



## London Borough of Enfield

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<b>Report Title</b>	Update and amendments to the Councils Contract Procedure Rules
<b>Report to:</b>	General Purposes Committee
<b>Date of Meeting:</b>	24 <sup>th</sup> July 2024
<b>Directors:</b>	Fay Hammond (Executive Director – Resources) and Olga Bennet (Director of Finance – Capital & Commercial, Resources)
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<b>Classification:</b>	Part I Public

### Purpose of Report

1. To provide an overview of the changes needed to the Contract Procedure Rules in response to changes in Procurement legislation coming into effect in 2024.

### Recommendations

<ol style="list-style-type: none"><li>I. To note the proposed improvements to procurement governance designed to support compliance with the emerging changes to procurement legislation and the strengthening of the role of the Procurement Assurance Group.</li><li>II. To agree the proposed changes to the Constitution, as shown in the appendix, including changes to the Contract Procedural Rules and deletion of the Partnership Procedure Rules and to refer the changes to Full Council for final approval.</li><li>III. To agree that the Director of Law and Governance will make any further necessary changes to the Contract Procedure Rules if required to comply with subsequent Government guidance, policy and updated legislation.</li></ol>
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### Background and Options

1. Procurement Services is a corporately led strategic function, bringing together a range of specialist skills and resources to support all Enfield Council service areas throughout the commissioning, procurement, and contract management cycles through a business partnering approach. This includes support on request, to Housing Gateway Limited and Energetik. The service is also responsible for all procurement policy and procurement governance, which includes management of the Council's Contract Procedure Rules.
2. The Council may only contract with external parties within the legal framework for local authority procurement i.e., in accordance with the UK Public Contracts Regulations 2015 (as amended), the Council's Contract Procedure Rules (s135 of the Local Government Act 1972), the general duty to obtain Best Value (Local Government Act 1999) and by following the principles of transparency, non-discrimination and equality of treatment.
3. Under section 135 of the Local Government Act 1972 a local authority is required to make standing orders for contracting of goods, works and services. There is also an obligation to include in those standing orders provisions for securing competition for contracts and regulating the way tenders are invited. The standing orders may provide that contracts of a certain value are exempt and may authorise the authority to exempt the provisions were justified by special circumstances. The Contract Procedure Rules (CPRs) are the Council's standing orders as required under the Act.

The Contract Procedure Rules were last updated in July 2020 in line with other changes in the Constitution and were mostly cosmetic in nature. The last major rewrite of the CPRs was in 2017.

4. Following the withdrawal from the EU, the Government have transformed public procurement with the implementation of the Procurement Act 2023 (to go live 28<sup>th</sup> October 2024) and the NHS Provider Selection Regime (went live 1<sup>st</sup> January 2024).
5. Briefings on the key features, local impacts and implementation of the Procurement Act 2023 and the NHS Provider Selection Regime have been provided to the Cabinet Member for Finance and Procurement, the Finance and Performance Scrutiny Panel and the Executive Management Team.
6. A key milestone to ensure compliance with the new legislation is a comprehensive review and amendment of the Council's Contract Procedure Rules. This report describes the methodology and outcomes of the review with recommendations for approval.
7. **Transforming Public Procurement**
8. The new Procurement Act 2023 is scheduled to go live on 28<sup>th</sup> October 2024. The Act brings Contract Management into legislation for the first time and increases transparency with the introduction of 17 new and additional transparency notices.
9. The Government has stated that it wants to simplify the procurement process, increase transparency, and ensure that Social Value, Climate Action, and

Economic Development are more central within procurement activity. There will be a simplification to just 2 main routes to market (open and competitive flexible procedure), but with significantly increased administrative requirements to ensure compliance with the notifications for transparency. Not only for Procurement Services but also for departments that self-serve and procurement directly and who manage contracts.

10. There are 17 notifications within the new Procurement Act, with some projects needing multiple notifications. The majority of these notifications are mandatory and whilst this supports the new legislation's transparency ambition, it also potentially raises the risk of challenge due to a greater need for accuracy. Missing information in a Notification can effect modification of the contract later.
11. Part two of the Act is focussed on new principles and objectives that all public sector procurement must have regard to:
  - delivering value for money
  - maximising public benefit
  - sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions, acting,
  - being seen to act with integrity and, equal treatment of suppliers.
  - the barriers facing SMEs, and to consider what can be done to overcome them.
12. The key changes from the Procurement Act 2023 are set out below:

<b>Area of Legislation</b>	<b>Summary of Changes</b>
Vocabulary	New language and terminology from that used in the Public Contracts Regulations 2015 e.g., Supplier not bidder Public Contract/ covered procurement (for above threshold) Regulated contract for below threshold. Convertible Contract for below threshold contracts that are modified to become above threshold contracts. Tekal is now referred to as: Horizontal and Vertical arrangements with other Councils and controlled companies.
Exemptions	User Choice Contracts are now within the Procurement Act, but can be directly awardable, but must follow the principles of the Procurement Act. These contracts are to be included for notifications on payments compliance notification on 30-day payment terms, any payment made over £30k, and procurement pipeline. This means that these contracts will now need to be recorded for compliance.
Contract Modification	Rules on contract management have changed. There are now changes that are permissible without notifications. Other changes (to public contracts) need notifications. Act covers below threshold modifications also.

Contract Management	<p>Contract management is now part of the Procurement Act 2023.</p> <p>Contracts over £5m must have 3 KPIs published, and an annual performance report produced and published on the performance of those KPIs.</p> <p>If the supplier defaults or fails to improve performance, then another notification is required.</p> <p>Termination notices are required if terminating early or at natural end.</p> <p>Redacted copies of the contract must be published, and re-published if modified.</p>
Framework Agreements and Dynamic Markets	<p>Open Framework Agreements are now permissible.</p> <p>Dynamics Markets offer a flexible approach to framework agreements but will be labour intensive.</p> <p>Dynamic Purchasing Systems will end in October 2028.</p>
Direct Award	<p>Direct Award is now permissible for certain circumstances. These are set out in the Exceptions section.</p> <p>User Choice Contracts are now caught by the Act but can be directly awarded and are not subject to notifications but must be included in payment notifications and pipeline notifications.</p>
Excluded, Excludable & Debarred Suppliers	<p>The Cabinet Office will maintain a list of suppliers that have been Debarred from providing Public Contracts.</p> <p>There are also grounds for mandatory and discretionary exclusion of a supplier at the evaluation stage. (See table below Appendix A)</p>
Conflict of Interest	<p>The Procurement Act asks that Conflicts of Interest are assessed throughout the procurement cycle, including at extension.</p>
Notifications	<p>There are now 17 notifications within the new Act. (There were 3 in the previous legislation).</p>
Pipeline Notification	<p>The Council now needs to publish a 'forward plan' or pipeline of procurements for contracts over £2m, for an 18-month period.</p>
Payment Notification	<p>A requirement to publish payment compliance to 30-day payment terms (this is already published as part of transparency regulations)</p> <p>Any payments over £30k appertaining to a Public Contract.</p>

13. The Provider Selection Regime (PSR) came into force 1<sup>st</sup> January 2024 and replaced the Public Contracts Regulations 2015 and National Health Service (Procurement, Patient Choice, and competition) regulations 2013. All Health Care Services within the scope of this legislation must now comply with it.
14. The PSR will replace existing procurement rules for healthcare services and set new flexible and proportionate rules for a fit for purpose decision-making process. The aim is to move away from the expectation of competition in all circumstances and encourage flexibility to promote the interests of patients,

taxpayers, and the population, remove barriers to integration and collaboration and allow greater transparency of publishing opportunities and awards.

15. The PSR will not apply to the procurement of goods or non-health care services (unless as part of a mixed procurement), irrespective of whether these are procured by relevant authorities.
16. The PSR introduces three provider selection processes that relevant authorities can follow to award contracts for health care services. These are the:
  - Direct award processes (A, B, and C):
  - Most suitable provider process:
  - Competitive process:
17. The PSR legislation removes the procurement of health care services by relevant authorities from the scope of the Public Contracts Regulations 2015 and therefore the Procurement Act 2023, and revokes the National Health Service (Procurement, Patient Choice, and Competition) (No. 2) Regulations 2013 from 1 January 2024. Contracts for social care services are within scope of the Procurement Act 2023.
18. For the first time officers will be required to comply with three distinct procurement legislations running concurrently:
  - Public Contracts Regulations 2015
  - The Procurement Act 2023
  - Provider Selection Regime (PSR).

The Procurement Act 2023 will not be retrospective, and therefore contracts let prior to the 28<sup>th</sup> October 2024 will continue under the Public Contracts Regulations 2015 until they expire.

19. This therefore requires a significant rewrite of all procurement governance, policy and processes, and the Councils Contract Procedure Rules to ensure that they incorporate the requirements of and cross-refer to these legislations. The Procurement Reform Project Plan is in full implementation and the key milestone of review and amendment of the CPRs has been completed.
20. **Procurement Assurance**
21. To ensure compliance and understanding of the new legislation, the role of the Procurement Assurance Group (PAG) has been strengthened, with more elements to be 'assured' by PAG. This includes:
  - Contract variations, extensions, novation over £100k, and termination
  - Performance Reports over £5m to be reviewed prior to publication
  - All direct awards regardless of legislation
  - Use of Single provider Frameworks and Direct Awards on frameworks
22. Procurement Services will take responsibility for Notifications where it leads the procurement process, but Service Departments must take responsibility where it

is self-serve. The increased number of Notifications needed for compliance is going to be a challenge. It is hoped that the Procurement System (London tenders Portal) will interface to allow notifications. If not, then will need to consider how these will be managed as it is not feasible or manageable for Service Departments to self-serve.

### **23. Methodology to Updating the CPRs in line with legislation**

24. A working group comprised of representatives from Procurement Services, Corporate Governance and Legal Services jointly completed the review to develop a draft working set of new CPRs. Despite the 3 legislations running concurrently, it was agreed that pragmatically, one set of CPRs would be more beneficial to the organisation and this will be supplemented with the creation of new Procurement Codes providing advice, guidance and process would be produced. These Procurement Codes will replace the current Procurement Manual. In addition to the new Procurement Code for generic goods and services, specific codes will be produced as follows:

- Schools – exempt from some elements of the Procurement Act 2023
- Light Touch – exempt from some elements and requirements of the Procurement Act 2023
- PSR Code for PSR
- Construction Guide – to support more complex procurements in the construction category, and the differences needed in this category.

25. The purpose and benefit of the current Partnership Procedure Rules was also reviewed. The project group agreed that since there has been no evidence of the need to utilise them it would be more beneficial and practical to remove these from the Council's Constitution and incorporate relevant elements into the new CPRs.

26. Stakeholder and user feedback into the new version of the CPRs was sought and the new version reflects their input. Key stakeholders consulted include service department commissioning teams, Audit Services and Corporate Finance.

27. This has been a complex and challenging piece of work, that has taken several months to pull together. Once all documents have been agreed, then final hyperlinks will be added.

28. The rewrite of CPRs will ensure the Council is compliant with the new procurement legislations and reflects user feedback from across the organisation. It is proposed that these Rules will be fully reviewed in March/April 2025 to determine if there have been any issues with the application or interpretation of them and to take account of any further guidance or potential changes in legislation in the coming weeks.

29. This report and Contract Procure Rules (and Codes) was presented to Assurance Board 11<sup>th</sup> July and was endorsed.

### **30. Changes in the CPRs**

31. The Finance Due Diligence and Security section has been rewritten in light of current practice, with the current CPRs stating there must be security and often this is waived. To rectify this the CPRs have moved to a risk-based approach with a risk assessment, and then a suggestion of security type, with Value for Money and what is industry standard as recommendation.
32. In line with this the insurance section has been updated to a risk-based approach and guidance on values set out in the Procurement Code.
33. Under the new Procurement Act, the Council must consider whether any barriers to SME participation can be removed or reduced. Currently Enfield's standard contracts have 'unlimited liability' as standard although there is an optional liability cap clause in the user guide. Continuing with the current templates (with a liability cap as optional) is a potential barrier to SME participation. It is recommended that a liability cap clause is inserted in our standard contracts in line with the 'self-service' contract templates.
34. Procurement Services is also working with Finance and Legal at putting in Financial Distress clauses in our standard contract terms. This will put a responsibility on the Supplier to inform the Council if they are getting into financial distress, and then work with the supplier to assess their Finances. This is set out in the Governments Sourcing Playbook.
35. The current CPRs refer to the Partnership Procedure Rules. It is recommended to remove these from the Constitution, and reference in the CPRs.
36. A full list of the changes to the CPRs are set out in the table below. **Appendix A.**
37. **Post Go Live**
38. Procurement Services will need to review compliance reporting to ensure it incorporates all elements of the new legislation and CPRs.
39. The Procurement System will need to be compliant to the new legislation to meet notifications. The system is not a contract management system, and Procurement Services will not be able to measure compliance to the contract management elements of the legislation with the current system.
40. The PSR regime went live in January, but ProActis (supply of current procurement system) have not confirmed if it will provide a method of identifying PSR projects from other procurement projects to comply with reporting requirements.
41. The Procurement Review Unit (PRU) from the Cabinet office will be monitoring compliance to the Procurement Act 2023 and has the powers to review procurement processes within Councils where noncompliance is detected and make recommendations. The PRU will also be controlling the Debarred list of suppliers. Enfield Council will have to report to the PRU where it decides to Exclude a supplier.
42. Guidance is being published regularly from the Cabinet office as the 'go live' date nears. It has been recognised that as more guidance becomes available the

interpretation of some of the legislation might need refining, and therefore it is recommended that the Director of Law and Governance make further necessary changes to the CPRs to respond to any further guidance from the Cabinet office or changes to regulations..

43. All hyperlinks will be added once all CPRs and associated documents have been endorsed and uploaded to the intranet.

### **Preferred Option and Reasons for Preferred Option**

44. To ensure compliance to the new procurement reform legislation and compliance with the local government act 1974 to have a set of Standing Orders.
45. To use 'Codes' to set out operational elements to allow flexibility as Council policy changes.

### **Relevance to Council Plans and Strategies**

46. Procurement Services supports the delivery of the Councils Plan priorities by enabling services to commission and procure contracts that deliver council outcomes, supporting clean and green places, strong, healthy, and safe communities, thriving children and young people, more and better homes and an economy that works for everyone.
47. Procurement Services supports the delivery of the Councils Plan principles through its sustainable and Ethical Procurement Policy, the Contract Procedure Rules and Contract management framework.
48. Providing a wide range of policy and analytical support as it relates to suppliers and external markets and to provide guidance through the legal and internal processes that govern how the public's money is spent.
49. Procurement Services is an enabling service and supports Council services through procurement to support the delivery of homes in well-connected neighbourhoods, safe, healthy, and confident communities, and an economy that works for everyone. Through procurement activity it ensures that suppliers support the Fairer Enfield Policy and Climate Action.

### **Financial Implications**

50. This is an update only report and there are no financial implications for this report. Procurement Services works closely with Financial Services throughout the life cycle of the Procurement Project to ensure financial probity.

### **Legal Implications**

51. As stated elsewhere in this Report, under section 135 of the Local Government Act 1972, local authorities may make standing orders with respect to the making of contracts by them or on their behalf and shall make standing orders with respect to the making by them or on their behalf of contracts for the supply of goods or materials or for the execution of works. Officers are obliged to follow the CPRs, which form part of the Council's Constitution, when procuring,



awarding and managing public contracts. This is important to ensure the Council complies with its statutory duties when spending money, including relevant procurement legislation (including the Provider Selection Regime and - from 28 October 2024 - the Procurement Act 2023) and its Best Value duty under the Local Government Act 1999.

### **Equalities Implications**

52. Equalities are considered during procurement through the Sustainable and Ethical Procurement Policy, which includes sections on equalities. An Equality Impact Assessment is being undertaken and the findings will be reported to the committee and Full Council in due course.

### **53. Environmental and Climate Change Implications**

54. Climate implications are considered during procurement through the Sustainable and Ethical Procurement Policy, which includes sections on Climate Action and sustainability.

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#### **Appendices**

**Appendix A – Table of Changes**

**Appendix B – CPRs**

**Appendix C – Procurement Code**

**Appendix D – Provider Selection Regime Code**

**Appendix E – Light Touch Services Code**

**Appendix F – Schools Code**

## Appendix A – Table of amendments to CPRs

Section/ Paragraph	Proposed Changes	Rational/ Comments
Whole Document	<p>Changes in vocabulary:</p> <ul style="list-style-type: none"> <li>• Contracting Activity rather than Procurement</li> <li>• Supplier rather than bidder</li> <li>• Procurement legislation rather than Public Contracts Regulations 2015</li> <li>• Procurement Manuel is now Procurement Code</li> <li>• Changed e-tendering system to Procurement System</li> <li>• Public Contract, above threshold contracts</li> <li>• Regulated below threshold contracts</li> <li>• Contract Modification rather than variations &amp; extensions</li> </ul> <p>Added more hyperlinks</p>	<ul style="list-style-type: none"> <li>• The term Procurement has been changed throughout the document to contracting activity, to reflect both Procurement Act 23 and PSR, and that Direct Award is contracting activity.</li> <li>• Change to Procurement Code from manual – manual suggests it is not mandatory to use.</li> <li>• Changed e-tendering portal name as might update system and avoid being out of date.</li> </ul>
Whole Document	Order of sections changed to follow the procurement cycle	To support better compliance and easier to use
Index	Update to index	To reflex the changes in the document
Introduction Rule 1	Introduction updated to reflect that there are now 3 different procurement legislations.	Addition of 4 codes to set out the different processes needed to meet all the different legislations.
	<p>Set out objectives of the PA23</p> <p>Have regard to the importance of:</p> <ol style="list-style-type: none"> <li>a) Delivering Value for Money (VFM)</li> <li>b) Maximising public benefit</li> <li>c) Sharing information for the purpose of allowing Suppliers and others to understand the authority's procurement policies and decisions.</li> <li>d) Acting and being seen to act with integrity</li> </ol>	To ensure compliance to the procurement act.

	<p>e) Having regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.</p> <p>f) Considering <a href="#">the National Procurement Policy Statement</a></p> <p>g) Considering treaty state Suppliers (See <a href="#">Procurement Code</a>)</p>	
	Change use of Procurement System to £5k to meet transparency regulations.	Use of Procurement system moved to capture all contracts over £5k to ensure compliance to transparency requirements, and better visibility of spend.
	Addition of the list of Notifications needed throughout the Contracting Activity.	To ensure compliance to the notifications needed It is expected that these will be via the procurement system or facilitated by Procurement Services (resource permitting)
	Clarified that the Rules apply to ALL contracting activity	Updated to meet new legislation. Children's and Adult social care contracts are no longer exempted under Procurement Act 2023, but direct award is permissible (see Exceptions)
Purpose Rule 2	Minimal change Sets our need to refer to PSR & Light Touch Codes	Strengthen compliance. Ensure officer are aware of what does not need to follow CPRs. What is now in scope that was not previously.
Exempted Contracts Rule 3	Sets out what contracts are now exempt from the PA23 and PSR. Adult social care and children's services are now <b>not exempt</b> , but direct award is permissible. This means that the principles of the Procurement Act apply to these contracts.	Ensure compliance with Legislation on what is not covered by the PA23.  Clarification on arrangements with other Councils and controlled entities. Confirmation that Horizontal

	<p>Horizontal &amp; Vertical arrangements with other Councils and controlled entities has been added, to avoid ambiguity.</p> <p><b>Vertical Arrangements:</b>  A contract between a contracting authority and a person that is controlled by—</p> <ol style="list-style-type: none"> <li>a. the contracting authority,</li> <li>b. the contracting authority acting jointly with one or more other contracting authorities,</li> <li>c. another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or</li> </ol> <p>another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).</p> <p><b>Horizontal Arrangements:</b>  Contract or arrangement with another authority with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions, solely in the public interest.</p>	<p>and Vertical arrangements are exempt.</p>
<p>Roles &amp; Responsibilities Rule 4</p>	<p>Added:</p> <ul style="list-style-type: none"> <li>• Budgets need sign off from budget holder and finance</li> <li>• Effective contract management must take place</li> <li>• Updated list of exempted contracts in line with legislation</li> <li>• Removed Children’s &amp; Adults as they are no longer exempt</li> </ul>	<p>Tighter control on budgets and ownership from budget holder.  Contract management added in light of new legislation</p>

Procurement Governance and Assurance (PAG) Rule 5	<b>New Section.</b> Sets out the role of the Procurement Assurance Group (PAG) and procurement assurance.	To ensure that PAG process are followed – as now in CPRs, rather than Procurement Manual as previously.
Annual Procurement Plan Rule 6	<b>New Section.</b> Details the purpose of the annual procurement plan	Sets out requirements for the development of the Annual Procurement Plan, to support more strategic planning around procurement and support resource planning and allocation.
Risk Assessment Rule 7	Procurement Code will now hold information on recommendation for minimum insurance levels. Sections asks for a risk assessment to be carried out, and deviation will need approval via PAG Addition of reference to the Construction Code	Better governance around risk and insurance Management of costs due to, to high insurance To ensure compliance to the new Building Regulations around construction
Insurance Rule 8	Moved position in the documents to nearer the beginning. Sets out need for risk assessment to identify risk and insurance requirements Reference to minimum requirements regarding insurance. Deviation from guide needs to go to PAG for assurance	Moved to more risk-based approach Procurement Code sets out guide to minimum requirements for insurance
Direct Award & Exceptions to Competitive Tendering Rule 9 (Was Exceptions)	Renamed to reflect the wording in the Procurement Act.  Updated to reflect changes in legislation to ensure compliance. Sets out where Direct Award (exceptions) are now permissible.  User Choice contracts are now no longer exempt, but Direct award is permissible where the user has chosen.	Change to meet new Procurement Act regulations, as exceptions are now seen as direct awards that are permissible.  Set out what is permissible under the Act. Strengthened governance for direct award Must be accompanied by contract, authority to award, and contract classification.  Included User Choice Contracts in line with legislation. Need to record these for payment reporting.

