular barrier for SMEs and VCSEs. There is an exception to the rule prohibiting a separate suitability stage in relation to a below-threshold **works** contract if the contract has an estimated value of not less than £214,904 including VAT. This exception is because the works threshold is much higher (£5,372,609 inc. VAT), and it is appropriate that

the Council when carrying out procurements for higher value below-threshold works contracts that are still above the goods and services threshold is able to include a separate suitability stage before the award stage, if desired.

13.9 The Procurement Act 2023 means the Council now has greater flexibility in designing and running below-threshold procurements, and awarding and managing the resulting contracts. This flexibility (which is subject to the Council's other policies and procedures) might allow, for example, the ability to award a contract without competition, to request quotes from (perhaps three) targeted known suppliers only, or to restrict the award of contracts to suppliers that are UK-based or located in a specific county or borough of the UK (eg the West Midlands) or to suppliers who are small and medium-sized enterprises (SMEs), or voluntary, community and social enterprises (VCSEs). The option to reserve procurements on the basis of location should not be used in relation to procurements which are of cross-border interest (i.e. which may be of potential interest to suppliers from EU Member States including the Republic of Ireland) that involve the provision of goods into Northern Ireland.

13.10 The Head of Procurement shall be responsible for ensuring that an "Invitation to Tender" procedure – that demonstrates public sector best practice – is available and adhered to, at all times.

14. Opening Formal Tenders

14.1 The information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the tenders. Confidentiality must be maintained and any breach reported to the Monitoring Officer.

14.2 The Council uses electronic tendering (CSWJETS www.csw-jets.co.uk) to meet the Council's requirement to use the CDP. The tender opening process must be appropriate to the specific electronic software employed and its facilities for guaranteed receipt of tenders.

15. The Quotation Procedure

- 15.1 For contracts of under £50,000 in value, suppliers may be invited to quote through CSWJETS and via it the CDP if required by the Procurement Act 2023 (for regulated below-threshold procurements) or advertised on the Council's website.
- 15.2 A sufficient number of suppliers must be invited to quote to ensure genuine competition. The minimum number is three. Where appropriate those invited to quote should include at least two local suppliers.
- 15.3 The Head of Procurement shall be responsible for all procedural aspects of seeking quotations, ensuring that probity and proper public accountability standards are in operation. Monitoring shall be carried out periodically by either the internal or external auditor.

16. Acceptance of Formal Tenders and Quotations

- 16.1 Where expenditure has been approved through the budget setting process, the Procurement Board has given approval to proceed and these Rules for Contracts have been followed, the responsible officer shall review the evaluation against the award criteria and agree which tender has been successful. He/she shall not be bound to accept the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received. The responsible officer is described in the Summary of Rules for Contracts table on page 8 of this document.
- 16.2 Contracts over £50,000 including VAT are to be awarded under the “most advantageous tender” criterion (see para. 16.3). The Director shall require a written report from the Head of Procurement requesting approval for acceptance and detailing the reasons for doing so. This shall be recorded in writing. In extreme urgency the Director may agree a verbal report from the Head of Procurement, with a written report being signed off by the Director within a fortnight of this meeting. All written reports will be stored in line with

the [records retention schedule](#)

- 16.3 Tenders or quotations must be evaluated on the basis of which is most advantageous to the Council. The basis of evaluation must be stated in the tender notice published in the CDP and in any other public notice. The basis of evaluation must also be stated in the invitation to tender or quote. When procuring in accordance with the Procurement Act 2023, the criteria for evaluation must be set out in the invitation to tender or equivalent document depending on which procedure is used, with the weightings to be given to them. The criteria may also be set out in the CDP and public notices. See 13.3 for more details. Inclusion of criteria such as whole life and environmental costs and social considerations is encouraged.

17. Electronic tendering and quotations

17.1 As of September 2018 it is mandatory for Contracting Authorities including the Council to invite and receive tenders electronically. The Head of Procurement is responsible for the procedure for these processes.

- tenders and quotations will be invited electronically, and supporting documentation uploaded through the etendering portal.
- invitations to tender and quotes will be submitted electronically through the approved e tendering system. Electronic submissions will not be made outside of the approved system. If the etendering portal is not available when tenders are due to be submitted, the tender date will be extended until the system is available. the procedure will also include arrangements for e-auctions.

18. Amendments and alterations to tenders and quotations

18.1 Amendments to invitation to tender or invitation to quote documents, made after the invitations have been sent out, must be sent through the etendering system to all suppliers who have been invited to tender or quote as

clarifications. If there is more than one clarification, the system will number them consecutively. Clarifications should be sent out in sufficient time to allow suppliers to adjust their tenders or quotations as appropriate and no later than six days before the tender submission date for tenders over the Procurement Act 2023 thresholds.

- 18.2 A supplier's tender or quotation is its offer to the Council, which the Council may accept as it stands. Once a tender or quotation has been submitted under the Procurement Act 2023, alterations will only be accepted through formal clarifications under the open and competitive flexible procedures. When conducting negotiations under the competitive flexible procedure, at all stages before the final tender submission, counter offers by bidders must be made in writing through CSWJETS and via it through the CDP.
- 18.3 A properly approved and compliant competitive flexible procedure may result in one or more Best and Final Offers as a result of negotiation with selected bidders. No alteration to the Best and Final Offer, in terms of outcomes or contract price is permitted without the specific approval of the Monitoring Officer.
- 18.4 In all other situations, if a supplier attempts to alter his offer after the last date for receipt of tenders or quotations, he must be given the opportunity to stand by or withdraw his original offer. Correction of an obvious arithmetical error, which would reduce the price to be paid by the Council or increase the price to be paid to the Council, may be accepted.
- 18.5 Where performance specifications are used, a tender or quotation that is expressed to be conditional upon the Council's acceptance of alterations to the specification or the terms and conditions of contract may be treated as non-compliant and rejected. This does not prevent the Council inviting variant bids (that is an invitation to submit an alternative bid that could then be considered as being to the Council's benefit provided that the condition applying to the mandatory reference bid is followed). If variant bids are invited, suppliers must be required to submit a mandatory reference bid

based on the specification and terms and conditions included in the invitation to tender or invitation to quote, so that all bids may be compared fairly.

- 18.6 Where outcome-based specifications are used it will be for the bidder to decide the method of service delivery. Tenders or quotations will be evaluated fairly against published evaluation criteria.
- 18.7 Before a tender or quotation has been accepted, the Head of Procurement may ask all tenderers or suppliers to maintain their tendered or quoted prices for a longer period. Tenders and quotations should in any event remain open for acceptance for a period of (ninety) days from the last date for receipt of tenders or quotations, or such other period as the Head of Procurement considers appropriate, and the form of tender or quotation should make this clear.

19. Contract modifications

- 19.1 Under the Procurement Act 2023 (the “Act”), modifications to the Council’s contracts may be made without triggering a new procurement in any one of the following circumstances:
1. The modifications are clearly and expressly stated in the existing contract, and its tender notice, tender documentation, and contract award notice.
 2. The circumstances were unforeseeable by the Council (not merely unforeseen).
 3. The additional goods, services or works required are of the same type as in the original contract; and the value of any such modification cannot exceed 50% of the contract’s value based on its total value immediately prior to the amendment (including the value of any previous amendments).
 4. The transfer (novation) to a different supplier if the existing supplier undergoes a corporate restructuring (this is the only time a change of supplier is permitted).

5. The modifications required are non-substantial – ie they change the contract term by less than 10%, do not introduce any new deliverables (eg software in addition to the existing supply of hardware), and do not change the contract's economic balance (ie allow the supplier additional benefits, if the Council does not itself receive additional benefits).
6. The modifications are below threshold, and may be no more than 10% (for goods and services) or 15% (works) of the existing contract value; and the total value of all modifications may not exceed the threshold amount.
7. The modification is urgent and for the protection of life.
8. The modification is to manage the materialisation of a known risk, provided: 1. the risk was identified in the tender or transparency notice as one that could jeopardise the satisfactory performance of the contract; 2. the notice stated the possibility of modification owing to materialisation of a known risk; 3. the risk has materialised at no fault of the supplier or the Council; 4. because of this, the contract cannot be performed to the Council's satisfaction; 5, the modification goes no further than necessary to remedy the impact of the risk; 6. awarding a new contract would not be in the public interest, as it would not provide better value for money and could cause technical or operational issues; and 7. the modification does not increase the contract value by more than 50%;
9. The requirement is unavoidably urgent, so a competitive procurement is impossible, and the urgency is not attributable to and could not have been foreseen by the Council.
10. The modification is for protection of life, if a direct award would have been possible under section 41 of the Act, or the modification can be made by reference to regulations made by a minister of the crown under Section 42 of the Act.