	<p>Direct Award is permissible to protect life (in response to covid etc). Switch to Direct award permissible where no tender responses have been received.</p>	<p>New regulation, as this was ambiguous under PCR2015, and Covid identified this.</p>
	<p>Moved position in the documents to nearer the beginning. That all Exceptions must be accompanied by authority to award, a contract and budget approval, in line with competitive process.</p>	<p>Strengthened requirements around Exceptions. Strengthened governance and to be treated like a contract.</p>
<p>Application of Waivers Rule 10</p>	<p>Minimal changes Inclusion of conflict-of-interest assessment, and excludable, excluded, or debarred supplier.</p>	<p>Strengthened requirements around Waivers. Strengthened governance and to be treated like a contract.</p>
<p>Financial Due Diligence and Security Rule 11</p>	<p>Updated name to reflect function. Set out that Economic and financial standing tests need to be carried out by finance in accordance with code. Test will be proportional based on contract classification.</p>	<p>Details of economic standing tests set out in the Procurement Code to allow for operational change.</p>
<p>(Was Financial Security)</p>	<p>Removal of the need for security by value, and only by assessment of risk, using Economic Standing Test, contract classification tool and risk assessment. Must come to PAG for exceptional circumstances. Security must be in line with industry norm and represent Value for money.</p>	<p>Updated security in line with working practices, and market forces, as old CPRs were out of date and required lots of waiving of this rule. Is now proportional and based on risk, therefore not adding cost to contracts where security was not needed.</p>
<p>Business Continuity Rule 12</p>	<p>Included requirements for Platinum and Gold contracts to be listed on Service Departments BIA. Use of Supply chain resilience tool for monitoring</p>	<p>Ensuring Emergency Planning have visibility of key contracts.</p>
<p>GDPR Rule 13</p>	<p>No change</p>	
<p>Contracting Activity</p>	<p>Change of Name to reflect that it is not just procurement Included approvals for:</p>	<p>Strengthened governance to ensure that it applies to ALL contracting activity (not just procurement)</p>

<p>Governance – Approvals Rules 14</p> <p>(Was Approval to Procure)</p>	<ul style="list-style-type: none"> <li>• Starting contracting activity</li> <li>• Awarding contracts</li> <li>• Modification to contracts (extensions &amp; Variations)</li> <li>• Termination of contract</li> <li>• Novation of contract</li> </ul> <p>Updated reports needed in line with changes in governance.</p>	<p>Set out reports needed (non-key officer decision report &amp; Key Decision Report) based on Council Governance. Hyperlinks to templates added. Strengthened budget approval</p>
	<p>Set out need to get any additional budget approved for modifications or where contract award is higher than anticipated.</p>	<p>Strengthen budget control, specifically where additional funds are needed.</p>
	<p>Updated in line with Procurement Act for below threshold contracts that when modified go about threshold process (which is now permitted).</p>	<p>Included convertible contracts (where below threshold contracts go over threshold (now permissible), and processes needed. To ensure compliance to new legislation</p>
	<p>Updated to state that no external procurement can be commissioned without approval from Procurement Services List moved to Procurement Code</p>	<p>Strengthened governance on use of external parties for procurement and legal services.</p>
<p>Specialist Procurement Rule 15</p>	<p>Moved list of specialist areas to Procurement Code Set out that existing council contracts must be used in first instance.</p>	<p>List of specialist areas in the Procurement Code</p>
<p>Estimating the Contract Value Rule 16</p> <p>(Was Calculating the Contract)</p>	<p>Change of title to reflect new PA23 Updated to reflect legislation (48-month rule no longer used) Must include whole live costs, included money already paid. Values must be <b>inclusive of VAT</b></p>	<p>Updated to reflect legislation Set out clearly guidance on estimating value of a contract from the legislation.</p>

Value)	For below threshold procurement Contract value must be estimated. Where unable to estimate the contract value then must carry out an above threshold procurement process. For below threshold can use negotiation for best and final offer.	Must know value of the contract or must do above threshold procurement (new legislation). No rolling contracts so all low value contracts must have a defined term. Add in best and final offer to promote savings
Frameworks & Dynamic Markets Rule 17	<b>New section.</b> Reflect new legislation regarding use of frameworks, dynamic markets, and open frameworks.	Added as new section as previously this was only in the Procurement Manual. More legislation around Frameworks and strengthening the governance around use of Frameworks. New legislation on Dynamic Markets and Open Frameworks
	Mandated the use of Exception & Waiver form for direct awards and use of single provider frameworks, and to come to PAG. Use of vendor neutral portals by Procurement Services permission only	Direct awards & single supplier frameworks to come to PAG, to ensure VFM. Control use of vendor neutral routes to market.
Conflict of Interest Rule 18	<b>New Section</b> Reflection of requirements under the PSR & PA23 to monitor conflict of interest through the sourcing cycle.	New section added (replaced Declaration of Interest) This is important part of the new legislation and needed to ensure risk is mitigated
Sustainable & Ethical Procurement Policy Rule 19	Minimal change Change of up to 10% Update to state up to 10% for weighting Includes fair tax declaration Moved further up the document	In line with procurement principles Updated S&EPP to reflect Fair Tax
Procurement Threshold Rule 20	1 quote moved from £25k to £30k in line with new legislation. Mandate the use of the portal from £5k, to ensure better compliance at low value and meet transparency regulations.	Updated in line with changes in legislation. Procurement Act 2023 only applies to contracts over £30k Updated column on contracts to strengthen risk management



	Thresholds must be inclusive of VAT	
Provider Selection Regime Rule 21	<b>New Section.</b> Information on how to remain compliant and rules to follow for Provider Selection Regime, that applies to Health Services Contracts.	New legislation to cover Health Services Contracts. Most of the legislation will be set out in the PSR Code, to not complicate the CPRs. This will only apply to a handful of contracts for the Council. Unlike PA23 which is based on values for route to market. Route to market is based on set of tests around supplier performance and applies to all values.
	New PSR Code also developed alongside to hold all operational elements of this legislation.	PSR Code sets out all legislative requirements that are needed for the 5 routes to market to ensure compliance.
Light Touch Services Rule 22	<b>New Section</b> Information on how to manage Light Touch Services contracts under the PA23, as there are exemptions from public contracts. Light Touch Code developed alongside to hold all operational elements of this legislation.	New Section added to ensure that the different processes needed for contracts that fall under the Light Touch Services elements of the Procurement Act 2023 are clear. (Mostly only applies to contracts within the People Department).
Notifications (Was advertising and publication) Rule 23	Updated title to reflect legislation. Section updated to reflect legislation. All notifications will be listed in the Procurement Code. 17 Notifications for PA23 Separate Notifications needed for PSR	Update to reflect the changes in legislation around the increase in the number of Notification and when they are needed. Details will be in the Procurement Code, as insufficient details on this yet as Notification details not published by Cabinet office at time of development of CPRs.
	Updated to reflect legislation changes in vocabulary. Sets out the need for notifications throughout the contract lifecycle, not just procurement.	Procurement Code lists all notifications States which are mandatory,
Preliminary Market Engagement	<b>New Section</b> Reflects legislation regarding market engagement to ensure compliance and reduce challenge	Added in as Market Engagement is now within the Procurement Act 2023 and needs a notification. Where it does not take place then explanation is

Rule 24		needed in Tender Notice.
Receipt and opening of tenders	Updated to reflect the use of the procurement system from £5k	Only updated to remind that the procurement system must be used
Rule 25	Updated to reflect changes in Council governance with the introduction of two Report templates.	Ensure compliance with council governance.
Award Criteria and Evaluation Rule 26  (Was evaluation criteria)	Updated title (was evaluation criteria) Reflective of the new legislation and vocabulary. Ensures compliance to new legislation Added in section on where the Act asks to consider evaluation criteria must: (i) relate to the subject-matter of the Contract, (ii) are sufficiently clear, measurable, and specific, (iii) do not break the rules on technical specifications in regulation 56 of the PA 23, and are a proportionate means of assessing tenders, having regard to the nature, complexity, and cost of the Contract.	Title updated to reflect the new procurement act vocabulary. Updated to reflect better management of Award Criteria. More emphasis on checking: Meeting conditions of participation. Checking suppliers are not excluded or excludable suppliers.
	Below threshold contracts cannot restrict submission of tenders by reference to an assessment of their suitability, including legal and financial capacity, & technical ability.	New rules around selection process. Contracts for Works are exempt from this where they are over the goods and services threshold £214K.
	New addition Consideration to check suppliers, subcontractors and connected persons if they are within the mandatory exclusion grounds, or discretionary exclusion grounds. Must check for all public contracts Recommending for below threshold for good practice Grounds include: <b>Mandatory:</b> Corporate manslaughter Terrorism	Ensure compliance to new legislation

	<p>Theft, fraud, bribery etc  Labour market, slavery &amp; human trafficking  Organised Crime  Tax offences  Misconduct in relation to Tax  <b>Discretionary:</b>  Environmental Misconduct  Insolvency, bankruptcy  Potential competition infringements  Professional Misconduct  Breach of Contract/poor performance</p>	
Contract Award and Execution Rule 27	<p>Reminder on the need to publish Notifications  Reminder on authorisation  Must be on the Council Corporate Contract Register</p>	Ensure compliance to new procurement legislation.
Post Tender negotiation Rule 28	Updated to endorse use of best and final offer on below threshold.	Updated to encourage negotiation for below threshold contracts to deliver savings.
Contract Modifications, Novation & Termination to Contracts. Rule 29	<p>Current CPRs very light on this area.  Extensive updates, to remind officers that extensions and variations need to be compliant and are an opportunity to review provision for savings and efficiencies.</p>	Updated to reflect the changes in legislation in this area.
(Was variation to contracts)	<p>Substantial change in legislation for this area.  Now have permissible changes where notifications are not needed.  Outside of permissible changes can make changes but notifications must be published, and Rules sets out what legislation allows.</p>	<p>Inserted into CPRs for compliance as this is complex.  Compliance to Notifications to ensure transparency, but greater risk of challenge.  Changes in rules regarding when a modification can take place and to the values and percentages that are permissible.  Sets out legislation on changes that are allowed but not permissible.</p>

	Modifications over £100k must come to PAG	Strengthened governance regarding modifications and maximise opportunities at contract breaks
	That Contracts let under Public Contracts Regulations 2015 must follow this legislation for modifications.	Reminder that the Procurement Act 2023 is not retrospective and current contracts will be subject to current legislation.
	Included Novations as this is now covered as part of the act.	Ensure compliance to new legislation and Councils Novation process.
	Terminations added	To strengthen governance around Terminations and ensure Notifications are published for all Public Contract Terminations including natural expiry
Contract Management Rule 30	Updated to reflect that Contract Management is now part of Procurement Legislation. Moved up the document Strengthened need to maintain contract register. Mandated use of classification and supplier resilience tool.	Updated to reflect that Contract Management is now part of the Procurement Act. Strengthen requirements around better contract management, and governance of contracts.
	Details obligations for publishing KPI's on contracts over £5m and need to publish redacted version of the signed contract. Annual performance report and on termination (natural end) or defaulted or failed.	Updated requirements on contracts over £5m. Included the need to follow the Contract management framework.
Record Keeping Rules 31	Updated to hyperlink to standard contract templates from Legal Added more details to be compliant to PA23 Included PSR arrangements Use of LTP over £5k	Updated to reflect changes in other elements of the CPRs. Included PSR for record keeping
Contract, Terms and Conditions Rule 32	Updated to reflect requirement to publish copy of the signed contract within 90 days for contracts over £5m. Stated that contracts must have a defined term, otherwise over threshold procurement.	Updated to reflect changes in the legislation Contract manager of contracts over £5m will need to be aware of responsibilities and compliance.

	Addition of electronic invoices and payment terms as per legislation	
Prevention of Corruption Rules 33	No real change Reference to Conflict-of-Interest within the Act.	Reference to conflict of interest to reinforce need to be compliant.
Grant Funding Rule 34	<b>New section</b> Clarifies that where contracts that are let and use grant funding, they are NOT exempt from the Rules, That Procurement Services need to be consulted early in the process as often need to spend the money quickly.	Remind officers for the need to be compliant to CPRs even if grant funded.
IR35 Rule 35	Minimal amendments	Strengthen guidance
Glossary of Terms	Updated to reflect all new terminology and legislative vocabulary.	

## Chapter 4.9 - Contract Procedure Rules

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## 1. INTRODUCTION

- 1.1 These Contract Procedure Rules (Rules) form part of the [Council's Constitution](#). The Rules and the [Procurement Code](#), [The Provider Selection Regime Code](#) and the [Light Touch Services Code](#) **MUST** be applied together to ensure value for money, protect the public purse and ensure compliance to applicable Procurement Legislation, protecting the Council from potential risks.
- 1.2 Schools must refer to the Schools Code in conjunction with these Rules.
- 1.3 Procurement Legislation relates to the award, entry into and management of Public Contracts. This means that the Legislation regulates public procurements from inception through to award and throughout the duration of the Contract – from the point at which the Council is considering how and what to procure, through the process of procurement and Contract award, up to the point at which the resulting Contract ends. Together with the [Procurement Code](#) and relevant Council policies, the Rules provide directives, regulations, policies, and guidance relating to the procurement and award of Goods, Services and Works Contracts for the Council.
- 1.4 From [28<sup>th</sup> October 2024] there will be three forms of Procurement Legislation that relate to Contracting Activity which these Rules cover:
- (i) Procurement Act 2023 (PA 23) that covers all Contracting Activity started on or after 28<sup>th</sup> October 2024 including Procurement Regulations and subsequent guidance (Procurement Policy Notes).
  - (ii) Public Contract Regulations 2015 (PCR 2015) that covers all Contracting Activity started before 28 October 2024, Contracts let before such date and call off Contracts under Framework Agreements set up under the PCR 2015 until their natural end.
  - (iii) The Provider Selection Regime (PSR) that covers all Contracts that come under the definition of Health Services Contracts let under the Public Contracts Regulations 2015 or PSR.
- 1.5 These Rules have been approved by Senior Leadership and Members and following these Rules protects the Council and Council officers from risk of challenge and ensure compliance with the relevant Procurement Legislation and the Council's Constitution.
- 1.6 Service Departments must follow the Rules for all Contracting Activity and Procurement Legislation. This means Service Departments must:
- (i) Have regard to the importance of:
    - a) Delivering Value for Money (VFM)
    - b) Maximising public benefit

- c) Sharing information for the purpose of allowing Suppliers and others to understand the authority's procurement policies and decisions.
  - d) Acting and being seen to act with integrity
  - e) Having regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.
  - f) Considering the National Procurement Policy Statement
  - g) Considering treaty state Suppliers (See [Procurement Code](#))
- (ii) Treat Suppliers the same. Where a difference between Suppliers justifies different treatments, the Service Department must take all reasonable steps to ensure that a Supplier is not put at an unfair advantage or disadvantage.
  - (iii) Ensure that at evaluation Suppliers are checked to ensure they are not an Excluded (Debarred) or Excludable Supplier (See Rule 26).
  - (iv) Ensure that Contracts are entered in a compliant manner and protect the public purse. Service Departments must demonstrate VFM by:
    - a) Demonstrating the need for the Goods, Services or Works.
    - b) Using existing [Council Contracts](#) in the first instance wherever possible.
    - c) Exploring opportunities to work collaboratively across the Council where Contracts are for similar Services.
    - d) Considering alternative methods of delivery and what approach will deliver the best outcomes for the Service Department.
    - e) Reviewing Contracts regularly for efficiencies, savings, and performance, specifically at Contract extensions and modifications.
    - f) Taking responsibility for the specification and ensure that it is neither over, or underspecified, meets the Service Department's needs and is clear and concise.
  - (v) Carry out a form of competitive process relevant to the estimated value of the Contract. Where procuring Regulated Below Threshold Contracts, ensure that the minimum number of quotes are sought and comply with the local Supplier requirements see Rule 20.
  - (vi) Ensure authority to carry out Contracting Activity has been given by the appropriate officer and written confirmation of budget in accordance



with the Financial Regulations has been obtained prior to any commitment to obtain formal bids/quotations or starting work.

- 1.7 All Contracting Activity above Procurement Legislation Thresholds or covered under the Provider Selection Regime (PSR) must be overseen by [Procurement Services](#), (unless agreed by Procurement Services) to ensure:
- (i) Strict compliance with the relevant Legislation,
  - (ii) The adoption of best practices, and
  - (iii) The achievement of VFM
- 1.8 Procurement Legislation requires Transparency from Local Authorities. Therefore, when following these Rules, it is important to ensure that all Transparency requirements are met. Notifications must be published at all stages of the Contracting Activity process as set out in the Procurement Legislation. Please refer to the [Procurement Code](#) for information on complying with Notifications.
- 1.9 Main Notifications:
- (i) Planned Procurement Notice
  - (ii) Preliminary Market Engagement Notice
  - (iii) Tender Notice
  - (iv) Tender Notice (amended)
  - (v) Dynamic Market Notice(s)
  - (vi) Transparency Notice (Direct Award)
  - (vii) Contract Award Notice
  - (viii) Contract Details Notice
  - (ix) Copies of Contracts (redacted)
  - (x) Procurement Termination Notice
  - (xi) Payments Compliance Notice
  - (xii) Contract Performance Notice(s)
  - (xiii) Contract Change Notice
  - (xiv) Contract Termination Notice
  - (xv) Below Threshold Procurement Tender Notices
  - (xvi) Below Threshold Award notice
  - (xvii) Pipeline Notice
  - (xviii) PSR Notifications
- 1.10 Procurement Services reserves the right to manage any Contracting Activity due to either risk to the Council (including reputational risk) or complexity.

- 1.11 The Council's [Procurement System](#) must be used for all Contracting Activity above £5k. All communications with bidders/providers must be carried out through the [Procurement System](#) to ensure there is a clear audit trail and compliance with retention policies. All governance documentation, reports and an executed (signed) copy of the awarded Contract **MUST** be uploaded to the [Procurement System](#). Use of any other procurement systems/portals must be approved by Procurement Services.
- 1.12 Any Contract entered into by the Council must be in accordance with these Rules and Procurement Legislation as set out in Rule 1.4.
- 1.13 The [Procurement System](#) is recognised as the [Council's Corporate Contract Register](#). It is the responsibility of Service Departments/ Contract Managers to ensure that all departmental Contracts are maintained within the [Procurement System](#). This ensures that the Council is compliant with obligations under Procurement Legislation regarding publications of Contracts, Pipelines, record keeping and retention obligations.
- 1.14 In all cases where there is uncertainty regarding these Rules, contact Procurement Services/Legal Services (where required) for clarification.
- 1.15 For the purpose of these Rules ALL Contract values are **inclusive of VAT** except for budget and governance purposes.

## 2. PURPOSE

- 2.1 The Rules apply to all Contracting Activity relating to Goods, Works, and Services (including Light Touch Services), Health Services Contracts covered by the PSR unless stated in Rule 21 and Rule 22. Refer to the **PSR Code** or **Light Touch Services Code** for further information. This includes Direct Award, where there may be little or no monetary value to the Contract or there is income or profit sharing. These Rules may also apply to agreements that are entered via other mechanisms, such as but not limited to:
  - (i) Partnerships
  - (ii) Shared working / Services
  - (iii) Consortiums of Councils
  - (iv) Section 75 arrangements
  - (v) Commercial Contracts funded by grant funding
  - (vi) Joint Ventures
  - (vii) Contracts via other councils
  - (viii) Concession Contracts
  - (ix) Direct Awards
  - (x) Contracts let via the Provider Selection Regime

- 2.2 Legal and Procurement advice must be sought in all circumstances where these apply.
- 2.3 To achieve the Council's objectives, these Rules and the Operational Procurement Processes in the [Procurement Code](#), [PSR Code](#) and [Light Touch Services Code](#) must be followed for all relevant Contracting Activity. These Rules are made under section 135 of the Local Government Act 1972. Failure to comply with these Rules may lead to a disciplinary action. Council employees have a duty to report breaches of these Rules to an appropriate senior manager and the Director of Law and Governance under the [Council's Whistle-Blowing Policy](#).