You must consult with Corporate Procurement Service to find out if the modification upon which you hope to rely upon is appropriate and good

authority in all the circumstances relating to your contract.

Whilst it is lawful to modify light-touch contracts in any circumstances, provided the Council has regard to the procurement objectives, the modification of light-touch contracts is still subject to all parts of this *Clause 19 Contract Modifications*.

In all circumstances other than the above, a new procurement is required to meet any additional requirements.

19.2 Where extensions to contracts have been authorised in accordance with this document, they will be effected through the signing of a contract change note (templates to be issued by the Head of Procurement). The contract change note must be kept with the original contract in line with the document retention policy.

19.3 For contracts including the value of the modification that are over £50,000 inc. VAT but under the appropriate Procurement Act 2023 threshold, if such a modification is proposed the Director shall require a written report from the Head of Procurement providing approval for the modification (if such approval can be given) and detailing the reasons for doing so and stating why it is lawful in accordance with clause 19.1 of this document or, alternatively, why such a modification would not be lawful. This shall be recorded in writing. In extreme urgency the Director may agree a verbal report from the Head of Procurement, with a written report being signed off by the Director within a fortnight of this meeting. Once approval is received a contract change note will be signed and kept with the original contract documentation. All written reports will be stored in line with the document retention policy. If a contract is under seal a short supplemental deed may be required and this will be dealt with on request to Legal Services.

19.4 If you hope to modify any contract with a value over the appropriate Procurement Act 2023 threshold, including the value of the modification, an Extension Procurement Approval Document (Extension PAD) must be taken to Procurement Board to provide the business case as to why it is appropriate to extend the contract, and stating why it is lawful to do so in

accordance with clause 19.1 of this document (assuming it is lawful). This report must be taken to Procurement Board in a timely manner, allowing sufficient time for retendering if the Procurement Board decides not to extend the contract.

Where throughout the life of the contract there are changes to the contract either requested by the contractor or the Council which vary the contract value by more than the appropriate Procurement Act 2023 threshold over the life of the contract, then this must be approved by the Procurement Board before final agreement with the contractor. If a contract is under seal a short supplemental deed may be required and this will be dealt with on request to Legal Services.

Once approval is received from the Procurement Board or the Director if under the appropriate Procurement Act 2023 threshold for the value of the contract and its modification a contract change note will be issued and kept with the original contract documentation. All written reports will be stored in line with the document retention policy.

20. Remedies

- 20.1 The Council must comply with Public Procurement Legislation (see “Definitions”). If it doesn’t, suppliers may suffer loss (or be at risk of loss) from the Council’s breach of its statutory duty. If this happens, a supplier can issue a legal challenge against the Council. The remedies available to suppliers under the Procurement Act 2023 are stated in its Part 9, *Remedies for Breach of Statutory Duty*:

[Procurement Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2023/16/ppt/9)

These remedies exist not only to compensate suppliers for any loss the Council may cause them, but also to incentivise the Council to comply with its legal obligations.

- 20.2 After a procurement, in many cases, the Council is prohibited from signing the contract till a standstill period of eight working days has expired without a supplier making a legal challenge. The standstill period starts on the day a contract award notice is published on the CDP. A standstill period also applies if the Council wants

to modify an existing contract. If a challenge is made during the standstill period, the Council's ability to enter into the contract is automatically (and immediately) suspended. This means that the contract or modification must not be entered into. If a supplier makes a legal challenge against the Council after the standstill period has expired - but before the contract or modification has been entered into - the Council can still enter into the contract or modification; however, because other remedies are available to the supplier – eg asking a court to force the Council to pay compensation - the Council will need advice from Legal Services before signing the contract or modification.

20.3 If the Council is found to have breached its statutory duty, the court can force the Council to rerun a procurement and / or pay damages to the supplier. If a contract or modification has already been signed, the court can set it aside (make it void). Reasons that a supplier might issue a legal challenge against the Council could include: 1. if the supplier believes the Council has unlawfully denied the supplier the chance to bid in a procurement; or 2. if the contract award criteria unduly favour the incumbent supplier. The supplier's claim against the Council could include the following: 1. money for the profits that the supplier would have made had it won the contract; and 2. money the supplier has wasted by participating in a non-compliant procurement.

20.4 To reduce the risk of a legal challenge, the Council should:

1. Publish all the transparency notices needed (see Section 8.6).
2. Follow the process stated in the tender notice and documents.
3. Tell suppliers about process changes; republish any notices; give suppliers the same information at the same time; and give them time to respond to changes.
4. Create conflict-of-interest statements, and action them at each stage.
5. Explain key decisions to suppliers – eg when removing them from the process.
6. Keep appropriate records of all decisions related to the procurement in one place.
7. Address suppliers' problems, before they pursue legal remedies.
8. Consider a voluntary standstill period if a mandatory one is not required.

- 20.5 Generally, a supplier has thirty days to make a claim against the Council for breaching its obligation to comply with the Procurement Act 2023. Usually, a supplier's reason for bringing a claim is to challenge the decision to award a contract to a different supplier or to challenge the lawfulness of a contract modification and to secure the contract (or a new contract implementing the modification) for itself. If a claim is not made within thirty days, a supplier effectively waives its right to a remedy.

21. Form of Contract

- 21.1 The Solicitor to the Council will decide whether a contract over the appropriate Procurement Act 2023 threshold in value is to be executed as a deed under the seal of the Council or under hand as a simple contract. As a general rule, works contracts, and high value contracts (over £5,000,000 in value) will be executed as deeds under the Council's seal.
- 21.2 All contracts made as deeds must be made under the Council's Common Seal, witnessed in accordance with the relevant Standing Order of the Council's Rules of Procedure (Standing Orders) by the Solicitor to the Council or such other person appointed by the Council.
- 21.3 Simple contracts over the appropriate Procurement Act 2023 threshold in value must be signed for and on behalf of the Council by the Director whose directorate is responsible for the contract or the Head of Procurement or authorised deputy.
- 21.4 Simple contracts of between £10,000 and the appropriate Procurement Act 2023 threshold in value must be signed for and on behalf of the Council by the Head of Procurement or an authorised deputy.

22. Contract administration and management

- 22.1 The Head of Procurement shall arrange for publication of a contract details notice, no later than 30 days after contract award (or 120 days if the contract is light-touch). If the value of the contract is at or above £5,000,000 including VAT, the Officer must provide Corporate Procurement Services with a redacted version of the Contract for publication within 20 days of contract signing. Such redaction must be agreed with Legal Services and Corporate Procurement Services. Commercially confidential information will be redacted. This does not include the overall contract price, but does include all price breakdowns. The Head of Procurement shall also keep a register of the notified information, which shall be available for inspection by appointment by any Member of the Council, internal and external auditors and any member of the public.
- 22.2 The Head of Procurement shall be responsible for ensuring that a procedure on “Contract Administration and Management” is made available to all officers and partners managing contracts on the Council's behalf. The Corporate Approach to Contract Management is approved by the Procurement Board and officers identified as contract managers must comply with that process [Corporate Approach to Contract Management](#)
- 22.3 The Procurement Act 2023 (the “Act”) **implies** the following terms into all Council procurement contracts (excluding concession contracts):
- the Council must dispute invoices with which it does not agree without undue delay; and
- it must pay undisputed invoices within 30 days of the date the invoice was submitted (not the date on which it was considered “valid and undisputed”) or the date for payment specified in the invoice, if later.
- The Council can terminate any procurement contract if:
- it believes the contract was awarded in material breach of the Act;

a supplier or subcontractor becomes excluded or excludable.

To exercise these rights, the Council must notify the supplier of its intention to terminate, setting out the reasons. The Council must provide the supplier with an opportunity to provide representations, and where termination is due to a sub-contractor, allow the supplier time to replace the sub-contractor.

- 22.4 For contracts valued at or above £5,000,000 including VAT, the Act requires the Council to set and publish on the CDP at least three key performance indicators (KPIs). The Council must publish an assessment of the supplier's performance against those KPIs at least once a year and when the contract ends.