### 3. EXEMPTED CONTRACTS

- 3.1 The following types of Contracts do not fall within the scope of the Rules, but Service Departments must still ensure VFM in these areas:
- (i) Contracts of direct employment
  - (ii) Land Contracts (including leases, licenses, and transfers), which are subject to the Property Procedure Rules. Although some property transactions may fall within the scope of these Rules where Works, Goods or Services relate to the property transaction. Contact Procurement Services and Legal Services for advice.
  - (iii) A Contract for the provision of arbitration, mediation, or conciliation Services, or of any other similar Services for the Council.
  - (iv) Legal representation or the giving of legal advice by a lawyer in judicial proceedings or other dispute resolution proceedings.
  - (v) Financial Contracts for the lending of money or currency, investment Services or activity, or of an ancillary Service, in relation to a financial instrument by an investment firm or a qualified credit institution.
  - (vi) Grants of money, where there is no Service provision, measurement of outcomes or performance measures in place.
  - (vii) Vertical and Horizontal Arrangements
    - a) Where Contracts are either to be awarded between the Council and a controlled entity under the applicable 'Teckal Company' exemption, or via the 'Hamburg' conditions which establish or implement co-operation exclusively between the Council and other Council(s). In these circumstances, the Service Department must seek advice from Legal Services as to the application of the proposed Direct Award. These Contracts must follow appropriate Council governance and the procurement assurance process via the [Exceptions and Waiver Form](#) prior to entering the proposed Contract.

- 3.2 If there is doubt as to whether Contracting Activity is exempt, please check with Legal Services or Procurement Services.
- 3.3 Please refer to [Procurement Code](#) or Procurement Legislation for a full list of Exempted Contracts.

## 4. ROLES AND RESPONSIBILITIES

- 4.1 Executive Directors, Directors, and Heads of Service are responsible for ensuring:
- (i) Service Departments are compliant with the relevant Procurement Legislation and Rules in all commercial and Contracting Activity:
  - (ii) VFM by carrying out a competitive process wherever possible.
  - (iii) Proper market research and engagement is carried out to support specification and Contract development.
  - (iv) Suppliers can deliver the requirement at an affordable cost and required quality at the time of going to the market, having regard for the right price/quality ratios, and are not Excluded, Excludable or Debarred Suppliers (See Rule 26).
  - (v) All Council officers carrying out Contracting Activity are familiar with the provisions of these Rules and compliance with any Operational Processes set out in the [Procurement Code](#), [PSR Code](#), or [Light Touch Services Code](#) and guidelines issued in respect of these Rules.
  - (vi) Service Departments and Contract Managers must ensure that all Notifications are complied with throughout Contracting Activity, including Contract variations, Terminations, and performance Notifications (where applicable), unless the Contracting Activity is being managed by Procurement Services, who will take responsibility for Notification.
  - (vii) Service Departments engage with the Procurement Assurance Group (PAG) as set out in the Procurement Code for Gateway Reports, Contract Modifications, Terminations, Novations and Direct Awards/[Exceptions and Waivers](#). Support procurement planning through the development of the Annual Procurement Plan, by ensuring all Contracts are on the Procurement System, and new projects are on the Annual Plan.
  - (viii) Service Departments ensure that Council governance processes are followed in addition to these Rules and taking responsibility for ensuring specifications are proportionate and meet the needs of the Council.
  - (ix) Immediate action is taken in the event of a breach of these Rules within their Service Department.

- (x) All Service Departments' Contracts are recorded and maintained on the [Council's Corporate Contract Register](#). Ensuring all records and reports of all decisions and Contracting Activity as set out in the Procurement Code are uploaded to the Procurement System, including minutes of Tender evaluation panels to ensure compliance with record keeping obligations under Procurement Legislation, the Council's retention policy and which may be needed for audit or investigation purposes.
  - (xi) When working with Procurement Services, information and resources are provided to support Contracting Activity to ensure that project deadlines are met, and a successful compliant process is carried out.
  - (xii) Delivery of VFM throughout the lifecycle of the Contract through effective Contract Management, Contract reviews and performance monitoring in line with the Council's [Contract Management Framework](#) and relevant Procurement Legislation. This Includes adherence to the Rules regarding Contract Modifications, Terminations, Novations and Performance Monitoring.
  - (xiii) Contract budgets are monitored and managed. In line with Financial Regulations ensuring all costs are managed (including internal and external costs), and any additional costs or overspends are approved by Finance Team, via the relevant Council governance report template where necessary.
  - (xiv) That all Direct Awards are carefully considered and follow these Rules in all cases. The [Exceptions and Waiver Form](#) **must** be used to record the Contract and that this Contract is managed in the same way as all Contracts.
  - (xv) Commissioning officers use the Council's Standard Procurement Templates for Contracting Activity provided by Procurement Services to ensure a robust and compliant process, including [Contract Templates](#) provided by Legal Services.
- 4.2 No Contracting Activity is started or awarded unless there is sufficient budget available for the Goods, Services or Works being Contracted and approved by the Finance Team and budget holder and recorded on the [Procurement System](#).
- 4.3 Service Departments must instruct Procurement Services via a [Procurement Instruction Form](#) to support all Contracting Activity over the Procurement Legislation Threshold or where the PSR Legislation is to be used. For Regulated Below Threshold Contracts refer to the [Procurement Code](#) for support offer.
- 4.4 References to Council officers or posts in these Rules include their authorised deputies or delegates, in accordance with the [Council's Constitution](#) and Council's scheme of delegation.
- 4.5 For the purposes of the Rules, the term "Contract" refers to both paper/hard copy (including their replication by electronic media) and electronic documents

and processes. Only e-Tendering/procurement systems approved by Procurement Services may be used.

- 4.6 All Contracts **MUST** be awarded in accordance with these Rules, the Financial Regulations, and other relevant Council policies/governance.

## 5. PROCUREMENT GOVERNANCE AND ASSURANCE

5.1 The Procurement Assurance Group (PAG) is set up to ensure regulatory compliance, promote procurement best practice, provide assurance on procurement delivery and VFM for awarded Contracts. It covers all Contracting Activity, including Light Touch Services and PSR.

5.2 All Contracting Activity over Procurement Threshold must come to PAG. For Below Threshold refer to the values set out in the [Procurement Code](#). Where covered, Contracting Activity must be endorsed by PAG at each stage of the Gateway Process.

- (i) Gateway 1 – Pre-Procurement
- (ii) Gateway 2 – Procurement Strategy
- (iii) Gateway 3 – Award
- (iv) Gateway 3a – Framework Agreement award
- (v) Gateway 4 – Contract Strategy Handover
- (vi) Gateway 5 – Contract Review

5.3 PAG has the right to call any Contracting Activity for review by the group.

5.4 Where Contracting Activity is covered by PAG and is not managed by Procurement Services, then the Service Department or 3<sup>rd</sup> party must complete the PAG gateway reports and present at PAG. Gateway report templates are available on request.

5.5 All Contract Modifications, Terminations and Novations at the value set in the [Procurement Code](#) must be endorsed by PAG, to ensure compliance with Procurement Legislation and these Rules.

5.6 Public Contracts over £5m where Performance reports are required (see Rule 30), must be approved by the relevant Director and be endorsed by PAG prior to publication.

5.7 All Contracting Activity covered by the [Exceptions and Waiver Form](#) over £30k or [PSR Direct Award Form](#) of any value must come to PAG.

5.8 Service Departments must engage with PAG where their Contracting Activity is covered by the procurement assurance process. Where there was no engagement then procurement implications will state there has been no engagement. Please refer to the [Procurement Code](#) for guidance on Thresholds.

## 6. ANNUAL PROCUREMENT PLAN

- 6.1 The Annual Procurement Plan will be compiled by Procurement Services for the start of the financial year. This supports:
- (i) Procurement resource planning
  - (ii) Compliance to the Pipeline Publication Notification.
- 6.2 The Annual Procurement Plan will set out all Contracting Activity for that financial year where Procurement Services will support delivery. Projects submitted after the approval of the Annual Procurement Plan, risk Procurement Services not having resources to support the project.

## 7. RISK ASSESSMENT

- 7.1 The Service Department must ensure that the risks associated with any Contracting Activity is assessed in line with the Council's Risk Strategy using the [Council's Corporate Risk](#) assessment template or other appropriate risk assessment template and must be documented on file.
- 7.2 Appropriate actions must be taken to ensure that the Council's potential and actual exposure is managed or minimised, this includes Supplier's liability within the Contract. Risks must be set out in any reports where appropriate. Where there is a high risk, financial checks must be carried out and appropriate procedures followed.
- 7.3 Service Departments must adhere to the guidance in the [Procurement Code](#) on levels of insurance.
- 7.4 For construction Contracting Activity refer to the [Construction Guide](#) for all risks and compliance with the Buildings Regulations and other construction compliance.

## 8. INSURANCE

- 8.1 Service Departments must ensure that each Contract includes adequate insurance requirements, seeking advice from the Council's Insurance Team and undertaking a risk assessment to ensure the levels of insurance are adequate.
- 8.2 Service Departments must carry out a [risk assessment](#) to determine risks associated with the Contract and insurance requirements to cover the identified risks associated with the Contracting Activity and Contract. The Council's recommended minimum insurance requirements are set out in the [Procurement Code](#). These are only recommendations and must be assessed proportionately with the risk of the Contract.

- 8.3 Where Service Departments wish to deviate from these standard recommendations, then the revised insurance requirements and their supporting justification must be endorsed by PAG using the [Exceptions and Waiver Form](#) or appropriate gateway report.
- 8.4 Contracts where there is direct advice and/or design Services provided by a Supplier, such as consultancy, design or advice, these Contracts must include a requirement for professional indemnity insurance. See [Procurement Code](#).
- 8.5 Where Purchase Order terms are used, the Service Department must assess whether these adequately cover risk, and it may be necessary to specify insurance levels in the specification or use a [Contract Template](#) from Legal Services where risk is not covered by the Purchase Order.

## **9. DIRECT AWARD AND EXCEPTIONS TO COMPETITIVE TENDERING**

- 9.1 Carrying out a competitive contracting process is the best way to ensure VFM. Direct Award is only permitted in the limited circumstances set out in this Rule. Legal and Procurement Services advice must be sought. Please refer to the PSR Rule 21 for Direct Award procedures.
- 9.2 This Rule can be applied in the following circumstances:
- (i) The Council has an existing suitable Contract in place for the Goods, Services or Works required and can be used.
  - (ii) The Contract unambiguously provides in writing for a variation or an extension and meets the requirements of the Procurement Legislation (see Rule 29).
  - (iii) Use of a Compliant Framework Agreement that permits Direct Award for the award of a call off Contract (See Rule 17).
  - (iv) Any of the grounds under rules 9.3 to 9.11 apply.

### **9.3 Direct Award for User Choice Services Contracts**

A User Choice Contract must be one that meets **all** of the criteria set out in the Procurement Legislation.

- (i) Must be set out in the Light Touch [CPV](#) codes
- (ii) Must be for the benefit of a particular individual or Service recipient
- (iii) Services where the Council are legally required to consider the views of the individual, or their carer, in relation to the supply of Services
- (iv) To use this ground the following conditions must be met:
  - a) the individual or carer has expressed a preference as to who should supply the Service, or the nature of the Services is such that only one Supplier is capable of providing the Service, and



the Council considers that it is not in the best interests of the individual to carry out a competitive procurement process.

- 9.4 Refer to the [Procurement Code](#) for recording these Contracts.
- 9.5 Any Direct Award in the following sections 9.9 to 9.12 must meet the Procurement Legislation requirements, and must be endorsed in advance by PAG using the [Exceptions and Waiver Form](#) prior to any form of commitment being given to a Supplier. The Service Department must justify why they are unable to demonstrate VFM through a competitive process and that the use of this Rule meets Council needs. Exceptions can only be approved if the total Contract value is below the Procurement Threshold or meets the relevant requirements of Procurement Legislation.
- 9.6 All Direct Awards Notifications and standstill period must be adhered to in all cases (except User Choice Contracts), in addition to following Council governance and have a Contract. Where required, Legal advice must be sought.
- 9.7 Exceptions must also comply with Conflicts of Interest (Rule 18) Financial Due Diligence and Security (Rule 11) and checking Suppliers are not Excludable, Excluded or Debarred Suppliers (Rule 25). See [Procurement Code](#).
- 9.8 All [Exceptions and Waiver Forms](#) must be accompanied with:
- (i) Evidence of authority to award (see Rule 14) from the relevant Council officer according to their departmental scheme of delegation for the value of the Contract
  - (ii) Copy of the Contract
  - (iii) Written confirmation of budget and its approval from the Finance Team
  - (iv) Financial Due Diligence in line with Rule 11
  - (v) Completed [Contract Tiering Tool](#) (Rule 30)
  - (vi) Evidence of Conflict of Interest assessed (Rule 18)

### **Direct Award exceptions to competitive Tendering**

- 9.9 Single Suppliers criteria
- (i) The proposed Contract concerns the creation or acquisition of a unique work of art or artistic performance.
  - (ii) Due to the Supplier having intellectual property rights or other exclusive rights, only that Supplier can supply the requirements, and there are no reasonable alternatives.

- (iii) Due to an absence of competition due to technical reasons, only a particular Supplier can supply the requirements, and there are no reasonable alternatives to those requirements.

#### **9.10 Additional or repeat Goods, Services or Works criteria**

- (i) The Public 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 in circumstances where:
  - a) a change in Supplier would result in the Council receiving Services or Works that are different from, or incompatible with, the existing Services or Works, and
  - b) the difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance.
- (ii) The Public Contract concerns the supply of Goods, Services or Works by the existing Supplier that are similar to existing Goods, Services or Works where:
  - a) the existing Goods\*, Services or Works were supplied under a Public Contract that was awarded in accordance with a competitive tendering procedure within the period of five years ending with the day on which the Transparency notice is published, and
  - b) the tender notice or any tender document in respect of that earlier Contract set out
    - I. the Council intention to carry out a subsequent procurement of similar Goods, Services or Works in reliance on this direct award justification, and
    - II. any other information specified in regulations.

\* If the contract is for the supply of Goods, relating to a Contract let under PCR 2015, contact Procurements Services or Legal Services.

#### **9.11 Urgency to protect life criteria**

- (i) Where the Goods, Services or Works to be supplied under a Public Contract are strictly necessary for reasons of extreme and unavoidable urgency, and as a result the Public Contract cannot be awarded based on a competitive Tendering procedure. Lack of sufficient planning and/or internal process delays will not constitute special, exceptional, or emergency circumstances.

#### **9.12 Switching to Direct Award criteria**

- (i) Refer to the [Procurement Code](#) for details and seek advice from Legal Services or Procurement advice.

- 9.13 All Exceptions are reported at the Council's General Purposes Committee on an annual basis by Procurement Services, and quarterly to the Executive Director of Resource and Director of Capital and Commercial.

## 10. APPLICATION AND WAIVER OF THE RULES

- 10.1 These Rules apply to all Contracts for Goods, Services or Works entered by the Council, except where a Waiver of all or part of the Rules is approved. Waivers should only be sought in **exceptional circumstances** given the general presumption that competition is the best way to demonstrate VFM. Members have requested that Waivers be kept to a minimum and will scrutinise all Waivers.
- 10.2 All Waivers must first be approved by the relevant Service Director and then sent to Procurement Services mailbox [Procurement.support@enfield.gov.uk](mailto:Procurement.support@enfield.gov.uk).
- 10.3 Application of a Waiver must be made via the [Exceptions and Waiver Form](#) and will be reviewed by Procurement Services at PAG for endorsement prior to being approved by the Executive Director of Resources. Waivers sent directly to the Executive Director of Resources will be referred to Procurement Services.
- 10.4 All [Waivers](#) must be accompanied with:
- (i) Evidence of authority to award (see Rule 14) from the relevant Council officer according to their departmental scheme of delegation for the value of the Contract.
  - (ii) Copy of the Contract
  - (iii) Written confirmation of budget and its approval from the Finance Team
  - (vii) Financial Due Diligence in line with Rule 11
  - (viii) Completed [Contract Tiering Tool](#) (Rule 30)
  - (ix) Evidence of Conflict of Interest assessed (Rule 18)
- 10.5 Where the estimated total value of the Contract is over the Procurement Legislation Threshold the Council must comply with the requirements of Procurement Legislation.
- 10.6 Contracts let via a Waiver must have documentation held on the [Procurement System](#) to create a record on the [Corporate Contract Register](#). The record will be created by Procurement Services and will have relevant Notifications published as per the Procurement Legislation.
- 10.7 Waivers must also comply with Conflicts of Interest (Rule 18) Financial Due Diligence and Security (Rule 11) and checking Suppliers are not Excludable, Excluded or Debarred Suppliers (Rule 25). See [Procurement Code](#).

- 10.8 Waivers will only be issued for a period of 12 months, unless agreed otherwise by Procurement Services or the Executive Director of Resources.
- 10.9 All Waivers are reported at the Council's General Purposes Committee on an annual basis by Procurement Services, and quarterly to the Executive Director of Resource and Director of Capital and Commercial.

## **11. FINANCIAL DUE DILIGENCE AND SECURITY**

- 11.1 An Economic and Financial Standing Test must be carried out by the Council's Finance Team for all Public Contracts, PSR Contracts and where permissible within Procurement Legislation for Regulated Below Threshold Contracts set out in the [Procurement Code](#) in accordance with this Rule.
- 11.2 An Economic and Financial Standing Test will assess Suppliers' financial capacity to perform the Contract and whether appropriate risk mitigations can be put in place to address any identified issues with Suppliers' financial capacity.
- 11.3 In addition to the Economic and Financial Standing Test, it is the responsibility of the Service Department to carry out a risk assessment using the [Council's Corporate Risk](#) assessment template or other form of assessment to determine the risk of the Contract, specifically in regard to Supplier failure. The risk assessment and Economic and Financial Standing Test will determine if any security is required. The Economic and Financial Standing Test, [Contract Tiering Tool](#) and [Supplier Resilience Tool](#) will assist in determining any associated risks.
- 11.4 Where it is assessed that a form of security is required, the Service Department MUST ensure that it considers VFM in deciding the type of security. Please refer to the [Procurement Code](#) for more guidance regarding the different forms of security.
- 11.5 Security should only be considered in circumstances where:
- (i) a Supplier fails to meet the minimum requirements of an Economic and Financial Standing Test and/or is determined as high-risk
  - (ii) a Contract is tiered as Platinum or Gold
  - (iii) the Contract is for Works or
  - (iv) a Special Purpose Vehicle has / is being proposed to be set up
- 11.6 If a form of security is sought, then the relevant gateway report shall detail this and be presented to PAG for review and endorsement. For Regulated Below Threshold Contracts contact Procurement Services.
- 11.7 Where it has been determined that a form of security is required but the Supplier cannot provide security, and the Council has no acceptable alternative Supplier or has decided to accept the level of risk, then the [Exceptions and Waiver Form](#) must be used to justify the recommendation, be

presented to PAG for endorsement. Procurement Services will seek approval from the Executive Director of Resources prior to any award and work commencing.

- 11.8 The risk and implications for this recommendation must be set out in the relevant authority to award report, providing the reasons why the proposed Contract should be awarded despite the absence of security and what measures are to be taken to manage the risks.

## **12. BUSINESS CONTINUITY**

12.1 To minimise risk and improve Service delivery resilience the Council has committed to implementing the [London Resilience Standards](#). This means that Suppliers must meet the Council's resilience requirements.

- (i) Commissioning of public Services must include a requirement that organisations bidding for Contracts meet the Council's resilience requirements and that those providers share information and data on the impact of disruptions such as severe weather or industrial action; and
- (ii) Projects, Contracts, initiatives and other organisational changes and developments always account for resilience to ensure that these enhance and do not weaken capability of the Supplier.

12.2 In line with the Council's Business Continuity Policy; during the risk assessment, Supplier failure or failure to deliver/perform must be assessed. Where delivery of the Services is assessed as critical, or there would be major reputational damage in the event of a Supplier failure to supply; then business continuity plans must be requested as part of the Contract and the Service Department must build in contingency plans. These Suppliers must be identified in the Service Department's Business Impact Analysis Form (BIA) and provided to the Emergency Planning Team. This must also be considered where the Supplier supports the Council in the event of an Emergency/Disaster Recovery.

12.3 In line with the [Contract Management Framework](#), all Contracts designated as 'Platinum or Gold' must be listed on the Service Departments BIA, must have a continuity plan, and this must be regularly discussed and tested at Contract Management reviews. There must be a nominated Contract Manager in the Councils [Procurement System](#).

12.4 All new Contracts over £30k and all Gold and Platinum must have a [Supplier Resilience Tool](#) test carried out. The score of this test will determine how regularly the test needs to be carried out. Where the risk score is high, then this must also be reported to the Emergency Planning Team.

### **13. UK GENERAL DATA PROTECTION REGULATIONS (UK GDPR)**

- 13.1 Potential Suppliers must be assessed to ensure that they meet UK GDPR requirements. Specifically, regarding data storage and data handling. It is the responsibility of the Service Departments to ensure any potential Supplier is compliant with the UK GDPR at the sourcing stage. This must be part of the specification and review of UK GDPR implications must be carried out at the start of the project.