In addition, the Council must publish a poor performance notice on the CDP if the supplier:

breaches the contract and that breach results in termination, partial termination, award of damages, or a settlement agreement; or

the Council believes the supplier:

is not performing the contract satisfactorily (even if the supplier is not in breach of contract); and
having been given a chance to improve performance has not done so.

The failure to meet KPIs is an example of a supplier not performing the contract to the Council's satisfaction, even if this does not comprise a breach of contract.

Important: the publication of a poor performance notice is a discretionary ground allowing all contracting authorities to potentially exclude the supplier from future procurements and terminate existing contracts – so its publication is a serious matter.

22.5 Under the Procurement Act 2023, the Council must publish:

A payment compliance notice every six months, which sets out the Council's compliance with its obligation to pay suppliers within 30 days of invoice receipt. This notice also includes the average number of days the Council takes to make payments; and it includes the percentage of payments made within 30 days, 31 to 60 days, and 61 days or more.

Specified information about any payment of at or more than £30,000 including VAT that the Council makes under a public contract. The Council must publish the information on the CDP before the end of the period of 30 days beginning with the last day of the quarter in which the payment was made.

23. Social value

- 23.1 The Public Service (Social Value) Act 2012 requires the Council to consider delivering Social Value through contracts for services. However, the Council has for many years considered social, economic and environmental issues when procuring goods and services. Therefore, the Council will continue to consider social value outcomes in all contracts at or above the appropriate Procurement Act 2023 threshold, any exceptions to be authorised by Procurement Board through the PAD.
- 23.2. For those contracts that fall below the appropriate Procurement Act 2023 threshold, the approach should be to maximise these outcomes where possible. All contracts will include social value and any exceptions to this must be authorised by the Head of Procurement.
- 23.3. In order to ensure that the Council adheres to the Public Service (Social Value) Act 2012 and to the Procurement Act 2023, the social value sought from a contract must be relevant and proportionate.
- 23.4 All expenditure must be delivered in accordance with the authority's [Social Value Policy](#)
- 23.5 The table below is an extract from the Social Value Policy which describes the social value activity that should be undertaken for different level of spend.

Value	Process	Potential Outcomes
Under £50,000	Light touch social value guidance included on the Corporate Procurement Service intranet pages	Innovation around one or two issues such as community volunteering or linking up with a local school. This will help small local businesses understand the issues and reward those that are already involved in their communities. Expectations will not be specific to a project but take into account what the organisation does as a whole. A suggested 5% weighting to be used on project assessment
£50,000 – Public Contract Regulations (PCR) thresholds	Category Managers will guide specifications and tender documents to ensure that Themes, Outcomes and Measures (TOMs) are included within the procurement process. It is an expectation that Social Value will apply to procurement requirements that fall within this threshold and any exceptions to this rule must be authorised by the Head of Procurement.	Businesses will be expected to respond to the range of opportunities contained within the TOM matrix. They will be assessed on their project specific proposals A 5 – 10% weighting is likely to be used on evaluation
Procurement Act 2023 thresholds and above	Category Managers will guide specifications and tender documents to ensure that considerations are made at commissioning stage and that TOMs are included within the tender process, ensuring that the evaluation scores and weightings are clearly set out and that an action plan is implemented during the contract period. Social Value must be included in tenders. Any exceptions to this rule must be authorised in the Procurement Authorisation Document (PAD) presented to Procurement Board	Businesses will be expected to respond fully to the TOMs matrix and commit to project specific deliverables that will be included in KPIs. Weightings are recommended to be set at 15 – 20% Weightings above 20% are used where contract price is set, or there is a specific opportunity around Social Value to solve a specific need. Category Managers will provide guidance on what is expected although this will not be prescribed.