### **14. CONTRACTING ACTIVITY GOVERNANCE – APPROVALS**

- 14.1 Service Departments must seek authority to start Contracting Activity, to award a Contract and to enter into a Contract. Even when there is no competitive Tendering, evidence of approval must be uploaded onto the [Procurement System](#).
- 14.2 It is the responsibility of the Service Department's lead officer to obtain the necessary authority/approvals, via the relevant Council report template and where required seek advice from Governance Team on the Council's governance process to be followed.
- 14.3 Governance applies to all Contracting Activity including, Extensions, Variations, Terminations and Novations and must follow the same scheme of delegation.
- 14.4 It is the responsibility of the commissioning officer and Service Department to ensure that they follow correct Council governance and submit the correct reports to get the correct approval levels.

## 14.5 Governance Table

Level of Authorisation and Acceptance.	Estimated Total Contract Value	
	Up to £500,000 (Excluding VAT)	£500,000 and over (Excluding VAT)
<p>Starting Contracting Activity.</p> <p>Authority to Procure</p>	<p>All Contracting Activity needs approval.</p> <p>For Contracting Activity above £30k officers must gain written approval to start Contracting Activity. This is either via an email or a <a href="#">Non-Key Officer Decision Report</a> to be signed at the appropriate level within their Service area prior to starting activity.</p> <p>Contracts over £100k must have a <a href="#">Non-Key Officer Decision Report</a>, and must be recorded on the SharePoint central recording Decision Log.</p>	<p><a href="#">Key Decision Report</a> and process must be followed.</p> <p>The forward plan description must state that the Key Decision is for <b>Procurement and Award</b>, so that the reference can be used for award.</p> <p>The authority to procure report, must set out the estimated total Contract value, route to market, evaluation/ award criteria and procurement strategy and Contract Management strategy.</p> <p>All Reports must have procurement implications and have engaged with PAG as per these Rules.</p>
<p>Contract Modification</p> <p>Authority to:</p> <ul style="list-style-type: none"> <li>• Vary Contract a</li> <li>• Extend Contract a</li> </ul>	<p>For modifications over £30k (including where a modification takes the Contract value above £30k) the procuring officer must gain written approval via an email or a <a href="#">Non-Key Officer Decision Report</a> to be signed at the appropriate level within their Service area to carry out the modification.</p> <p>Contracts over £100k (including where a modification takes the Contract value above £100k) must come to <a href="#">PAG</a> (see Rule 29), and must have a <a href="#">Non-Key Officer Decision Report</a>, must be recorded on SharePoint central recording Decision Log.</p> <p>Where the Contract is over the Procurement Threshold</p>	<p><a href="#">Key Decision Report</a> and process must be followed for extensions or variations where the value of the Contract Modification is £500k or over or creates savings of £500k or over.</p> <p>All Contract Modifications over £100k must come to <a href="#">PAG</a>.</p>

	<p>(including where the modification takes the Contract value over the Procurement Threshold) Legal advice must be sought to ensure compliance with Procurement Legislation.</p> <p>All Contract Modifications over £100k must come to <a href="#">PAG</a>.</p>	
<p>Authority To Novate</p>	<p>For Contracts over £30k the procuring officer must gain written approval to <a href="#">novate</a> the Contract. This is either via an email or a <a href="#">Non-Key Officer Decision Report</a> to be signed at the appropriate level within their Service area.</p> <p>Contracts over £100k must come to <a href="#">PAG</a>, and must have a <a href="#">Non-Key Officer Decision Report</a>, must be recorded on the SharePoint central recording Decision Log.</p> <p>Legal advice must be sought to ensure compliance with Procurement Legislation.</p> <p><a href="#">Novations</a> Contracts over £100k must come to <a href="#">PAG</a> as set out in the Procurement Code.</p>	<p><a href="#">Key Decision Report</a> and process must be followed where the Novation of the Contract increases expenditure by £500k or more or makes savings of £500k or more.</p> <p>Where the Novation makes no difference to the original Contract value, a <a href="#">Standard Corporate Report Template</a> to be signed at Director level should be used.</p> <p>Services must ensure that Financial Due Diligence checks are carried out on the new provider to ensure financial standing.</p> <p><a href="#">Novations</a> Contracts over £100k must come to <a href="#">PAG</a> as set out in the Procurement Code.</p>
<p>Authority to Award</p>	<p>For Contracts over £30k the procuring officer must gain written approval to award a Contract. This is either via an email or a <a href="#">Non-Key Officer Decision Report</a> to be signed at the appropriate level within their Service area.</p> <p>Contracts over £100k must have a <a href="#">Non-Key Officer Decision Report</a>, must be recorded on the SharePoint central recording Decision Log.</p> <p>Where the Contract is over the Procurement Threshold Legal advice must be sought to ensure compliance with Procurement Legislation.</p>	<p><a href="#">Key Decision Report</a> and process must be followed.</p> <p>The forward plan reference for authority to procure can be used for award <b>only IF</b> the description stated procurement <b>and</b> award. Where no KD was put on the Forward Plan, then a new KD will be needed.</p> <p>Reports must detail procurement process, extensions, whole life cost of the Contract, and Contract Management strategy.</p> <p>All awards must come to <a href="#">PAG</a> via relevant gateway paper.</p>



	<p>All awards over the threshold set out in the <a href="#">Procurement Code</a> must come to <a href="#">PAG</a>.</p>	
<p>Authority to Terminate</p>	<p>Contracts over £100k must have a <a href="#">Non-Key Officer Decision Report</a>, and recorded on the SharePoint central recording Decision Log.</p> <p>Where the Contract is over the Procurement Threshold Legal advice must be sought to ensure compliance with Procurement Legislation.</p> <p>All Terminations over £100k must follow <a href="#">Termination Pro-Forma</a> and come to PAG as set out in the <a href="#">Procurement Code</a>.</p>	<p><a href="#">Key Decision Report</a> and process may be needed if the implications of Terminating a Contract incur expenditure of over £500k or savings of over £500k. Advice must be taken from Legal Services, <b>BEFORE</b> any publication.</p> <p>Where the Termination makes no difference to the value of the Contract, a <a href="#">Standard Corporate Report Template</a> to be signed at Director level should be used.</p> <p>Report must detail reasons for Termination and what future strategy is being put in place.</p> <p>All Terminations over £100k must follow <a href="#">Termination Pro-Forma</a> and come to PAG as set out in the <a href="#">Procurement Code</a>.</p>

- 14.6 Procurement Services will not support any Contracting Activity/project that cannot demonstrate approval to start Contracting Activity or budget approval including the capital governance framework.
- 14.7 Where Tenders are returned above the estimated total value / budget approved, then the additional budget must be approved by the Finance Team, prior to Contract award.
- 14.8 When carrying out Contracting Activity for Regulated Below Threshold Contracts, and Tenders are returned higher than the Procurement Threshold then the Contracting Activity is non-compliant and needs to start again as an Above Threshold activity. See [Procurement Code](#).
- 14.9 For Transparency and ease of decision making all reports seeking authority to award should confirm engagement with PAG. Where there was no engagement then procurement implications will state there has been no engagement.

## **15. SPECIALIST PROCUREMENT**

- 15.1 In all cases [existing Council Contracts](#) should be used where possible. Service Departments must contact the specialist department to ascertain if existing Contracts can be used.
- 15.2 Where there is a requirement to undertake Contracting Activity and there is expertise and knowledge within a Service Department or responsibility has been given to a Service Department, the commissioning Service Department must meet and consult with the specialist department to ensure that existing Contracts are maximised and consolidated where possible.
- 15.3 Services that must be procured by the specialist department or authority given from that department to proceed are set out in the [Procurement Code](#).
- 15.4 No external procurement support or outsourcing of procurement activity can be procured or appointed without the written approval of the Head of Procurement Services or deputy. Please refer to the [Procurement Code](#) for rules on third party access.
- 15.5 No external legal advice is to be instructed or Contracts for external legal Services to be awarded without the prior approval of Legal Services.
- 15.6 Procurement Services will not support any ICT related Contracting Activity unless approved by Digital Services.

## 16. ESTIMATING THE VALUE OF A CONTRACT

- 16.1 Service Departments must estimate the value of a Contract as the **maximum amount** it could expect to pay under the Contract during its term including, where applicable, amounts already paid.
- 16.2 When calculating the estimated total value of a Contract, the following must be considered:
- (i) the value of any Goods, Services or Works provided by the Council under the Contract other than for payment
  - (ii) amounts that would be payable if an option in the Contract to supply additional Goods, Services or Works were exercised
  - (iii) amounts that would be payable if an option in the Contract to extend or renew the term of the Contract were exercised
  - (iv) amounts representing premiums, fees, commissions, or interest that could be payable under the Contract
  - (v) amounts representing prizes or payments that could be payable to participants in the procurement
  - (vi) That estimated values **must include VAT**
- 16.3 If the Service Department is unable to estimate the total value of a Contract in accordance with this Rule (for example because the duration of the Contract is unknown), then the Contracting Activity must be carried out as if the Contract value is above the Procurement Threshold.
- 16.4 It is a breach of these Rules to deliberately divide up Contracts to evade the need to follow a more complex/lengthy Contracting Activity route or evade the requirements of Procurement Legislation. Seek advice from Procurement Services.
- 16.5 PA23 requires the Council to aggregate requirements for estimation of Contract value where the requirements could reasonably be supplied under a single Contract, unless there are good reasons for not doing so.
- 16.6 Before publishing a Tender Notification, the Service Department must consider whether the requirement could not be broken into Lots and the requirement supplied under more than one Contract. There is a requirement to put justification in the Tender Notification if not dividing the Contract into lots for Public Contracts. See [Procurement Code](#).
- 16.7 Where the Contract value may change, due to uncertainty of the project or slippage, then this must be factored into the overall costs to ensure sufficient budget is approved for the project. Identify the risks and ensure that it is documented in Procurement Documents and Notification.
- 16.8 Where a Contract is for several organisations and the Council is the lead authority, then the value of the Contract shall be the total value of the Contract for all the participating organisations. If the Council is not the lead authority,

then the value of the Contract for the purposes of these Rules shall be the value of just this Council's proportion of the Contract.

16.9 If the value of the Contracting Activity is less than 10% below the Procurement Legislation Thresholds, then officers must procure in accordance with the PA23 process for a Public Contract.

16.10 Please refer to the [Procurement Code](#) for the estimation of Contract values for:

- (i) Concession Contracts

## **17. FRAMEWORK AGREEMENTS & DYNAMIC MARKETS SYSTEMS**

17.1 The use of Framework Agreements and Dynamic Markets is not exempt from these Rules.

17.2 All Framework Agreements used must be legally compliant and legally accessible to the Council. [Due Diligence](#) must be carried out for ALL Framework Agreements, including Financial Due Diligence in line with Rule 11, either by:

- (i) Procurement Services for Contracts over Procurement Threshold
- (ii) Service Department for Regulated Below Threshold Contracts and log evidence with Procurement Services and upload to the [Procurement System](#).

17.3 Notifications in relation to Contracts awarded under a Framework Agreement must be carried out where required. See [Procurement Code](#).

17.4 Any use of a single Supplier Framework Agreement or Direct Award under a Framework Agreement must be presented to PAG via the [Exceptions and Waiver Form](#) or gateway form to demonstrate VFM. PAG reserves the right to challenge if VFM is not demonstrated and evidenced adequately.

17.5 A call off from a Framework Agreement must be undertaken via the Council's [Procurement System](#) otherwise the [Exceptions and Waiver Form](#) must be used to create the record in the [Procurement System](#), and non-compliance will be recorded.

17.6 Services who wish to create a Dynamic Market or Open Framework Agreement must instruct Procurement Services prior to starting any activity.

17.7 Framework Agreements established under The Public Contracts Regulations 2015, and call-off Contracts from those Framework Agreements, will be subject to The Public Contracts Regulations 2015 until the end date of the call-off Contract or expiry of the Framework Agreement.

- 17.8 Use of vendor neutral portals for Contracting Activity are at the permission of Procurement Services only via the [Exceptions and Waiver Form](#) and presented at PAG. See [Procurement Code](#).

## **18. CONFLICT OF INTEREST**

- 18.1 It is a legal requirement to identify and mitigate any conflicts of interest or potential conflicts of interest by carrying out a conflict-of-interest assessment prior to publishing a notice relating to any Contracting Activity. This must take place before any Contracting Activity has taken place, again after any market engagement, and finally prior to any award or prior to publication of a Contract details notice or a Contract change notice.
- 18.2 Throughout the Contracting Activity conflicts of interest and potential conflicts of interest assessments must be kept under review and revised/updated at each stage of Contracting Activity, including Contract Modification.
- 18.3 Conflict of interest occurs when a person:
- (i) Acting for or on behalf of the Council has the ability to influence a decision to award a Contract under Contracting Activity, and
  - (ii) They have a personal, professional, or financial interest (directly or indirectly) in the outcome of the procurement.
- 18.4 Refer to the [Procurement Code](#) for guidance on how to manage and mitigate conflicts of interest.

## **19. SUSTAINABLE AND ETHICAL PROCUREMENT POLICY**

- 19.1 At the Contracting Activity planning stage for the supply of Services, authorised officers must consider whether the Public Services (Social Value) Act 2012 applies to those Services. This means that officers must consider how the Service they are procuring might improve the economic, social, and environmental well-being of the area and the Contract support Council objectives and outcomes to generate community benefits.
- 19.2 The inclusion of the [Sustainable & Ethical Procurement Policy](#) must be considered for all Contracting Activity and is mandatory over the Procurement Legislation threshold. Service Departments are responsible for specifying requirements regarding the [Sustainable & Ethical Procurement Policy](#) that are in line with their departmental objectives, and the Council Plan.
- 19.3 The Council's [Sustainable & Ethical Procurement Policy](#) recommends the inclusion of up to 10% weighting for this sustainability element within all Contracting Activity over the Procurement Legislation threshold, or where it is relevant to include. Refer to the [Procurement Code](#) to ensure the correct processes are followed for implementation.

19.4 All Contracting Activity must be in accordance with the Council's [Sustainable & Ethical Procurement Policy](#) as well as other Council agreed policies including but not limited to:

- (i) Modern Slavery Charter
- (ii) Construction Industry Charter
- (iii) Health and Wellbeing Strategy
- (iv) Climate Action
- (v) Fairer Enfield
- (vi) Fair Tax declaration

## 20. PROCUREMENT THRESHOLDS

20.1 All Contracting Activity covered by PA23 (excluding Contracting Activity for Healthcare Services that fall under the PSR) must be in line with PA23 and this Rule. All Contracting Activity for Healthcare Services that fall under PSR must comply with Rule 21 and the PSR Code.

20.2 All Regulated Below Threshold Contracts must follow the requirements in this Rule regarding the number of Quotations set out in the table below, according to the estimated total value of the Contract. The requirements below are minimum requirements.

20.3 **Service Departments must ensure that Notifications are published where required.** See [Procurement Code](#).

20.4 Services Departments must consider Preliminary-Market Engagement prior to inviting Suppliers to bid and inviting more than the minimum number to cover for bidders withdrawing from the process.

20.5 Please refer to Rule 16 on estimate value of the Contract. The estimated Contract value is the total value over the whole term of the Contract including any potential extensions and **inclusive of VAT**.

20.6 It is against the Rules to deliberately disaggregate the value of a Contract and split the value up to reduce the number of quotes to be obtained or carry out multiple procurements to avoid the Rules.

20.7 All Contracting Activity over the £5k must be carried out via the Council's [Procurement System](#). For quotations under this threshold, written evidence of the requirement and quotation must be maintained within a central repository within the Service Department. It is recommended to use the [Procurement System](#) for all competitive processes regardless of value, to protect against challenge.

20.8 When seeking quotes on a regular basis officers must ensure that they offer opportunities to new suppliers as much as possible. Where same Suppliers are used on a regular basis then the Service Department must consider market development or setting up a Framework Agreement. Officers need to

be mindful of Aggregation of spend and be mindful of Rule 20.6 on disaggregation. Procurement Services will monitor compliance with this requirement.

20.9 Officers must consider seeking 'best and final offer,' for Regulated Below Threshold Contracts to ensure best value.

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20.10 Procurement Thresholds.

Estimated Total Contract Value including VAT & possible extensions.	Minimum No. of Quotations & Local Quotations	Evaluation & Supplier Selection	Additional Requirements (if applicable)	Method of Issuing a Contract	Advertising or Notification	Responsibility for Procurement Process
<b>Regulated Below Threshold Contracts Process</b>						
Up to £30,000. Must be done via the Procurement System if over £5,000.	1 quote.  Must seek local Supplier in the first instance.  Seek 'best and final offer'.	Check if Supplier is on Debarred list or should be Excluded or are Excludable.	Must seek best and final offer to ensure VFM.	<ul style="list-style-type: none"> <li>• Use of Purchase Order for <b>Goods and Services, and limited Works Contracts only</b> (see <a href="#">Procurement Code</a>) or</li> <li>• <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) for more complex requirements or where the level of risk needs to be addressed.</li> </ul>	Advertising not required.	Self-service in line with Rules and Procurement Legislation.
Contracts from £30,001 to £100,000 for Goods and Services.  Or  £30,001 to £500,000 for	3 quotes  2 local Suppliers in the first instance  Where VFM is better met by going to	Ensure Suppliers meet conditions of participation and evaluation criteria. See Rule 25	If less than three quotes are <b>received</b> the Service must seek the relevant level of approval within their Service to award and must ensure that VFM has been demonstrated. The decision must be recorded in writing and the decision retained in the	<ul style="list-style-type: none"> <li>• Use of Purchase Order for <b>Goods and Services. For construction (Works and Services)</b> See <a href="#">Procurement Code</a>. or</li> <li>• <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) for more complex requirements, or</li> </ul>	Advertising not required where quotations are by invitation only from particular or pre-selected Suppliers.  Where open competition	Self-service via the <a href="#">Procurement System</a> and in line with the Rules and <a href="#">Procurement Code</a> . Must be visible on the <a href="#">Council's Corporate Contract Register</a> to meet Transparency code.



Works	the open market then this must be the first option.	<p>Check that Suppliers are not on Debarred list or should be Excluded or are Excludable.</p> <p>Ensure conflict of interest is assessed.</p>	<p><a href="#">Procurement System</a>.</p> <p>Once selected winning bidder must ask for best and final offer to obtain VFM.</p> <p>Refer to the Construction Guide for Works Contracts.</p>	<p>where the level of risk needs to be addressed.</p> <p>Please also refer to Rule 31 for requirements for sealing.</p> <p>Ensure added to the <a href="#">Key Decision List</a> if Contract award is over £500,000.</p>	<p>takes place then a Below Threshold Tender Notice must be published. See <a href="#">Procurement Code</a> .</p> <p><b>In all cases</b> must publish a Regulated Contract Details Notice.</p>	<p>Must publish a Regulated Contracts Details Notice on the Find a Tender Service via the Procurement System for award.</p>
<p>Contracts above £100,000 to PA23 Threshold<sup>1</sup> for Goods and Services</p> <p>Or</p> <p>£500,000 to PA23 Threshold for Works:</p> <p>Or</p> <p>£100,000 to Light Touch Threshold for Light Touch</p>	<p>5 quotes.</p> <p>2 Local Suppliers where possible.</p> <p>Where VFM is better met by going to the open market then this must be the first option.</p>		<p>If less than five quotes are <b>received</b> the Service must seek the relevant level of approval within their Service to award and must ensure that VFM has been demonstrated. The decision must be recorded in writing and the decision retained in the <a href="#">Procurement System</a>.</p> <p>The decision must be recorded in writing and all documentation supporting the decision retained in the <a href="#">Procurement System</a>.</p> <p>Once selected winning</p>	<p>Up to £500,000:</p> <ul style="list-style-type: none"> <li>Signature on <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) or sealed by Legal Services if required</li> </ul> <p>Over £500,000:</p> <ul style="list-style-type: none"> <li><a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) sealed by Legal Services</li> </ul> <p>Please refer Rule 31 (requirements for sealing)</p>	<p>Advertising not required where quotations are by invitation only from particular or pre-selected Suppliers.</p> <p>Where open competition takes place then a Below Threshold Tender Notice must be published.</p> <p><b>In all cases</b> must publish a</p>	<p>Self-service via the <a href="#">Procurement System</a> and in line with the Procurement Legislation. Must be visible on the Contract register to meet Transparency regulations.</p> <p>Must publish a Regulated Contract Details Notice on the Find a Tender Service via the Procurement System for award.</p>

<sup>1</sup> \*The Procurement Legislation thresholds change regularly, so please refer to the Procurement Code or intranet pages for up-to-date figures.

Services			bidder must ask for best and final offer to obtain VFM.  Refer to the Construction Guide for Works Contracts.		Regulated Contract Details Notice.	
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**Public Contracts Process**

Above PA23 Threshold <sup>2</sup> for Goods, Services and Works and Light Touch Services	Follow Procurement Legislation processes.  Consider how to develop local market within the procurement and social value.	Ensure Suppliers meet conditions of participation and evaluation criteria.  Check that Suppliers are not on Debarred list or should be Excluded or are Excludable.  Ensure conflict of interest is assessed.	A fully compliant process must be carried out in accordance with the processes set out in the PA23 for Public Contracts.  Possible routes to market: <ul style="list-style-type: none"> <li>• Open Procedure</li> <li>• Competitive Procedure Flexible</li> <li>• Frameworks</li> <li>• Dynamic Markets</li> <li>• Light Touch</li> </ul>	Up to £500,000: <ul style="list-style-type: none"> <li>• Signature on <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) or Sealed by Legal Services if required</li> </ul> Over £500,000: <ul style="list-style-type: none"> <li>• <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) sealed by Legal Services</li> </ul> Please refer to Rule 31.  Ensure added to the <a href="#">Forward Plan</a> if award is over £500,000.	Notifications must be published in line with the PA23 and the <a href="#">Procurement Code</a> .  (See Light Tough Code) for all Notifications.  Notifications apply if Procurement Process is Terminated.  Standstill periods must be followed.	Project managed by Procurement Services with engagement from Legal Services as appropriate.  All procurements over the PA23 Threshold must follow processes set out in the PA23 and the <a href="#">Procurement Code</a> .  Service departments are responsible for: <ul style="list-style-type: none"> <li>• Specification</li> <li>• Governance &amp; authority</li> <li>• Evaluation</li> </ul>
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<sup>2</sup> \*The Procurement Legislation thresholds change regularly, so please refer to the Procurement Code or intranet pages for up-to-date figures.

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## 21. PROVIDER SELECTION REGIME (PSR)

- 21.1 Contracts that are covered (in-scope services) under the Provider Selection Regime (PSR), must refer to the **Provider Selection Regime (PSR) Code**, follow the appropriate route to market as set out within PSR Legislation, and **NOT** Rule 20, and follow PSR Code for Contract Modifications, and Notifications.
- 21.2 When procuring relevant Health Care Services, the Council must act transparently fairly and proportionately and with a view to:
- (i) Securing the needs of the people who use the Services
  - (ii) Improving the quality of the Services
  - (iii) Improving the efficiency in the provision of the Services
- 21.3 **There is no minimum value for the application of the PSR and therefore MUST be applied to ALL Contracts regardless of value.**
- 21.4 The PSR is retrospective; therefore, any Contracts that are covered under the PSR must be extended or varied in line with PSR Legislation, including all Notifications.
- 21.5 Contracts covered by the PSR must follow the CPR principles in all other respects including governance, record keeping, approval to start Contracting Activity, awarding, use of the [Procurement System](#), PAG, and Contract Management.
- 21.6 Any Contracting Activity that is covered by the PSR requires consultation with Procurement Services prior to starting a project. Procurement Services reserves the right to lead any PSR procurement project based on complexity, value, or risk.
- 21.7 Where using the approved Direct Award routes as set out in the PSR, advice must be sought from Procurement Services and Legal Services regarding whether this route applies and the [PSR Direct Award Form](#) must be used.
- 21.8 The PSR can only be used where the Contract is within the listed Common Procurement Vocabulary (CPV) codes set out under [Schedule 1 \(Relevant Health Care Services\)](#) and meets the [PSR principles](#). Where necessary, please check with Procurement Services.

## 22. LIGHT TOUCH SERVICES

- 22.1 For more in depth details of Contracting Activity covered by Light Touch Services process please refer to the [Light Touch Services Code](#) and follow guidance there for the approved routes to market, and necessary Transparency notices that must be published.
- 22.2 The Light Touch process can only be used where the Contracting Activity is covered by the relevant [CPV](#) codes set out in Schedule 1 (Light Touch Services) of the PA23.
- 22.3 All Contracting Activity must follow the PA23 regarding notices and timescales for Light Touch Services (see the Light Touch Code).

## 23. NOTIFICATIONS

- 23.1 Notifications are dependent on the type of Contracting Activity being carried out, and not just the Threshold. In some cases, several Notifications are needed for one Contracting Activity. **Please refer to the [Procurement Code](#), [PSR Code](#) or [Light Touch Code](#) for full details of Notifications and timescales.**
- 23.2 Procurement Legislation (including Light Touch Services and PSR) places obligations on the Council to publish Notifications throughout the life cycle of Contracting Activity.
- 23.3 When and what Notifications are needed are dependent on the type of Contract and the value of the Contract. It is important to ensure that the Council remains compliant with Procurement Legislation by publishing all the Notifications that are needed and at the appropriate times as specified in the Procurement Legislation.

## 24. PRELIMINARY MARKET ENGAGEMENT

- 24.1 Prior to any preliminary-market engagement for Contracting Activity for Public Contracts, a Pre-Market Engagement Notice should be published. Where no Pre-Market Engagement Notice has been issued then reasons for not doing so must be included in the Tender notice. See [Procurement Code](#).
- 24.2 Working with Procurement Services, the Service Department can review and engage the market to inform its forthcoming Contracting strategy. This may

include consultations with Suppliers and other forms of market research, but must not:

- (i) Use this phase to shortlist or pre-qualify Suppliers, it is an exploratory phase
- (ii) Base any specification on one Supplier's capability or offering such as to distort competition
- (iii) Make any indication or commitment to Suppliers that their capability or offering may be preferred by the Council
- (iv) Suggest any procurement route which is not consistent with these Rules
- (v) Enter into negotiations about any form of delivery or price where a competitive procurement process has yet to take place.

24.3 Any preliminary market engagement or research undertaken, including discussions with the market must meet the principles of equal treatment and Transparency and be fully documented on file and relevant information shared as appropriate.

24.4 Service Departments must take steps to ensure that Suppliers participating in the preliminary market engagement are not put at an unfair advantage in relation to the award of the Contract which could have been avoided.

## **25. RECEIPT AND OPENING OF TENDERS AND QUOTES**

25.1 Permission from Procurement Services must be obtained where the [Procurement System](#) is not used or to carry out a postal Tender. All paperwork will be managed by Procurement Services, unless agreed otherwise. This includes submissions by post or where documentation/additional information in relation to the Tender is sent via post and not the [Procurement System](#).

25.2 By default, all Contracting Activity must be carried out electronically. Tender closing times must be within working hours, and the commissioning officer must be available to deal with last minute clarifications and issues.

## **26. AWARD CRITERIA AND EVALUATION**

26.1 The award of all Contracts shall be based on disclosed pre-determined award criteria, and/or conditions of participation and in accordance with Procurement Legislation and these Rules.

- 26.2 For Contracting Activity covered by the PSR please refer to the **PSR Code** for further information on evaluation.
- 26.3 In setting award criteria, the Service Department must be satisfied that they:
- (i) relate to the subject-matter of the Contract,
  - (ii) are sufficiently clear, measurable, and specific,
  - (iii) do not break the rules on technical specifications in regulation 56 of the PA 23, and
  - (iv) are a proportionate means of assessing Tenders, having regard to the nature, complexity, and cost of the Contract.
- 26.4 The Service Department must describe how Tenders are to be assessed in the Contracting Activity documentation, and the assessment (evaluation) must be properly moderated, and full and complete contemporaneous written records of the evaluation process must be maintained by the Service Department and uploaded onto the [Procurement System](#). These will be needed to provide the assessment summary at award stage. Award criteria, scoring mechanisms and any weightings must be clearly set out in the Tender Documents to ensure Transparency.
- 26.5 The Price/Quality ratio must be in line with Procurement Principles set out in the [Procurement Code](#), any request to change these must be made via an [Exceptions and Waiver Form](#) and presented at PAG.
- 26.6 For all Contracting Activity check Suppliers are not on the Debarred list. If so, contact Procurement Services prior to continuing.
- 26.7 For Public Contract all Suppliers at evaluation must be checked for Mandatory Exclusion grounds. This includes Suppliers, subcontractors, or Connected Persons.
- 26.8 For Public Contracts all Suppliers at evaluation must be checked for Discretionary Exclusion grounds. This includes Suppliers, subcontractors, or Connected Persons.
- 26.9 Contact Procurement Services if any Suppliers meet any of the Mandatory or Discretionary grounds for exclusion.
- 26.10 For Regulated Below Threshold Contracts over £30k, where a Supplier meets the Exclusion grounds contact Procurement Services prior to continuing.
- 26.11 Please refer to the [Procurement Code](#) for information on how to assess Mandatory and Discretionary Grounds for Exclusion throughout the Contracting Activity

26.12 For Regulated Below Threshold Contracts the Council may not restrict the submission of Tenders/ quotations by reference to an assessment of a Supplier's suitability to perform the Contract. This includes:

- (i) Legal and financial capacity
- (ii) Technical ability

26.13 Rule 26.7 (i) and (ii) do not apply in relation to Works Contracts over the value set out in the [Procurement Code](#), or Contracts awarded in accordance with a Framework.

## **27. CONTRACT AWARD AND EXECUTION**

27.1 All Contract awards over £100k must have a separate report seeking approval to award. Contracts that are [Key Decisions](#) must be awarded in accordance with the [Council's Constitution](#) and must follow the Key Decision approval process.

27.2 See Rule 14 for levels of authorisations and approvals.

27.3 Prior to entering a Public Contract, the Council must publish a Contract Award Notice, which sets out the Council's intention to award a Contract, provide assessment summaries to each Supplier that submitted an assessed Tender, and comply with any Standstill periods. See [Procurement Code](#).

27.4 The Council must publish a Contract Details Notice upon entering into a Public Contract or a Regulated Below Threshold Contract and this must be done within the timescales set out in the PA23 and [Procurement Code](#).

27.5 Prior to any award being made in the [Procurement System](#), all approvals must be in place, any Council governance must have been followed, and then the relevant notices can be published. See the [Procurement Code](#).

27.6 Contracts can only be awarded by officers as set out in their departmental scheme of delegation and must have followed the Council's governance process set out in Rule 14.

27.7 All Contracts must be awarded based on the advertised award criteria and conditions of participation included in the Tender documents, and cannot be changed after the receipt of submissions, unless in line with Procurement Legislation and after advice from Procurement Services and Legal Services.



- 27.8 All Contracts awarded must be recorded on the [Council's Corporate Contracts Register](#) within the [Procurement System](#), and relevant Notifications published.

## **28. POST-TENDER NEGOTIATIONS**

- 28.1 Post-Tender negotiations for Public Contracts, may only take place if using the Competitive Flexible Procedure and the Tender documents expressly allow for negotiation.
- 28.2 For Regulated Below Threshold Contracts, best and final offer must be requested.

## **29. CONTRACT MODIFICATIONS, NOVATION & TERMINATION TO CONTRACTS**

- 29.1 Extension milestones are an opportunity to review the scope of the Contract and look for savings if needed. It is the responsibility of the Service Department to ensure that Contracts are reviewed in good time and to identify if the Contract continues to demonstrate:
- (i) Good performance
  - (ii) That it continues to meet the needs of the council
  - (iii) Is within budget
  - (iv) Continues to deliver VFM
  - (v) It is in the interests of the Council to extend or vary.
- 29.2 Conflicts of Interest must be assessed for decision making for this section. See Rule 18.
- 29.3 All Contract modifications over £100k (including where the modification takes the Contract value above £100k), must follow the relevant [Contract Extension Variation Pro-Forma](#) and be presented at PAG.
- 29.4 Public Contracts (except Light Touch) can only be modified where permitted under the Procurement Legislation as set out in this Rule.
- 29.5 See Notifications Rule 23 in [Procurement Code](#) for details on Notifications and timescales.

29.6 The Council may modify a Public Contract or a Contract that as a result of the modification becomes a Public Contract (Convertible Contract) if the modification (Permitted Modifications) is set out below:

- (i) Is set out in Schedule 8 Modifications below. (Rule 29.7- 29.12)
- (ii) Is set out in the non-Substantial Modifications below (Rule 29.13)
- (iii) Is set out in the 'Below Threshold modification' (Rule 29.14)
- (iv) relates to a Light Touch Services Contract

**Schedule 8 Modifications:**

29.7 Where the possibility of the modification was clearly detailed in the Contract Tender or Tender Notification and would not change the overall nature of the Contract.

29.8 Where there is a need to respond to:

- (i) extreme and unavoidable urgency and as a result a competitive procurement is not possible, and the urgency is not caused by the Council and could not have been foreseen by the Council; or
- (ii) protect life, where the Contract could have been awarded by Direct Award under the PA23 and the Contract is a type that is permitted by regulations.

29.9 Where unforeseeable circumstances demand a modification. This is only permitted if the circumstances could not have been reasonably foreseen, the modification would not change the overall nature of the Contract and it would not increase the value by more than 50%.

29.10 Where a 'Known Risk' (see Definitions section) has materialised. This is only permitted if the following conditions are met:

The Modification:

- (i) must not be because of any act of the Council or Supplier, or because of non-performance of the Contract.
- (ii) must not go further than to remedy the risk and the Council must be satisfied that awarding a Contract (instead of a modification) would not be in the public interest.
- (iii) does not increase the estimated value of the Contract by more than 50%.
- (iv) In using this Rule, it must be considered if a new Contract would represent better VFM, and technical and operational matters.

29.11 Where a modification provides for additional Goods, Services or Works already provided for in the Contract, where using a different Supplier would result in delivery different from or incompatible from those already provided and that this would create disproportionate technical difficulties in operation or maintenance or other significant inconvenience and substantial duplication of costs for the Council. This modification would not increase the value of the Contract by more than 50%.

29.12 A Novation of a Public Contract to a Supplier (who is not Excluded or Debarred) following a corporate restructuring or similar. (Must follow the [Councils Novation Process](#)). The Contract with the new Supplier must be treated as a new Contract and be in line with these Rules and Council Governance.

**Non-Substantial Modifications:**

29.13 This means the modification does not:

- (i) increase or decrease the term of the Contract by more than 10% of the maximum term provided for on award
- (ii) materially changes the scope of the Contract; or
- (iii) materially change the economic balance of the Contract in favour of the Supplier.

**Below Threshold Modifications:**

29.14 Modifications below Threshold are permissible where:

- (i) the modification would not itself increase or decrease the estimated value of the Contract by more than
  - a) 10% for Goods and Services.

- b) 15% for Works.
- (ii) the aggregated value of below-threshold modifications would be less than the threshold amount for the type of Contract,
- (iii) the modification would not materially change the scope of the Contract, and
- (iv) the modification is not a Substantial Modification (ii) or a Schedule 8 Modification.

29.15 Regulated Below Threshold Contracts that are modified and as a result become a Convertible Contract (Public Contract), must going forward follow the Public Contract rules for Contract Management and further modifications.

29.16 All Contract Modifications must have authority. See Rule 14.

29.17 Contracts let under the PCR 2015 or Concession Contracts Regulations 2016 will still be subject to that Legislation until the Contract natural end date and must follow the provisions of those Regulations for extensions and modifications.

29.18 New PSR Contracts and Contracts let under the Public Contracts Regulations 2015 that are now covered by the PSR must follow PSR Legislation regarding Contract Modifications. See PSR Code.

29.19 Public Contracts covered by the PA23 over £5m must also publish a redacted copy of the modified Contract. See [Procurement Code](#).

### **30. CONTRACT MANAGEMENT**

30.1 Contract Management is now part of Procurement Legislation and places obligations on the Council to ensure that Contracts are managed effectively. Contract Managers must ensure they remain compliant to the PA23 for Public Contracts with a value over £5m.

30.2 Service Departments are responsible for carrying out effective Contract Management in line with the Councils [Contract Management Framework](#) to ensure VFM throughout the lifetime of the Contract. Service Departments must ensure there are sufficient resources, skills, and capacity to effectively manage the Contract and the Council receives the Goods, Services or Works as procured.

30.3 Contracts over £100k must have a Contract Manager nominated in the [Procurement System](#).

- 30.4 Contract spend must be managed and monitored, and any additional budget or overspend must go through Council governance, and Contract Modification as set out in Rule 29.
- 30.5 All Contracts over £30k must be classified using the [Contract Tiering Tool](#) to ensure the right level of Contract Management is carried out, including performance management, monitoring of budget and costs, strategic delivery and supply chain risk.
- 30.6 Contract Managers must ensure that supply chain risk is monitored through the use of the [Supply Chain Resilience Tool](#). These must be shared with Procurement Services and uploaded into the [Procurement System](#).
- 30.7 Public Contracts let under the PA23 with a value over £5m (with the exception of Light Touch Services Contracts, Concession Contracts and Frameworks Agreements) must have a minimum of 3 KPIs. All KPIs for these Contract must be published, and regularly monitored, and performance reported every 12 months.
- 30.8 For Public Contracts over £5m Service Department must, once in every 12 months assess the performance of the Supplier against the KPIs using the scoring mechanism set out in the [Procurement Code](#). Draft performance reports must be agreed by the relevant Director and then presented at PAG for assurance, prior to publication of the Contract Performance Notification.
- 30.9 All Public Contracts (except for User Choice Contracts) at Termination, either early or at the natural end of the Contract the Service Department must publish a Termination Notification. For Contracts over £100k the [Termination Pro-Forma](#) must be completed and presented at PAG for assurance and publication.
- 30.10 For a Public Contract Service Departments must immediately contact Procurement Services where the Supplier has breached its Contract which may result in:
- a) Termination
  - b) Award of damages, or
  - c) A settlement agreement between the supplier and the Council
- 30.11 For a Public Contract Service Departments must inform Procurement Services where it considers that the Supplier:
- a) Is not performing to the Service Departments Satisfaction
  - b) Has been given opportunity to improve performance and

c) Has failed to do so

- 30.12 Public Contracts covered by the PA23 over £5m must also publish redacted copies of the signed Contract, and any versions of Modified Contracts in line with Procurement Legislation. Contract Terminations must follow the Contract [Termination Pro-Forma](#) and be presented to PAG over £100k.
- 30.13 Please refer to the [Procurement Code](#) for a full list of Contract management requirements under the Procurement Legislation.

## **31. RECORD KEEPING**

- 31.1 Procurement Legislation requires that proper records are maintained. To ensure that there is a full audit trail of Contracting Activity, compliance with Procurement Legislation, Transparency regulations and Council retention policies, Service Departments must refer to the [Procurement Code](#) to ensure compliance with Council Policy.
- 31.2 Service Departments must ensure that all Contracting Activity over £5k is on the [Procurement System](#) and properly maintained to ensure that they are in the [Council's Corporate Contract Register](#). This ensures that the Council is compliant with Transparency regulations. Supplier spend that cannot be linked to a Contract and is not exempt may result in the Supplier being blocked.
- 31.3 All Direct Awards, Framework Agreements and Exceptions and Waivers must be recorded in the [Procurement System](#). This includes where there is only one Supplier which must be covered by an Exception.
- 31.4 For PSR an annual report is required to record all Contracts let under the process and the decision making relating to the Contract. Refer to the PSR Code.
- 31.5 Service Departments must have in place a full auditable trail with authorisation and decision making using the correct Council governance report template or email and must ensure that decisions are authorised at the correct level of authority, and this is uploaded into the [Procurement System](#) for record keeping.

## **32. CONTRACTS, TERMS AND CONDITIONS**

- 32.1 It is Council policy to use the [Contract Templates](#) maintained by Legal Services. In the limited circumstances where they are not appropriate (for

example, call off Contracts from Framework Agreements, or construction Contracts) then Legal advice must be sought to ensure the Contract is in a suitable form.

- 32.2 It is the responsibility of the Service Department to ensure that all risks associated with the Contract are assessed and that the Contract supports the mitigation of risk, and performance management of the delivery of the Contract. See Rule 7.
- 32.3 For Public Contracts over £5m as set out in Rule 30.8 a redacted copy of the Contract must be published within the timescales defined in the Notification Rule 23 (see [Procurement Code](#)).
- 32.4 The Council does not allow for Contracts that have no defined end date (for example rolling Contracts). Where the estimated Contract value is unknown then an Above Threshold process must be followed (see Rule 20) and refer to the Procurement Principles in the [Procurement Code](#) for guidance on uplifts.
- 32.5 All Contracts must be signed and uploaded to the [Procurement System](#) for record keeping. A Contract must be sealed where:
- (i) The Contract is £500,000 or above in value (except for Contract extensions, where the Contract provides for extension by notice in writing).
  - (ii) The Council wishes to enforce the Contract for a period of more than 6 years.
  - (iii) The price paid or received under the Contract is a nominal price that does not reflect the value of the Goods or Services.
  - (iv) It is required by the parties.
- 32.6 Legal Services are responsible for the process of sealing the Contracts. The affixing of the Common Seal of the London Borough of Enfield is attested by an authorised officer from Legal Services, whose signature will be seen as executing the Contract on behalf of the Council. The Supplier must validly execute the Contract, and Legal Services should be consulted as to the appropriate execution clause.

### **33. PREVENTION OF CORRUPTION**

- 33.1 All Contracting Activity must be carried out in an open and transparent way. Officers must act with integrity and always follow the [Councils Code of Conduct](#).

- 33.2 Officers must ensure that they are not influenced by Suppliers during Contracting Activity which may prejudice the process.
- 33.3 In all Contracting Activity officers must follow the processes for Conflict of Interest in Rule 18. See [Procurement Code](#).

## **34. GRANT FUNDING**

- 34.1 All applications for grants must be in line with the Councils Financial Regulations and must be recorded and reported to the Finance Team to meet government regulations.
- 34.2 Where grant funding is used to deliver Service provision that will be subject to performance measures and outcomes then these Rules apply. If over the Procurement Threshold, then Procurement Services must be engaged at the application stage for timely entry onto the Annual Procurement Plan, to ensure resources are available to support the forthcoming procurement.