24. Prevention of fraud and corruption

24.1 All purchases, contracts and income covered by these rules must be let in line with the Council's <http://intranet/Teams/AuditServices/Counter-fraud.aspx> Anti-Fraud and Corruption Policy and Strategy

24.2 If an officer of the Council has a pecuniary interest, in a contract or proposed contract, he/she must in accordance with Section 117 of the Local Government Act 1974 and as required by Standing Order 25 of the Council's Rules of Procedure (Standing Orders) register the interest with the Chief Executive and declare it at any meeting at which the officer is present and the contract is discussed and thereafter leave the room and take no further part in the discussion. He or she must also advise the relevant procurement officer and the Head of Procurement about the conflict of interest and complete a conflicts of interest declaration specific to the procurement. The officer must cooperate with any steps the relevant procurement officer or the Head of Procurement may require to manage the risk specific to the procurement. An officer of the Council acts 'in relation to' a procurement if he or she is in a position to influence a decision made by or on behalf of the Council. The following are examples of persons who may act in relation to a procurement and who may therefore be relevant when considering conflicts of interest: the senior responsible officer, the budget holder, the commercial director, members of the management board, commercial staff, tender assessors, external experts, private sector secondees and consultants, non-executive board members, special advisers, private office employees and, as set out in section 81(2)(b), ministers. The relevant procurement officer and the Head of Procurement will need to consider what steps to take on a case-by-case basis, considering the nature of the conflict of interest, how it could impact the officer's duties and how it might impact the procurement. Examples of steps which might mitigate a conflict of interest are:

- a. reassigning individuals with a conflict or potential conflict of interest away from situations where they can influence decisions;
- b. providing for more than one person to assess tenders and carrying out and recording moderation meetings;

- c. cancelling and re-running the procurement;
- d. including an independent observer in the procurement team;
- e. ensuring that management with appropriate oversight is aware of the conflict of interest and that those managers review and sign-off outputs from the individual;
- f. monitoring the situation and having checkpoints to review whether it has led to an unfair advantage or disadvantage for a supplier; and
- g. sharing procurement and process information with all relevant suppliers in a timely manner and at the same time.

24.3 If an officer of the Council has a personal or non-pecuniary interest in a contract or proposed contract, he/she must declare that interest to their Director as required by the Council's Code of Conduct for Employees and to the relevant procurement officer and the Head of Procurement. They may take any actions defined in clause 23.2 to manage the conflict of interest; and the officer of the Council must cooperate with any steps the relevant procurement officer and the Head of Procurement may require to manage the risk specific to the procurement.

24.4 If a Member of the Council has a personal interest in a contract as defined in the Members Code of Conduct, the member must take such action as is required by that Code. The Member must also declare such an interest to the relevant procurement officer and the Head of Procurement. The relevant procurement officer and the Head of Procurement may take any actions defined in clause 23.2 to manage the conflict of interest; and the Member must cooperate with any steps the relevant procurement officer and the Head of Procurement may require to manage the risk specific to the procurement.

24.5 The relevant Procurement Officer shall maintain a conflict assessment of all declarations of interest and mitigations in a procurement exercise as notified by any and all key stakeholders.

24.6 A contract must be terminated immediately, and any losses to the Council

arising from the termination recovered from the contractor, if the contractor, or anyone acting on his behalf

24.6.1 offers or gives or agrees to give any member or officer of the Council any gift, benefit or consideration of any kind or value as an inducement or reward with regard to the contract;

24.6.2 commits any offence under the Bribery Act 2010 or section 117 of the Local Government Act 1972.

A declaration to this effect must be contained in all invitations to tender or quote.

24.7 The attention of officers is drawn to the Council's Code of Conduct, Whistleblowing policy, Disciplinary Rules and Procedures and the Code of Conduct for Employees. Non-compliance with these Rules for Contracts constitutes grounds for disciplinary action.

24.8 All of the requirements in 24.1 to 24.6 above will apply to any third party acting on the Council's behalf in a contractual situation e.g. consultants and community representatives on evaluation panels

25 Freedom of Information Act & Environmental Information Regulations

- 25.1 When entering into contracts, the Council as a public authority, and any contractor it uses, must be aware of the importance of delivering services in a transparent way. The Freedom of Information Act (the Act) and the Government's Open Data agenda promote this approach and require both the proactive publication of contractual information such as the identity of contractors and contracts, values and durations; and the reactive publication of information following requests made under the Act or Environmental Information Regulations (EIR).
- 25.2 For this reason, the Council will refuse to include contractual terms that restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act and EIR. This means that unless an exemption provided for under the Act is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract.
- 25.3 Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act or EIR as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner. When entering into the above contracts the Council will make it clear that these restrictions apply to sub-contractors also and that the Secretary of State has the powers to designate them as 'public bodies' for the purpose of making them comply with the Act or EIR.
- 25.4 The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for only applies if information has been

obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act and EIR, would constitute a breach of confidence actionable by that, or any other person.