## **35. IR35 RULES**

- 35.1 The Council has a policy of ensuring that all temporary staff are engaged through the Council's Temporary Agency Contract unless agreed with Head of HR or Director of HR and OD. Permanent staff must be engaged via employment process.
- 35.2 Any agency staff including education agency staff that are excluded from the Council Temporary Agency Contract, must follow these, Rules. Procurement must only be used to procure Services and not to provide individual staff members. Officers must refer to the Principles of Managing Agency Workers and IR35 HR guidance before proceeding to procurement where IR35 may apply.
- 35.3 The intermediaries' legislation, known as [IR35 Rules](#) is designed to make sure Suppliers pay the required tax and National Insurance on earnings. It is the responsibility of the Council for deciding the employment status of Suppliers. For provision of Services or consultancy the procuring officer must ascertain whether the provision falls within the IR35 rules. Refer to the [HRMC site](#) to follow the online Employment Status Service test assessment process.
- 35.4 If a Supplier is Contracted and it is later found that IR35 applied but was not considered, then back tax could be recovered from the Council for a period of up to 6 years. The employment check must be uploaded into the [Procurement](#)



[System](#) as evidence where a consultant/individual has been procured. This is particularly important where the Supplier is a Personal Service Company.

## **36. CONSULTATION**

- 36.1 For Housing procurement Contracts the [Landlord and Tenant Act 1985](#) (LTA 1985) may apply. Where applicable, officers must undertake the required consultation with leaseholders. Leaseholders can nominate Suppliers for invitation for quotation for Regulated Contracts (Below Threshold Contract) processes. Officers must liaise with Home Ownership Services to clarify the requirements under the LTA 1985 before commencing any procurement likely to affect leaseholders.
- 36.2 For all other procurements officers shall ensure that, where applicable, consultation with stakeholders is undertaken within the appropriate period of the procurement process.

### 37. GLOSSARY OF DEFINED TERMS

Advertising	Where Request for Quotations and Tenders are advertised to the open market for opportunity.
Aggregation	Is the requirement to add together the estimated value of separate Contracts for meeting a single requirement. Procurement Legislation expressly prohibits the splitting of requirements into smaller units or orders to avoid the process relating to Public Contracts.
Annual Procurement Plan	Procurement plan for the financial year that sets out Contracting Activity, including extensions & terminations.
Business Impact Analysis Form/ BIA	Business Continuity Form for Emergency Planning.
<a href="#">Bribery Act 2010</a>	Bribery Act 2010
<a href="#">Code of Conduct</a>	The Councils code of Conduct and how officers must carry out their duties in terms of conduct.
Concessions	A type of Contractual arrangement under which, rather than paying the Supplier to deliver a work or service, the Council grants the Supplier the right to exploit an opportunity and receive some or all of its income from third parties (e.g. the public), retaining the profit.
Connected Person	A person in relation to a supplier is a person with significant control over the supplier (as set out in Companies House). A Director or shadow director, a parent undertaking, or a subsidiary. See Schedule 6 for full description
Consultation	A formal process to consult or discuss
Contract	Means an agreement between the Council and any other organisation, including another public authority, made by

	formal agreement or by issue of a letter of acceptance or official purchase order for Works, Goods or Services.
Contracting Activity	Any action, process of decision making that relates to the creation of a Contract for the supply of Goods, Services or Works. Including all elements of the sourcing cycle from market research, engagement, Tendering, evaluation, award, and Contract management to the end of the Contract term including Termination.
Contract Management	The management and monitoring of a Contract to ensure delivery and performance; including commercial elements and payments.
Contract Manager	Person responsible for the management of Council Contract to ensure delivery of performance and outcomes.
Contract Management Framework	The Councils Contract management framework, that sets out requirements for Service Departments to ensure that Contracts are effectively managed to deliver VFM.
<a href="#">Contract Templates</a>	Standardised Contracts to be used by Service Departments and procuring officers that have been drawn up by Legal Services for the Contracting of Goods and Services (for Works, industry standard construction contracts such as the JCT or NEC suite are generally used).
Convertible Contract	A below Threshold Contract, that after modification has become a Public Contract, and therefore has become a Convertible Contract.
<a href="#">Corporate Contract Register</a>	Corporate Register of Contracts held by Procurement Services within the <a href="#">Procurement System</a> .
<a href="#">Council's Constitution</a>	Documents (s) that sets out how the Council is governed.
Debarred Supplier	Supplier that is on the Cabinets Office list of Debarred suppliers.

Directors	Means Executive Directors and Directors of Enfield Council
Direct Award	Entering into a Contract where no competition has taken place.
Dynamic Market	Arrangement for the purpose of the Council awarding Public Contract by reference to Suppliers' participation in the arrangements.
Exception	Contracting Activity where Direct Award is permissible in certain circumstances.
Excluded & Excludable Suppliers	Supplier that can be Excluded in line with the discretionary or mandatory requirements for exclusion.
Exempted Contracts	Contracting Activity that is not covered by the Procurement Act 2023.
Extension	Facility to extend a Contract term.
Financial Regulations	Financial regulations forming part of the <a href="#">Council's Constitution</a> ; that set out financial management regulations for the council.
Framework Agreement	An agreement with Suppliers which sets out the terms and conditions under which specific purchases can be made throughout the term of the agreement and which where necessary has been Tendered in accordance with Procurement Legislation.
Goods	Tangible products that can be consumable or non-consumable.
Hamburg	Hamburg means contract entered into between two or more contracting authorities with the aim of achieving common objectives in connection with the exercise of their public function and carried out in the public interest.
Health and Wellbeing	Council Policy to improve the health and wellbeing of staff and residents of the borough

Strategy	
Health Services	Contracts that provide Services relating to health care provision but not social care.
Horizontal Arrangement	Contract or arrangement with another authority with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions, solely in the public interest.
IR35	HRMC regulations regarding working regulations and TAX for agency workers, interims, and consultants.
Key Decision	Council's governance process for projects that meet the Key Decision criteria.
Known Risk	Means: <ul style="list-style-type: none"> <li>a) Could jeopardise the satisfactory performance of the contract, but</li> <li>b) Because of its nature, could not be addressed in the contract as awarded and</li> <li>c) Was identified in the Tender or Transparency notice for award, detailing a description of the risk and possibility of modification</li> </ul>
Legislation	Legal regulations set out by the Government.
Light Touch Services	The Services set out in the Public Procurement Regulations 2024 that cover areas in Schedule 3; namely Adult social care and other areas listed in schedule 3.
Local Supplier	Supplier that is based in the London Borough of Enfield
Modern Slavery Charter	Charter signed by the Council to support the eradication of Modern Slavery; specifically, within the Council supply chain.
<a href="#">Non-Key Officer Report</a>	Part of the <a href="#">Reports Process for Non-Key Officer Decisions</a> .

Notification	A Notice placed in the public domain to notify the market of Contracting Activity to ensure Transparency.
Novation	A Council Contract that is moved from one Supplier to another via corporate restructuring or similar.
Open Framework	A scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.
Operational Processes	Processes that are not set out in the CPRs but support the process of Contracting Activity and are operational in nature.
Performance Bond	A bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a Supplier.
Platinum or Gold Contract	Contract classified as Platinum or Gold that will be either high value, high risk, complex or all the aforementioned.
Price Quality Ratio	Award criteria set out in the Procurement Principles on the ratio of Price and Quality within a Tender.
Procurement Act Thresholds.  Procurement Threshold	Threshold set over which the Procurement Legislation applies.
Procurement Act 2023 (PA23)	Procurement Legislation covering public procurement. Came into effect 28 <sup>th</sup> October 2024.
Procurement Assurance Group (PAG)	Procurement Assurance Group, that oversees procurement assurance, and robust procurement governance is in place.
<a href="#">Procurement Code</a>	Document that supports the CPR's and sets out the processes and governance to be followed for all Contracting Activity. Provides more detailed information and links to supporting information to ensure compliance with these rules.

Procurement Legislation	<p>Procurement Legislation covering Public Contract requirements for England.</p> <ul style="list-style-type: none"> <li>• Procurement Act 2023 &amp; Public Procurement Regulations 2024</li> <li>• Provider Selection Regime</li> <li>• Public Contract Regulations 2015</li> </ul>
Procurement Principles	Set of Principles set out to meet Council requirements and may change from time to time.
<a href="#">Procurement System</a>	The Councils digital platform used for e-Tendering, Contract management and <a href="#">Council's Corporate Contract Register</a> , used to meet legislative requirements.
Property Procedure Rules	Rules set out to manage property procurement and form part of the constitution
Provider Selection Regime (PSR)	Procurement Legislation came into effect January 2024. Covers Health Services Contracts. A set of rules for procuring health care Services set out in the Health Care Services (Provider Selection Regime) Regulations 2023.
Provider Selection Regime Code	Document that supports the CPRs and sets out rules and operational processes in relation to the PSR.
Public Procurement Regulations 2015	Procurement legislation came into effect 2015. Only applied to contracts let under this legislation.
Public Contract	<p>A Contract of a kind specified in Procurement Legislation:</p> <p>A contract with a value of not less than the Procurement Threshold and:</p> <ul style="list-style-type: none"> <li>• Not an Exempted Contract</li> <li>• A framework</li> </ul>

	<ul style="list-style-type: none"> <li>• A concession contract</li> </ul>
Regulated Below Threshold Contract	Contracts covered by the Procurement Act. Contracts let via Procurement Act 2023 which are below Threshold.
Quotation	<p>A formal statement or promise usually submitted by a potential Supplier in response to a request for a quotation to supply specified Goods, Works or Services required by a purchaser at specific prices within a specific time frame. (A quotation should be distinguished from an Estimate, which is not a fixed price).</p> <p>N.B. A Contract arises on acceptance of a quotation. Unless otherwise specified a quotation may be subject to the Supplier's terms and conditions of business and those terms and conditions become part of the Contract. Therefore, a request for quotations should specify that the quotation is subject to the Council's terms and conditions.</p>
Resilience Requirements	Resilience Requirements needed by the Council to mitigate risk in emergencies
Schools Code	Code setting out modifications within the Procurement Act 2023 for Schools.
Services	Services such as maintenance of equipment, transportation, consultancy, technical Services. etc. as defined by the Procurement Legislation.
Service Department. The Service	Department or team within the Council, commissioning or carrying out Contracting Activity, who define the requirement and manage the Contract.
SME (Small, Medium Enterprise)	Small and medium sized enterprise supplier as defined in section 123 of the Procurement Act 2023.
Special Service Vehicle	A <b>special purpose vehicle</b> (also referred to as an SPV) is a legal entity created for a limited purpose. It's created by a parent or primary company to isolate financial risks. In other



	words, in the event a parent company were to go bankrupt, the <b>SPV company (which is essentially legally separate) will not be affected</b> ).
Standard Corporate Report Template	<a href="#">Standard Corporate Report Template</a> to be used for any decision that meets the KD threshold of expenditure/savings of £500k or more and/or has a significant impact on the community in two or more wards. Should also be used for all Portfolio decisions whether they are Key or Non-Key
Supplier	A person/ company that will provide Goods, Service or Works to the Council.  A bidder within a competitive process.
<a href="#">Supplier Resilience Tool</a>	Tool used to ascertain the risk in the supply chain and the Supplier risk.
Transparency	Regulations relating to what is to be published in the public domain relating to Contracting Activity
Teckal Company	Is a specific type of entity used by Public Authorities to deliver local services without going through a competitive Tender Process. See Vertical & Horizontal arrangements.
Tender	A sealed bid submitted in response to an invitation to Tender, which invitation contains detailed information on requirements including a specification and terms and conditions
Termination	Where a Contract or procurement activity is stopped or ended (terminated).
The Council	London Borough of Enfield
Threshold	The value at which Contracting Activity must follow Procurement Legislation processes.
Value for Money (VFM)	Value for Money (VFM) is a balanced judgement about finding the best way to use public resources to deliver policy objectives.

Variation	Any alteration, modification, addition to or deletion of any requirement of the Contract terms or specification.
Vertical Arrangement	<p>A contract between a contracting authority and a person that is controlled by—</p> <ul style="list-style-type: none"> <li>a) the contracting authority,</li> <li>b) the contracting authority acting jointly with one or more other contracting authorities,</li> <li>c) another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or</li> <li>d) another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).</li> </ul>
Works	The outcome of building or civil engineering as defined under the Procurement Legislation.

**Appendix C**  
**Procurement Code**

## **Procurement Code**

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## 1. Introduction – Rule 1

- 1.1 This Procurement Code (Code), MUST be used in conjunction with the [Contract Procedure Rules](#) (Rules) and form the Councils' Contract Procedure Rules in how to carry out Contracting Activity. This document, together with the Rules, are the Councils rules outlining the key principles, procedures, and best practices to uphold throughout all Contracting activity. The Rules form part of the [Councils Constitution](#) and are therefore mandatory.
- 1.2 From [28<sup>th</sup> October 2024] there will be three forms of Procurement Legislation that relate to Contracting Activity which these Rules cover:
- (i) Procurement Act 2023 (PA 23) that covers all Contracting Activity started on or after 28<sup>th</sup> October 2024
  - (ii) Procurement Regulations 2024 and subsequent guidance
  - (iii) Public Contract Regulations 2015 (PCR 2015) that covers all Contracting Activity started before 28 October 2024, Contracts let before such date and call off Contracts under Framework Agreements set up under the PCR 2015 until their natural end.
  - (iv) The Provider Selection Regime (PSR) that covers all Contracts that come under the definition of Health Services Contracts let under the Public Contracts Regulations 2015 or PSR.
- 1.3 This Procurement Code covers all Contracting Activity under the PA23 and Contract Modification under PCR 2015. There are separate Codes for specific parts of Procurement Legislation, however this Code still applies for all those elements regarding governance and best practice. Please refer to:
- (i) Provider Selection Regime Code (PSR Code) for Contracts covered by PSR Legislation
  - (ii) Light Touch Services Code, for Light Touch Services Contracts
- 1.4 Schools Code for which elements of the PA23 that do not apply to schools.
- 1.5 The PSR Code is to be used for all Contracting Activity that is in scope of the PSR and sets out the routes to market, Contract Modification and elements that are unique to the PSR. For all other elements, this Code is to be used. Refer to Procurement Services for any clarifications.
- 1.6 The Light **Touch Services Code** sets out the differences to be applied to Light Touch Services Contracts and is to be used only for Light Touch Contracts.
- 1.7 The **Schools Code** sets out which elements schools are exempt from the PA23.
- 1.8 All Council officers at whatever role in the Council involved in Contracting Activity must read this Code and the Rules to ensure there is a thorough understanding of

how to carry out the steps within the Sourcing Cycle to ensure best practice and compliance to Council governance and Procurement Legislation.

1.9 Contracting Activity means:

- (i) Procurement (all elements of the process)
- (ii) Direct Awards
- (iii) Exceptions & Waivers
- (iv) Variation & extensions
- (v) Terminations
- (vi) Novation
- (vii) Contract Management

1.10 The PA23 asks Councils to ensure that all Contracting Activity is compliant, and that Service Departments do not enter into a Public Contract unless:

- (i) It is competitively awarded
- (ii) It is directly awarded under the special cases
- (iii) It is directly awarded after switching procedures
- (iv) Awarded under a Framework Agreement

1.11 This document sets out the operational elements for Contracting Activity and these should be followed in **conjunction with the CPR's**; both these documents together constitute the [Contract Procedure Rules](#).

1.12 The rules cover all Contracting Activity for Services, Goods or Works. **These Rules relate to ALL Contracts entered, not just the procurement activity.** Procurement Services must facilitate all Contracting Activity over the PA23 Threshold unless it is agreed. For Regulated Below Threshold Contracts it is the responsibility of the Service Department to follow self-service processes.

1.13 The PA23 demands more transparency during the whole Sourcing Cycle, including, procurement, variations and extensions, terminations, and Contract Management. It is important to ensure that all transparency Notifications are actioned through the lifetime of the Contract. Failure to comply with the Notifications is a failure to comply with UK Legislation and may result in a challenge, it may also affect extensions and modifications in the future.

1.14 Notifications must be published at all stages of the Contracting Activity process as stipulated by Procurement Legislation.

1.15 Spend over £250 is published every month as part of the Councils' transparency agenda, and Council Contracts over £5,000 **MUST** be published in the public domain. Therefore, all Contracts **MUST** be promoted in the LTP to ensure that the Council is compliant to the transparency reporting and have documented evidence should the need arise to corroborate our decisions. Suppliers will not be set up where the LTP project is not completed.

1.16 The [Procurement Services intranet](#) site is kept up to date. Information to support Service Departments with Contracting Activity is held here. It is expected that

Service Departments self-serve and use this site in the **first instance** prior to seeking support from Procurement Services.

- 1.17 Please seek approval from Procurement Services where a 3<sup>rd</sup> Party is to carryout procurement, this is to ensure that they are fully familiar with procurement processes within Enfield. They must follow the [procurement consultant policy](#) for 3<sup>rd</sup> parties.
- 1.18 Where third parties have been commissioned to carry out Contracting Activity or Procurement on behalf of the Council then the 3<sup>rd</sup> party must follow these Rules and this Code, and it is the responsibility of the Service Department to provide them copies of all the documents needed.
- 1.19 Procurement System
- 1.20 The Council Procurement System is the London Tenders Portal and is to be used for all Contracting Activity over £5k. E-Tendering is expected as part of the PA23 and the Council uses the London Tenders Portal for:
  - (i) Compliance with UK regulations
  - (ii) Corporate Contracts Register
  - (iii) E-tendering tool to process procurement projects
  - (iv) To ensure that procurements are transparent and compliant
  - (v) Audit trail and compliance with Council's transparency obligations
  - (vi) Central repository for procurement information
- 1.21 The [London Tenders Portal](#) is used to ensure that Contracting Activity is carried out in a compliant way and provides an audit trail, and ensures the Council meets its transparency obligations.
- 1.22 All Contracting Activity over £5,000 must go through the London Tenders Portal; this includes:
  - (i) All Contracts over £5,000 including 'Call-Off' Contracts from a Framework Agreement (see Rule 18)
  - (ii) Frameworks over £5,000
  - (iii) Collaborative procurement with other authorities over £5,000
  - (iv) Any agreement (over £5,000) where a Purchase Order is used.
  - (v) Competitive processes below £5,000
  - (vi) Section 75 agreements
- 1.23 Direct Awards via the [Exceptions and Waiver Form](#) will be added to the LTP and the relevant Notifications published.
- 1.24 Support and guidance on using the [London Tenders Portal](#) giving step by step instructions is available on the Procurement Services intranet site. Access is via a [Form](#) to be uploaded to Digital Services ServiceDesk. Access for 3<sup>rd</sup> parties must be approved by Procurement Services prior to uploading into ServiceDesk.
- 1.25 Use of other Procurement Portals must be approved by Procurement Services and the Contract must be entered into the LTP for central recording. Using the LTP ensures that the Council meets information retention policy, using another portal will

not meet these obligations, and it will be necessary to duplicate information into the LTP. It is the responsibility of the service to maintain the Contract register.

- 1.26 Where a 3<sup>rd</sup> party/consultant is managing the procurement the Service Department must ensure that a member of the Service Department is added to the project in the LTP, as it is the responsibility of the Service Department to check compliance and for post award Contract management.

## **2. Purpose – Rule 2**

- 2.1 Where a 3<sup>rd</sup> party/consultant is managing the procurement the Service Department must ensure that a member of the Service Department is added to the project in the LTP, as it is the responsibility of the Service Department to check compliance and for post award Contract management.
- 2.2 The purpose of the Rules is to ensure that the Council is compliant with all Procurement Legislation and Council rules. Suppliers can take legal action where the Council does not apply the Rules or follow Procurement Legislation and therefore it is important to protect the Council from risk of challenge.

## **3. Exempted Contracts – Rule 3**

- 3.1 Where a 3<sup>rd</sup> party/consultant is managing the procurement the Service Department must ensure that a member of the Service Department is added to the project in the LTP, as it is the responsibility of the Service Department to check compliance and for post award Contract management.
- 3.2 Exemptions are areas of spend that have been exempted by the Procurement Act 2023. These have been amended under the new PA2023.
- 3.3 Exempted Contracts:
- (i) Vertical Arrangements
  - (ii) Horizontal Arrangements
  - (iii) Defence and Security contracts
  - (iv) Utilities Contracts
  - (v) Land and Building Contracts
  - (vi) Broadcasting
  - (vii) Electronic Communications Services
  - (viii) Alternative dispute resolution
  - (ix) Legal Services (judicial proceedings or dispute)
  - (x) Financial Services
  - (xi) Employment
  - (xii) Emergency Services
  - (xiii) Public passenger transport Services
  - (xiv) Research and development Services
  - (xv) International agreement and organisations
  - (xvi) National security
  - (xvii) Intelligence activities



- (xviii) Defence and security contracts
- (xix) Utilities contracts

3.4 If the Rule on Vertical and Horizontal arrangements is to be applied, the Service Department must seek Legal advice on the application of this Rule.

3.5 User Choice Contracts are no longer Exempt (if the value is above threshold), but Direct Award is permissible. Reporting on payment is needed for these Contract and will now need to be identified as Public Contracts and recording in the Contract Register will be needed. It is good practice to ensure that the principles of being open, transparent, equal, and fair are applied.