25.5 It is for the Council to disclose information pursuant to the Act and EIR, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Act or EIR) by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.

25.6 The Head of Procurement will be responsible for advising on the application of the Freedom of Information Act and Environmental Information Regulations and contracts, in conjunction with the Council's Corporate Information Governance Manager, where circumstances arise that are not specifically covered by Council policy. He/she will also be responsible for updating procedure following any case law that materially amends or augments Council policy in this area.

26 Data Protection Legislation [Data Protection Act 2018 and General Data Protection Regulations (GDPR)]

'Privacy by Design' is a legal requirement when processing personal and/or 'special category' data ("personal data"). The General Data Protection Regulations (GDPR) makes it mandatory that the Council obtain contractual guarantees from all third parties that process personal data on its behalf. It also requires that the Council ensures third parties have measures in place to prevent unauthorised or unlawful processing of personal data and to prevent accidental loss, destruction or damage to any personal data they are processing on behalf of the Council. Where the Contractor is processing Personal Data (as defined by Data Protection legislation) on behalf of the Council, the Contractor shall only use the Personal Data in accordance with

express instructions from and for purposes defined by the Council. Third parties must also be able to provide all relevant details that would enable the Council to respond to Data Protection legislation requests, received from a data subject in respect of the processing of their personal data.

27 Management of Risk in Contracts

Risks should be identified, assessed and managed throughout the life of the contract in line with the Council's Risk Management Policy and Procedure [Risk Management Policy](#). Significant risks should be recorded, as appropriate, on our Corporate Risk Management system (JCAD Core). Please note clause 19.1 h. of this document. It allows for the modification of a contract based on the materialisation of a known risk. Allowing for this can be a useful part of the Council's risk management strategy.

28 Safeguarding Children and Vulnerable Adults

When spending public money, officers have a duty under the Care Act 2014 to safeguard children and vulnerable adults. CPS's standard Invitation to Tender ([ITT Part 3](#)) includes appropriate questions in section 4.11 and the Safeguarding Framework to be asked of bidders when it is possible that the service provider may come into contact with children or vulnerable adults. This template is typically used for expenditure over £50,000, however officers must satisfy themselves that they have duly considered safeguarding issues when awarding contracts or placing orders under that value and that where necessary, DBS checks have been put in place by the contractor/provider.

Further support and information can be accessed through the [Solihull Safeguarding Adults Board](#) and the [Solihull Safeguarding Children Partnership](#)

29 Impact of other legislation on contracts and quotations

In addition to what has already been mentioned in these Rules, there is other legislation that may impact on the supplies, services or works required when following a contract or quotation procedure e.g. health and safety, modern slavery etc. the Corporate Procurement Service will be able to give you

advice on the impact of this legislation and the considerations you will need when drawing up specifications or identifying appropriate suppliers/providers. The authority produces an annual [Modern Slavery statement](#) which describes how this issue is being tackled by Solihull. If a supplier or a connected person of the supplier has been convicted of modern slavery, then that conviction is one of the mandatory exclusion grounds in the Procurement Act 2023, requiring that the supplier be excluded from any competitive tendering process. If a supplier or a connected person of the supplier has been subject to regulatory enforcement in relation to labour misconduct by way of being issued certain orders, then then that enforcement is one of the discretionary exclusion grounds in the Procurement Act 2023, under which the supplier may be excluded from any competitive tendering process. Consult with Corporate Procurement Service and / or Legal Services for further guidance.

The Subsidy Control Act 2022 establishes the UK's subsidy control regime. It enables the Council to give subsidies that are tailored to local needs, and that drive economic growth, while minimising distortion to UK competition and protecting the UK's international obligations. Here is a guide to the regime: [Subsidy Control rules: quick guide to key requirements for public authorities - GOV.UK](#). This seven-step guide will enable the Council to check if any support it hopes to give to an enterprise is consistent with the Subsidy Control Act 2022 – thus minimising the risk of legal challenges. See also section 30.4 (below).