3.6 It is still important to ensure that:

- (i) Budget is approved.
- (ii) Audit trail for decision making
- (iii) Value for Money

3.7 Whilst not bound by the PA2023, there may still be advantages to carry out a competitive tender to ensure best value.

3.8 In all cases when carrying out Contracting Activity the following will still be needed:

- (i) A specification or set of requirements to set out what the deliverables are and where and when they need to be delivered.
- (ii) A Contract (even a PO) to ensure that the Supplier adheres to Council Contractual arrangements.
- (iii) Management of the outcomes and outputs of the Contract to ensure that the Council is maintaining value for money.
- (iv) Performance management of the Supplier and Supplier resilience monitoring or risk and supply chain failure.

3.9 In all cases the rules around the sealing and storage of Contracts still apply as these are Council rules.

## **4. Roles and Responsibilities – Rule 4**

4.1 All officers or 3<sup>rd</sup> parties/consultants involved in Contracting Activity must ensure that they are aware of the Councils governance, CPRs and the operational rules within this Procurement Code. As a Local Authority there is a duty to protect the public purse.

4.2 All Specifications for Public Contracts and for PSR Contracts must be reviewed by Procurement Services and authorised and approved in writing by the budget holder.

- 4.3 Procurement Services will manage all Public Contract (above threshold) activity only. Currently Below Threshold Contracts are self-serve, unless highly complex. Procurement Services will manage all PSR activity for the time being.

## 5. Procurement Governance and Assurance – Rule 5

- 5.1 The Procurement Assurance Group (PAG) has been created to provide 'assurance' around the procurement process. It is not a decision-making group. Procurement Projects **over threshold** must come to PAG. All Extensions, Variations, Novations and Terminations over £100,000 must come to PAG, to ensure compliance with Procurement Legislation and Notifications.
- 5.2 Exceptions to this must be agreed at PAG. PAG meets weekly and consists of:
- (i) Procurement Services Representatives
  - (ii) Legal Services Representatives
  - (iii) Financial Services Representatives
- 5.3 Procurement that falls under the following rules must come to PAG:
- (i) All above threshold procurements (including Frameworks) under the PA2023
  - (ii) All mini competitions above threshold from Frameworks awarded under PCR2015
  - (iii) All projects that fall under the PSR unless agreed
  - (iv) All Contracts for construction over £2.5m
  - (v) All Contract Extensions, Variations, Novations and Terminations over £100k
  - (vi) All Direct Awards (Exceptions & Waivers and PSR Direct Award)
  - (vii) All single provider Framework Agreements
  - (viii) All Direct Awards from Framework Agreement
- 5.4 Contracting activity that fall under (i) to (viii) above must be endorsed by PAG at each stage of the Gateway Process.
- (i) Gateway 1 – Pre-Procurement
  - (ii) Gateway 2 – Procurement Strategy
  - (iii) Gateway 3 – Award
  - (iv) Gateway 4 – Contract Handover Strategy
  - (v) Gateway 5 – Contract Review
- 5.6 Award Reports should reference that the project has been through the Gateway Process.

## **6. Annual Procurement Plan – Rule 6**

- 6.1 The Annual Procurement Plan will be compiled by Procurement Services for the start of the financial year. This will set out all procurement activity for that financial year that Procurement Services will support to deliver. Projects submitted after the approval of the Annual Procurement Plan risks Procurement Services not having resources to support the project.
- 6.2 Service Departments must identify all new Contracting Activity and put it on the Annual Procurement Plan to ensure resources are available.

## **7. Risk Assessment – Rule 7**

- 7.1 When carrying out Contracting Activity risk must be assessed. This helps to identify relevant steps to mitigate or minimise any potential risk to the Council.
- 7.2 These risks could be financial (financial failure), service affecting (performance or Supplier failure) or reputational. Risk is not always due to the size/value of the Contract. A small Contract could carry a high risk if it is controversial or for a high-risk area, such as IT security. A risk assessment should be carried out at the start of the project; and continue to be reviewed throughout the project and lifetime of the Contract.
- 7.3 The Council has a Risk Strategy and assessments should be carried out using the [Council's Corporate Risk](#) template. These risks should be set out in the approval to procure and award report and what actions are being taken to minimise/mitigate these. The template must be stored on the LTP for evidence.
- 7.4 GDPR must also be considered when procuring, to ensure that if any personal data or client data processed by the Supplier is done in a compliant way.
- 7.5 As part of good practice and to ensure that Equalities are considered an Equalities Impact Assessment (EQIA) should be undertaken to understand the impact of the Contract on service provision and customers/residents/staff.

## **8. Insurance – Rule 8**

- 8.1 It is important within the Contract that the correct levels of insurance are stipulated. They may vary due to the type of Contract, and the levels of risk to be mitigated. A [risk assessment](#) must be carried out to support identification of the type of insurance and the levels needed for mitigation.
- 8.2 The PA23 asks that the Council considers barrier to SMEs, therefore insurance levels need to be proportionate to risk, and value of the Contract. Where Service Departments wish to deviate from the values set out below then the [Exceptions and Waiver Form](#) must be used.

- 8.3 The Council considers the following to be the minimum requirements for insurance:
- (i) Public Liability for each and every claim £10m
  - (ii) Employers Liability each and every claim £10m
  - (iii) Professional indemnity (seek advice from Insurance Team):
    - a) Construction design £10m
    - b) Consultancy/Advice £2m
- 8.4 To decide on what type of insurance is required by the Contractor/Third party the Service Department must consider what Works/Services are being provided. A construction Contract will need different arrangements to a health Contract. A Health Contract may need medical negligence for an example. Levels of insurance should be for each and every claim, however, there are issues with professional indemnity cover, and this may be aggregate, so Service Departments must check.
- 8.5 The following are the main types of insurance that may be required by the Contractor/Third party in order to protect the Council:
- (i) **Public Liability Insurance:** Covers the cost of third-party claims following an accidental loss of/damage to property and/or injury.
  - (ii) **Product Liability insurance:** Covers the manufacturer or trader against claims for loss of/damage to property and/or injury caused by a product the business has designed, manufactured, sold or supplied.
  - (iii) **Employers Liability Insurance:** Covers the cost of claims made by employees of a company/organisation who are injured due to the negligent actions of the employer, during the course of their employment.
  - (iv) **Professional indemnity Insurance:** Will apply where there has been a breach of duty by an insured (e.g., the consultant/provider) in their professional capacity arising from a negligent/accidental error or omission on their part.
- 8.6 Where insurance levels have been requested, but the Supplier is unable to fulfil the required levels of insurance, there will be a 'gap' in the level of insurance. In this situation another risk assessment is required and obtain the necessary approval via the [Exceptions and Waiver Form](#) to accept the risk that the Supplier only holds insurance at a lesser amount than the requirement. See guidance below:
- (i) **Low risk** – where the insurance gap is less than £2m, the decision to agree a lower level of insurance will sit with the relevant Executive Director of the team contracting the goods/Services.

- (ii) **Medium risk** – where the insurance gap is between £2m and £25m, the decision to agree a lower level of insurance will sit with the Executive Director Resources and the Insurance Manager.
- (iii) **High risk** – In cases where the insurance gap is over £25m the decision to agree a lower level of insurance will sit with the Executive Director Resources and the Insurance Manager.

8.7 Medical negligence/malpractice insurance

8.8 Generally, provides cover to medical practitioners for injury claims from a patient as a result of an error or omission and/or breach of duty on the part of a medical practitioner.

8.9 All Risks Insurance cover

8.10 Provides cover for property (buildings/goods) for damage caused by standard perils (Fire, Lightning, explosion, aircraft, riot, malicious persons, earthquake, subterranean fire, storm, flood, escape of water, impact, subsidence and accidental damage).

NB: Please note that for Public Liability, Products Liability, Employers Liability, Professional Indemnity and Medical Negligence/malpractice cover negligence must be proven for a claim to be successful.

8.11 To decide on what the appropriate level of insurance a Supplier/Contractor should have, the Service Department will need to consider the following question:

- (i) 'What is the maximum potential loss (guesstimate) the Council could suffer in any 1 year as a result of the Works carried out by the said provider'?

8.12 Based on the risk assessment, this should have been identified, if this is no more than £10m then cover for that amount would not be unreasonable. If, however, it is considered the maximum loss to be more, then the service needs to make a decision on how much more (i.e., how many £1million loss incidents does the Council anticipate could occur?). The response to this will give an indication of how much additional insurance should be in place.

8.13 For context the Council's own insurance policies have the following limits:

- (i) Public liability £50 million
- (ii) Employers' liability £50 million
- (iii) Professional indemnity £1 million

8.14 Service Departments must assess the risk themselves and decide on the appropriate level of cover.

- 8.15 In order to ensure that the Council is adequately protected Service Departments must:
- (i) Look at what type of work the provider will be doing for the Council
  - (ii) the associated risks that work entails,
  - (iii) in conjunction with assessing the maximum potential loss the Council could suffer in any one year because of the work being undertaken by the provider.

## **9. Direct Award and Exceptions to Competitive Tendering - Rule 9**

- 9.1 Under the PA23 there are situations where Direct Award is permissible. This Rule must be studied and justified when it is applied. Remember that VFM cannot be demonstrated by applying this rule and should only be used in exceptional circumstances. Members are keen for Service Departments to carry out competitive processes wherever possible.
- 9.2 For Public Contracts, Notifications and standstill period apply to Direct Awards (except User Choice Contracts).
- (i) Transparency Notice
  - (ii) Contract Award Notice
  - (iii) Contract Details Notice
  - (iv) Publish Contract if over £5m
- 9.3 For Regulated Below Threshold Contracts a Below Threshold Contract Award notice is needed.
- 9.4 Where Direct Award is carried out outside of this Rule the Service Department must ensure compliance to PA23 and Notifications.
- 9.5 Exceptions must also comply with Conflicts of Interest (Rule 21) Financial Due Diligence and Security (Rule 11) and checking Suppliers are not Excludable, Excluded or Debarred Suppliers (Rule 26). See [Procurement Code](#).
- 9.6 All Contracting Activity covered by this Rule must have followed the same governance as a competitive process. All [Exceptions and Waiver forms](#) must be accompanied with:
- (i) Authority to award from the relevant Council Officer in the Scheme of Delegation for the value of the Contract
  - (ii) Copy of the Contract
  - (iii) Confirmation of budget and its approval from the Finance Team
  - (iv) Financial Due Diligence in line with Rule 11
  - (v) Completed [Contract Tiering Tool](#) (Rule 31)
  - (vi) Evidence of Conflict of Interest assessed (Rule 21).
- 9.7 Complete list of exemptions:

- (i) Prototypes and development
- (ii) Single Suppliers
- (iii) Additional or repeat goods, Services or Works
- (iv) Commodities
- (v) Advantages terms on insolvency
- (vi) Urgency
- (vii) User Choice Contracts
- (viii) Defence and Security

9.8 User Choice Contracts are now subject to the Procurement Act 2023 but are exempt from Notifications. This means that while Direct Award is permissible, payments made under these contracts are subject to reporting. This means these Contracts must be recorded to ensure compliance to payment notifications. Contracts set up under this Rule must complete a User Choice Contract Recording Form.

9.9 Switching to Direct Award

9.10 Close attention to the PA23 must be made if using this route to Direct Award. The use of the [Exceptions and Waiver form](#) must be used and an assessment of risk must be undertaken, and the use of this Rule will be assessed at PAG.

9.11 Switching to a Direct Award can only be used in the following conditions:

- (i) Where the Council has invited Suppliers to submit tenders as part of, or requests to participate in a competitive tendering process in respect of the Contract, it may award the Contract directly if:
  - a) no suitable tenders or requests were received, and
  - b) it considers that award is not possible under the circumstances.
- (ii) A tender or request is not suitable where the Council considers that:
  - a) it would be disregarded in an assessment of Tenders for not meeting the conditions of participation, being from a Supplier that is not a UK or treat state Supplier or being an abnormally low tender (see Rule 26)
  - b) it does not satisfy the Councils requirements or the award criteria
  - c) There is evidence of corruption or collusion between Suppliers or Suppliers and the Council
  - d) It materially breaches a procedural requirement in the tender notice or tender documents. A breach is material if the Council considers that ignoring it would put the tender at an unfair advantage.
- (iii) The Council may carry out a selection process or take such other steps that it may consider appropriate prior to making a Direct Award.

- 9.12 All Exceptions must be via the [Exceptions and Waiver form](#) and presented at PAG. They are reported quarterly to the Director of Finance – Capital and Commercial and annually at the General Purposes Committee. These go to [procurement.support@enfield.gov.uk](mailto:procurement.support@enfield.gov.uk) to approve and create a Contract on the LTP.
- 9.13 Exceptions can only be approved if they are in line with the PA23 on Direct Award, otherwise a Waiver will be needed.
- 9.14 Refer to the Framework Agreement (Rule 17) section of this Manual for following mini competition Rules.

## **10. Application and Waiver of The Rules – Rule 10**

- 10.1 The Council wants to ensure that Contracts deliver VFM through a competitive process. Waivers are Direct Awards, and therefore cannot demonstrate VFM and will not be compliant with PA23 unless they fall within the Direct Award grounds (see Rule 9 and this Rule) or are below Threshold. Members are quite clear that Waivers should only be sought in exceptional circumstances.
- 10.2 All Waivers are reported annually at the Council's General Purposes Committee by Procurement Services. All Waivers must be agreed locally by the Service Departments Director and then sent to Procurement Services. These will be reviewed at PAG and then sent to the Executive Director for Resources for approval.
- 10.3 Where the estimated total value of the Contract is over the Procurement Legislation Threshold the Council must comply with the requirements of Procurement Legislation.
- 10.4 Waivers will only be issued for a period of 12 months, unless agreed otherwise by Procurement Services or the Executive Director of Resources.

## **11. Financial Due Diligence and Security – Rule 11**

- 11.1 When assessing risk; the financial health, capacity to perform and deliver should also be reviewed.
- 11.2 As part of the Council's financial due diligence, it may be necessary to have appropriate forms of security in place to cover and mitigate any associated risk(s) to the Council. The Economic and Financial Standing Test, [Contract Tiering Tool](#) and [Supplier Resilience Tool](#) will assist in determining the associated risks.
- 11.3 Economic and Financial Standing Tests



- 11.4 The Council's methodology and assessment of Economic and Financial Standing Test must be transparent and objective within the Contracting Activity process.
- 11.5 The reasons for undertaking an Economic and Financial Standing Test of Suppliers as part of a procurement process are to:
- (i) Assess the risk to public sector business and/or public money which would result if a potential Supplier bidding for a Contract opportunity was to go out of business during the life of the Contract, or have inadequate financial resources to perform the Contract and deliver on its obligations, and
  - (ii) When justified, eliminate from a procurement process any potential Supplier whose current financial capacity would pose an unacceptable risk to business and/or public money.
- 11.6 Procurement law requires that requirements of potential Suppliers to demonstrate Economic and Financial Standing are related and proportionate to the subject matter of the Contracting Activity and are limited to those that are appropriate to ensure that the Supplier has the financial capacity to perform the contract. Therefore, all assessments of Suppliers' Economic and Financial Standing should be proportional to the nature of the Contract, its complexity and value ensuring protection of taxpayer value. The [Contract Tiering Tool](#) is used to set out the Economic Standing Test methodology, to ensure proportionality. See Rule 26 and Rule 26.7 on Regulated Below threshold contracts.
- 11.7 All potential Suppliers, whatever their size or constitution, should be treated fairly and with equal diligence during the appraisal of economic and financial standing. For example, no SMEs, public service mutuals or third sector organisations should be inadvertently disadvantaged by the assessment of economic and financial standing.
- 11.8 Economic and financial standing should only be considered as part of the conditions for participation. It may not, on its own, reflect potential Suppliers' ability to deliver. In accordance with PA23 Section 22(3) audited accounts and evidence of insurance should not be required to be submitted or in place before the award of Contract except in limited circumstances. Speak to Procurement Services
- 11.9 Platinum and Gold tiered Contracting Activity
- 11.10 Contracts [tiered](#) as Platinum or Gold should follow the requirements of a full and comprehensive Economic and Financial Standing Test during the Contracting Activity process. This shall be considered, devised, and tailored by the assigned lead within the Finance Team

#### 11.11 Silver and Bronze tiered Contracting Activity

11.12 For Contracts [tiered](#) as Silver or Bronze, the Finance Team should use an Equifax credit report as the starting point to undertake the economic and financial standing Test and may also include simplified ratios. Should this assessment identify any issues for a potential Supplier against the pre-determined minimum requirements set out within the procurement documents, the Finance Team should interrogate this further and request clarification or supplementary information (via the Procurement Lead) from the Supplier.

11.13 Where Contracts are classified as Silver or Bronze **but** is above the relevant Procurement Threshold, an Equifax credit report alone cannot be solely used to undertake the Economic and Financial Standing Test to pass (or fail) Suppliers.

11.14 For Regulated Below Threshold Contracts the Council must not set or assess a Supplier's suitability to perform the Contract (i.e. legal and financial capacity, or technical ability) as a way of reducing the number of Suppliers to be invited to Tender, except where the Contract is a Works contract and has an estimated value of not less than £214,904 (the threshold for services/supplies under the PA23)

#### 11.15 Forms of Security

11.16 Following the Rules to ascertain if security is required. Then an assessment is required to determine what type of security will provide the best value. There are varying types of security, which can take one of the following forms:

- (i) Parent company, ultimate holding company or holding company guarantee where their finances prove acceptable,
- (ii) Director's guarantee or personal guarantee where their finances prove acceptable,
- (iii) Any other security as determined by the Finance Team.

11.17 Where a form of security is required but the Supplier cannot provide security in line with this Rule, and the Council has no acceptable alternative Supplier or has decided to accept the level of risk, then the [Exceptions and Waiver Form](#) must be used to justify the recommendation, be presented to PAG for endorsement. Procurement Services will seek approval from the Executive Director of Resources prior to any award and work commencing.

#### 11.18 Monitoring the ongoing Economic and Financial Standing of Suppliers

11.19 The Economic and Financial Standing of the Council's contractual arrangements classified as Platinum, Gold and Silver Contracts and any other key Suppliers should be reviewed at least once per year. Therefore, the

assigned Contract Manager within the Service Department shall review and complete the [Supplier Resilience Tool](#) annually.

11.20 Where the [Supplier Resilience Tool](#) Classification is rated **High Risk** or **Medium Risk**, the Contract Manager must liaise with the relevant member of the Finance Team to determine the appropriate actions and request relevant mitigations from the Supplier.

11.21 Note, while monitoring the Council's key Suppliers, this should also take a wider view of a Supplier's business and financial health and the level of risk.

## 12. Business Continuity – Rule 12

12.1 When carrying out business continuity plans Service Departments must consider key Suppliers that deliver front line Services or who are **important to delivery of the Service**. These must be listed in the Service Departments **Business Impact Analysis**. Service Departments should also consider having a paper list of key Suppliers in case of emergencies, with contacts details etc.

12.2 Think about situations such as Brexit or Covid-19 where it may be necessary to speak to all key Suppliers to understand the impact on them, and how this may impact on their ability to deliver Services to the Council. The emergency situation may affect different Suppliers in different ways, and not all situations may affect all Suppliers. Economic Standing Tests may be necessary in some emergency situations to ensure continuity. **See Rule 11**

12.3 To minimise risk and improve Service delivery resilience the Council has committed to implementing the [London Resilience Standards](#). This **means that Suppliers must meet the Councils Resilience Requirements:**

- (i) Commissioning of public Services must include a requirement that organisations Tendering for Contracts meet the Council's resilience requirements, and those providers share information and data on the impact of disruptions such as severe weather or industrial action; and
- (ii) Projects, Contracts, initiatives and other organisational changes and developments always account for resilience to ensure that these enhance and do not weaken capability of the Supplier.

12.4 In line with the Council's Business Continuity Policy; during the risk assessment, Supplier failure or failure to deliver/perform should be assessed. Where delivery of the Services is assessed as critical, or there would be major reputational damage in the event of a Supplier failure to supply; then Business Continuity Plans should be requested as part of the Contract and Services should build in contingency plans.

12.5 This must demonstrate how the Supplier will continue to support Services to the Council should there be some incident or issue at a national, local level or at the Supplier site. It is recommended as part of any Contract review or Contract Management meeting that these are reviewed to ensure they are fit for purpose.

(i) Has the Supplier tested them?

(ii) Has the Supplier implemented them, if so, how did this work?

12.6 These Suppliers must be identified in the Service Departments Business Impact Analysis Form and provided to the Emergency Planning Team. This should also be considered where the Supplier supports the Council in the event of an Emergency/Disaster Recovery.

### **13. UK General Data Protection Regulations (UK GDPR) – Rule 13**

13.1 These Suppliers must be identified in the Service Departments Business Impact Analysis Form and provided to the Emergency Planning Team. This should also be considered where the Supplier supports the Council in the event of an Emergency/Disaster Recovery.

13.2 Potential Suppliers must be assessed to ensure that they meet GDPR requirements. Specifically, regarding data storage and data handling. GDPR elements MUST be considered at the planning stage of the project. It is the responsibility of the procuring officer to ensure that any potential Supplier is compliant with the UK GDPR at the tendering stage.