30 Grants

- 30.1 If the Council issues a grant to a third-party as a conditional gift with no benefit in return, this falls outside the scope of Public Procurement Legislation. However, as a grant involves public expenditure, it is still subject to the requirements of fairness, transparency and best value.
- 30.2 The Council may secure grants or external funding from grant awarding bodies, such as other local authorities, central government or other funding agencies. Officers who secure such grant funding must ensure that any funding arrangements stipulated by these bodies are: 1. compliant with

Public Procurement Legislation – check with Corporate Procurement Service; and 2. complied with by the Council.

- 30.3 Where a competitive tender process must be conducted, as a condition of the grant funding, the thresholds and approval processes set out within this Rules for Contracts document must be followed (see Pages 13 - 16).
- 30.4 Where procurement activity is grant funded (or partially grant funded) and a supplier is named as a condition of that funding, then - provided Corporate Procurement Service has confirmed that such a condition is lawful in accordance with Public Procurement Legislation - it must be evidenced and formally documented as an exemption (see Exceptions to Rules for Contracts in section 6). The award of a contract must still be approved in accordance with the total contract value (see Pages 13 - 16). The Subsidy Control Act 2022 can make (below-threshold) grant funding arrangements exempted contracts – see the last paragraph in subject-matter exempted contracts in Appendix 1.
- 30.5 Bidders assisted by State Aid: Officers must ensure that where a bidder is assisted by grants from the Council or other grant awarding authority, such as central government or other local authorities, that this does not constitute unlawful State Aid. Moreover, where a bidder is assisted by grants from the Council which does constitute State Aid that the correct procedures are followed. Guidance must be sought from Corporate Procurement Service in the first instance.

Appendix 1

Schedule 2 of the Procurement Act 2023 (the “Act”)

The following types of contracts are wholly or partially exempt from the Act’s rules on covered procurements – ie the Act’s general provisions. But they may still be subject to certain of the Act’s requirements – eg in relation to compliance with the National Procurement Policy Statement (NPPS). The exemptions mean the Council has more freedom to carry out the most appropriate procurements for these kinds of requirements. However, these exemptions have significant qualifications. You must therefore consult with the Corporate Procurement Service team, before starting any such procurement. Note that only the types of contracts marked with an asterix (*) are exempt from these Rules for Contracts, because the Council has other procedures governing them.

Counterparty exempted contracts:

Vertical arrangements: contracts between the Council and an entity it controls, either solely or jointly with other public authorities, such as other councils. Such an entity has a separate legal personality, but is under the control of either the Council alone or the Council and the entity’s other public authority owners. An example would be a contract between a trading company set up by the Council to fulfil a specific task, such as carrying out waste treatment and collection, and either the Council itself or the Council and a group of other local authorities. This exemption derives from the *Teckal* legal case.

Horizontal arrangements: contracts between the Council and other public authorities, such as other councils, which have the aim of achieving objectives they have in common. An example would be waste disposal across several council areas. This exemption derives from the *Hamburg* legal case.

Subject-matter exempted contracts:

*Land transactions where the Council does not derive additional benefits over and above the price for the purchase, sale, lease or

rental of land.

Broadcasting.

Electronic communications services supplied to members of the public.

Alternative dispute resolution services, which are generally agreed upon by the parties to a contract.

Certain legal services, including legal representation in judicial proceedings (such as a court) or in a dispute resolution process; pre-litigation advice by a lawyer; services provided by a notary to certify or authenticate documents where that is required legally; or any other legal service where that service is required to be performed by a court or tribunal or by law.

Certain financial services – eg loans.

*Employment contracts, but not service contracts for personnel placement and supply services, which are regulated by the Act.

Emergency services.

Public passenger transport services.

Research and development services that are intended for general public benefit provided the Contract does not generate goods or works that might otherwise flow from the research and development activity (ie pure research and development with no commercial or commercialisation element).

International agreements and organisations.

National security.

National security exceptions in international agreements.

Intelligence activities.

Defence and security.

Certain concession contracts.

Grant Funding Arrangements (that are instead subject to the Subsidy

Control Act 2022) where:

the funding is provided in order to achieve agreed outcomes;

the recipient will have discretion over the spending of that funding within limits agreed between the Council and the recipient of the funding;

the recipient will be liable to repay any funding spent outside the agreed limits; and

waivers from the requirement to comply with these Rules for Contracts, which may be granted for below-threshold requirements only.