13.3 This should be ascertained at the Tendering/quotation stage. Please contact the Councils Data Protection Officer at the start of the project to ensure compliance with UK GDPR requirements.

13.4 Please seek advice from the Council's Data Protection Officer on the data protection role of the Council and ensure that appropriate data protection clauses are in the Contract seeking advice from Legal Services, where required.

13.5 It may be necessary to consider non-disclosure agreements if working without a Contract.

### **14. Contracting Activity Governance – Approvals – Rule 14**

14.1 Council governance must be followed throughout the whole of the Sourcing Cycle for Contracts and Contracting Activity and evidence stored on the LTP. Approvals must be in writing and signed off by the relevant person under the Service Departments Scheme of Delegation that can approve Contracting Activity and for the relevant value.

- 14.2 Approval must be sought for (but not limited to):
- (i) Approval to start Contracting Activity, strategy, and budget
  - (ii) Approval to award Contracts following Contracting Activity
  - (iii) Approval to vary or extend a Contract
  - (iv) Approval to terminate a Contract
  - (v) Approval to terminate a Contracting Activity
  - (vi) Approval to Novate to a new Supplier
  - (vii) A Direct Award (including Waiver or Exception)
- 14.3 It is the responsibility of the Service Department to gain authority and Procurement Services will not support any Contracting Activity that does not have evidence of approval to start Contracting Activity.
- 14.4 Refer to CPRs approval table for full explanation.
- 14.5 All Contracting Activity must have approval. Low value may only need written approval via an email.
- (i) Over £100k need to use the [Non-Key Officer Decision Report](#) and recorded on the SharePoint Decision Log.
  - (ii) £500k and above it must follow the Key Decision process using the [Corporate Standard Report Template](#) (DAR) in line with Council Governance.
- 14.6 All Reports that relate to Contracting Activity must clearly set out the strategy and process that the Service Department will follow, any risks identified and how these will be mitigated/managed, changes to liability or insurance and have Procurement Services implications.
- 14.7 Award reports must set out the procurement route to market, evaluation criteria and reasons for award and must detail any deviation from the initial estimated budget. It may be necessary to use the Confidential Appendix for commercially sensitive information. Reports must state compliance with PAG, where the Service Department has not engaged with PAG then this will be set out in the procurement implications.
- 14.8 Where a Key Decision process was used to gain authority for budget or authority for a strategy or concept, this cannot be used for authority to procure or award, unless the forward plan description stated procurement, and the report set out the procurement.
- 14.9 In line with Council Governance any Contracting Activity over £500k must have a [Standard Corporate Report Template](#) (DAR) produced by the Service Department and listed on the [Forward Plan](#), this includes any concession Contracts where the costs or the income is equal to or greater than £500k,

Contract Modifications over £500k. The authority report must be approved in accordance with the Scheme of Delegation and Council governance.

- 14.10 All Contract Modifications over £500k (or make savings of £500k or over) will need a [Key Decision](#).
- 14.11 A signed copy of the [Non-Key Officer Decision Reports](#) must be recorded on the SharePoint Decision Log.

## **15. Specialist Procurement – Rule 15**

- 15.1 In all cases existing [Council Contracts](#) should be used for aggregation of spend and efficiency. The Council has created 'Service Areas' and moved common activity into teams. These areas manage the specialist areas and must be consulted when letting a Contract that comes with their area.
- 15.2 In some cases, such as Digital Services, Procurement Services and Legal Services then these teams have a 'centralised' function and are the lead for the Council and in these cases no procurement for these Services should be made outside of these Service Departments unless agreed.
- 15.3 Some areas may not have a centralised budget but do have the corporate responsibility for these areas. The Services Department for this area must be contacted to ensure that in the first instance 'corporate Contracts' (e.g., FM) are used or any compliance with any relevant trade regulations or legislation for that area etc.
- 15.4 In the case of CCTV, Service Departments must ensure that correct legal requirements are used and use Suppliers that are compliant to correct industry standards.
- 15.5 Procurement Services will not support ICT procurements that are not led by Digital Services, this is to ensure compliance with data regulations, security regulations and integration into the Councils IT network.
- 15.6 No external legal advice is to be instructed or sought without the prior approval of Legal Services.
- 15.7 No procurement Services may be externally commissioned without approval from Procurement Services. Access for 3<sup>rd</sup> parties to the LTP must be approved by Procurement Services. If 3<sup>rd</sup> parties are commissioned then any risk or challenge from the procurement process will sit with the Service Department, therefore it is vital that the Service Department are clear that the 3<sup>rd</sup> party is compliant with the CPR's and this Code.
- 15.8 Third parties must be compliantly procured and have a Contract and confidentiality agreement if not in the Contract.

#### 15.9 Specialist Areas:

- (i) Digital Services
- (ii) CMFM (Construction)
- (iii) CMFM (Security)
- (iv) CMFM (Cleaning)
- (v) Housing
- (vi) Regeneration
- (vii) CCTV
- (viii) Children's & Adults
- (ix) Legal Services
- (x) Procurement Services
- (xi) Financial Services

#### 15.10 Corporate Contracts must be used for:

- (i) Stationery
- (ii) Cleaning and Janitorial Supplies
- (iii) PPE
- (iv) Pre-Paid Cards
- (v) ICT Services
- (vi) Translation and Interpretation

### 16. Estimating The Value of a Contract – Rule 16

- 16.1 It is important to ensure that the estimated cost of the Contract is properly carried out prior to any Contracting Activity commencing. The estimated Contract value determines which route to market is needed, and governance that must be followed. If the estimated total value of the Contract is underestimated, then there is a risk of noncompliance with the Council's Governance and Current Procurement Legislation. For the purposes of estimating the Contract Value it must be **INCLUSIVE OF VAT**; Values relating to Governance are Excluding VAT.
- 16.2 The estimated cost of the Contract **must include ALL costs**, including but not limited to the amount the Council could expect to pay including the following:
- (i) The value of any goods, Services or Works
  - (ii) The value of any Contract extensions or renewal of the term of the Contract
  - (iii) The value of any premiums, fees, commissions, or interest that could be payable
  - (iv) Value of any prizes or payments that could be payable to participants in the procurement
  - (v) Any additional work or provision that is likely to go to this Supplier later (this must also be added to the Tender Notification). This should be

included where possible and stated in the Tender Notice or the Tender documents.

- 16.3 Under the PA23 where a Contract value is unknown or cannot be estimated (for example because the contract duration is unknown) then the Contracting Activity must follow an above threshold process. All Contracts must have a start and end date to comply with the PA23.
- 16.4 Contracts repeatedly let on an annual basis do not provide VFM and will be seen as disaggregation and circumvention of the Council's Rules. Remember that aggregation will apply where repeated Contracting with the same Supplier year on year occurs. The PA23 asks that money already paid is taken into account, and that if the term is unknown then an above threshold procurement must take place, therefore it is vital that Regulated Below Threshold Contracts have the correct term, that covers the whole provision.
- 16.5 If the aggregation over many years breaches the PA23 threshold, then a full above procurement must take place.
- 16.6 Information that might assist in estimating the Contract value could include:
- (i) Current cost of any Contract
  - (ii) Spend/budget currently being spent
  - (iii) Budget available in the future
  - (iv) Market forces and price
  - (v) Benchmarking information
  - (vi) Other Council spend or information in the public domain
  - (vii) Market engagement/research
  - (viii) Is it a one off, or likely to want more after an initial delivery?
- 16.7 If the Contract is with other organisations and the Council is the lead authority, then the value is the total cost of the Contract, with all the other organisations. Where the council is not the lead authority then only the value of the council's element is needed.
- 16.8 Lots
- 16.9 The introduction of Lots within procurement is not disaggregation; and can help smaller Suppliers (SME's) to bid for work. The PA23 asks that lots be considered. The Service Department when designing a competitive Tendering procedure above the Procurement Legislation threshold must consider:
- (i) Whether the goods or service or Works to be supplied could reasonably be supplied under more than one Contract: and
  - (ii) Whether such Contracts could appropriately be awarded by reference to lots.
- 16.10 The Service Department must then:



- (i) Arrange for the award of the Contract or Contracts by reference to lots or
- (ii) Provide reasons for not doing so.

16.11 The Service Department may limit the number of participating Suppliers by reference to lots, in respect of which and how many any one Supplier can submit a tender for.

16.12 If the value of the Contracting Activity is less than 10% below the Procurement Legislation Thresholds, then officers must procure in accordance with the Procurement Legislation process for a Public Contract. Contact Procurement Services to discuss this. If bids are returned and they are over the value of the Procurement Threshold, then the procurement will be non-compliant.

16.13 For Concessions the following calculation must be followed

16.14 The Council must estimate the value of a concession Contract as the maximum amount the Supplier could expect to receive under or in connection with the Contract including, where applicable, amounts already received

16.15 The amount a Supplier could expect to receive includes the following:

- (i) amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the Works or Services to which the Contract relates (whether from the Contracting authority or otherwise)
- (ii) the value of any goods, Services or Works provided by the Contracting authority under the Contract other than for payment
- (iii) amounts that would be receivable if an option in the Contract to supply additional Services or Works were exercised
- (iv) amounts that would be receivable if an option in the Contract to extend or renew the term of the Contract were exercised
- (v) amounts representing premiums, fees, commissions or interest that could be receivable under the Contract
- (vi) amounts received on the sale of assets held by the Supplier under the Contract.

## **17. Frameworks Agreements & Dynamic Markets Systems – Rules 17**

17.1 Use of Frameworks Agreements must follow the CPR's and are subject to the PAG process and must be led by Procurement Services when over Threshold unless stated otherwise. Framework Agreements are still subject to Council Governance. Therefore, if the cost of the Contract is over the PA23 threshold then [Procurement Services](#) must be instructed. If over £500k then the Key

Decision process must be followed. Where the Service Department intend to create a Framework then Procurement Services must be contacted.

- 17.2 Where additional call offs from the Framework Agreement are made, then these may be subject to additional Contracting Activity and approval, and must follow the same processes as the original call off, in regard to Notifications, Conflict of Interest checks (Rule 21) and checking if the Supplier is Debarred, Excluded or Excludable (Rule 26)
- 17.3 The use of single Supplier frameworks or Direct Award to a framework must come to PAG via the [Exceptions and Waiver Form](#) for review and endorsement to demonstrate VFM.
- 17.4 Frameworks are provided by purchasing organisations that have already carried out a procurement exercise. Generally, they are a 'shortlist' of pre-qualified Suppliers that has been through a procurement process and are able to be 'called off' to provide provision. Frameworks Agreements do offer a quicker and easier way to market, but do not always offer Best Value. Full route to market analysis must be carried out to be clear that this offers Best Value and if there are any Framework Agreement fees.
- 17.5 When using a Framework Agreement, the Framework Agreement rules must be followed to be compliant. Direct Award is only permissible if the Framework Agreement rules allow, otherwise mini competition is required. [Due Diligence](#) must be carried out by the Service Department and logged with Procurement Services and evidence uploaded to the [Procurement System](#). For over threshold Procurement Services will carry out the [Due Diligence](#) if managing the activity.
- 17.6 Framework Agreements are subject to Notifications in the same way as other Public Contracts see Rule 23, including those Notifications applicable to Contracts over £5m.
- 17.7 The LTP Quick Quote must be used when calling from a Framework Agreement, and any for any further competition.** Where the LTP has not been used then the [Exceptions and Waiver Form](#) must be used and sent to [Procurement.support@enfield.gov.uk](mailto:Procurement.support@enfield.gov.uk).
- 17.8 Where 'mini competition' is needed, then this **must** be classed as a procurement exercise and the Quick Quote template used in the LTP. Have clear criteria for selection by reference to the award criteria for the Framework Agreement and allow reasonable time for Suppliers to respond to the quotation/Tender process.
- 17.9 The LTP is NOT a framework**, and Suppliers already registered on the LTP are not 'on a framework'. The LTP is an e-tendering portal.

17.10 Services wishing to set up a Framework Agreement to be used internally must contact Procurement Services to discuss this. It is important that the Framework Agreement is set up compliantly and that it is open to the right areas of the Council and where possible other organisations. Service Departments will be responsible for creating a Framework Agreement 'pack' that includes (except for Light Touch Services Contracts):

- (i) Terms and conditions, Contract, access agreements and call offs
- (ii) Rules of accessing the Framework
- (iii) Whether Direct Award is permissible and to whom
- (iv) Schedule of rates, prices payable, or mechanism for determining the price payable
- (v) The estimated value of the Framework
- (vi) Any selection process to be applied
- (vii) Term of the Framework
- (viii) Description of the Goods and Services to be provided
- (ix) Measurement of the Framework and reporting to monitor spend against the Framework.

17.11 Please note that the use of the Matrix MM portal for procurement activity must be approved in advance by Procurement Services. The use of Bloom is not allowed.

17.12 Dynamic Markets

17.13 Dynamic Markets can be set up where each award is a 'separate' contract and contracting activity. These Dynamic Markets allow for membership to Suppliers who meet the criteria for membership and have the technical ability to perform the contracts.

17.14 Open Frameworks

17.15 An "open framework" is a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.

17.16 An open framework must provide:

- (i) for the award of a framework at least once during:
  - a) the period of three years beginning with the day of the award of the first framework in the scheme, and
  - b) each period of five years beginning with the day of the award of the second framework in the scheme
- (ii) for the expiry of one framework on the award of the next framework

- (iii) for the final framework to expire at the end of the period of eight years beginning with the day on which the first framework under the scheme is awarded.

17.17 In all cases discussion with Procurement Services is mandatory prior to setting up any Dynamic Market or Open Framework due to the complexity of the contracting activity and management of the Dynamic Market or Open Framework. All Notifications relating to Dynamic Markets and Open Frameworks must also be published.

17.18 A list of [frameworks](#) can be found on the Intranet Hub.

## **18. Conflict Of Interest – Rule 18**

18.1 The PA23 asks that conflict of interest and potential conflict of interest is assessed and mitigate throughout the Contracting Activity. It is a legal requirement to identify and mitigate any conflicts of interest or potential conflict of interest by carrying out a conflict-of-interest assessment. This must take place before Contracting Activity is initiated.

18.2 Throughout the Contracting Activity the conflict of interest and potential conflicts of interest assessment must be kept under review and revised/updated at each stage of Contracting activity. Records of the assessments must be kept and uploaded to the LTP to ensure a clear audit trail.

18.3 A conflict of interest occurs when a person acting for the Council in Contracting Activity (i.e. a person that influences a decision made by the Council) has a direct or indirect personal, professional or financial interest in the procurement.

18.4 Conflicts of interest: duty to mitigate

18.5 The Council must take all reasonable steps to ensure that a conflict of interest does not put a Supplier at an unfair advantage or disadvantage in relation to a covered procurement. Reasonable steps may include requiring a Supplier to take reasonable steps.

18.6 Where the Council consider that:

- (i) a conflict of interest puts a Supplier at an unfair advantage in relation to the award of a public contract, and
- (ii) either
  - a) the advantage cannot be avoided, or

- b) the Supplier will not take steps that the contracting authority considers are necessary to ensure it is not put at an unfair advantage.
- (iii) The Council must in relation to the award treat the Supplier as an excluded Supplier for the purpose of
  - a) assessing tenders under section competitive tendering, or
  - b) awarding a contract under section Direct Award), and
- (iv) exclude the Supplier from participating in, or progressing as part of, any competitive tendering procedure.

18.7 Conflicts assessment

18.8 Before publishing a Tender or Notification in relation to a covered procurement, the Council must prepare a conflicts assessment in relation to the procurement

18.9 Before publishing a dynamic market notice in relation to the establishment of a dynamic market, the Council must prepare a conflicts assessment in relation to the establishment

18.10 The Service Department must take all reasonable steps to identify conflicts, potential conflicts and identify the individuals

18.11 For the Contracting Activity the Service Department must:

- (i) Identify any person acting for or on behalf of the Council in relation to the Procurement
- (ii) Any Members acting in relation to the procurement
- (iii) Any persons that will have influence over the decision made in relation to the Procurement

18.12 Checklist:

- (i) Confirm reasonable steps have been taken to identify any actual or potential conflicts of interests?
- (ii) Make sure it includes consideration of interest for personal, professional or financial interest and which may be direct or indirect.
- (iii) Think about any circumstances that are likely to cause someone to wrongly believe there is a conflict or potential conflict of interest, beyond any conflicts already identified? If so make a note of the steps taken or will be taken to demonstrate that no such conflict or potential conflict exists.
- (iv) Take all reasonable steps to ensure that any identified conflicts or potential conflicts of interest does not put a supplier at an unfair

advantage or disadvantage in relation to the procurement (this may include requiring a supplier to take reasonable steps).

- (v) Before publishing a tender or transparency notice prepare a conflicts assessment using the information and steps taken so far.
- (vi) Keep the conflicts assessment under review and update it as and when required - until either procurement termination, contract termination or, for dynamic markets, the market ceases to operate (via the relevant procurement notice).
- (vii) Provide confirmation that a conflicts assessment has been prepared and revised when publishing relevant procurement notices. Does a supplier remain at an unfair advantage - even after all reasonable steps to mitigate this? If yes, this supplier must be excluded.

18.13 A conflicts assessment must include details of:

- (i) conflicts or potential conflicts of interest identified in accordance with definition above (duty to identify), and
- (ii) any steps the contracting authority has taken or will take for the purposes (duty to mitigate).

18.14 If the Council is aware of circumstances that it considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest, a conflicts assessment must also include details of any steps the Council has taken or will take to demonstrate that no such conflict or potential conflict exists.

## **19. Sustainable and Ethical Procurement Policy – Rule 19**

19.1 All Contracting Activity over threshold should consider the application of the [Sustainable and Ethical Procurement Policy](#). Any Social Value must be recorded by the Service Department and monitored through the lifetime of the Contract for delivery. Wherever possible use of the local market **must** be considered to support and help to generate the local economy.

19.2 All Contracting Activity must be in accordance with the Councils agreed polices including but not limited to:

- (i) Modern Slavery Charter.
- (ii) Construction Charter; and
- (iii) Health in Everything we do
- (iv) Fairer Enfield
- (v) Fair Tax Declaration.

19.3 The Councils [Sustainable and Ethical procurement policy](#) and suggests inclusion of up to **10% evaluation weighting** for sustainability in all Contracting Activity.

- 19.4 Social Value should be in line with the Service Departments aims which align to the Council Plan. They should be themes that align to the delivery of Council outcomes.
- 19.5 The [Council Plan](#) has set out its main objectives for the next 5 years.
- 19.6 The main deliverables are:
- (i) Good Homes in well-connected neighbourhoods
  - (ii) Safe, healthy and confident communities
  - (iii) And economy that Works for everyone
  - (iv) A modern Council
  - (v) Climate Action
  - (vi) Fairer Enfield
  - (vii) Early Help
- 19.7 The [Sustainable and Ethical Procurement Policy](#) sets out clearly how the Council plan will be delivered through Contracting Activity. It has minimum standards for each area, with enhanced and preferred standards to meet Council objectives.
- 19.8 It covers:
- (i) Ethical procurement
  - (ii) Equality and diversity
  - (iii) Local economy
  - (iv) Social value
  - (v) Climate action
- 19.9 The Council is committed to paying all staff directly employed the London Living Wage (LLW). The policy states the Council will pay LLW wherever possible and move to a situation where all Suppliers to the Council will pay LLW. Therefore, this must be considered when carrying out Contracting activity.

## 20. Procurement Thresholds – Rule 20

- 20.1 The estimated total Contract Value determines the route to market and which part of the PA23 needs to be followed.
- 20.2 Different categories of Contracting Activity have different thresholds, therefore ensure that the correct thresholds are applied. All thresholds are **inclusive of VAT**, when calculating the Contract value.
- 20.3 Thresholds:

Category	Value Including VAT	Value Excluding VAT
Goods and Services	£214,904	£179,086
Works	£5,372,609	£4,477,174

Light Touch	£663,540	£552,950
Concessions	£5,372,609	£4,477,174
KPIs Publishing	£5,000,000	£4,166,667

- 20.4 Contracts below the threshold are referred to in the PA23 as '**Regulated Below Threshold Contracts**', and there are rules that apply to these Contracts in addition to Council Governance.
- 20.5 If Regulated Below Threshold Contract is varied in value and the value brings the Contract over the relevant Procurement threshold, the Contract becomes a 'Convertible Contract', and this Contract must now follow the PA23 as an above threshold Contract or 'Covered Contract'. If the value of the Contract is unknown, then a full above threshold procurement must be carried out. (See Rule 16).
- 20.6 **Public Contracts** is the term used for all Contracts that are above the threshold for the relevant category. These attract more legislative requirements, specifically regarding route to market, variation and extension, termination, and Contract management. The procurement activity for above threshold is termed **Covered Procurement**.
- 20.7 For Regulated Below Threshold Contracts the number of quotations needed is guidance as to the **minimum** that should be **received**, to demonstrate Value for Money (VFM). It is recommended that additional bidders should be invited if there is a risk of poor response. Where there are insufficient bids received, then the Head of Service must agree that VFM has been demonstrated, and evidence of this uploaded into the LTP. Where insufficient bids have been sought this will be reported as non-compliant procurement.
- 20.8 Where the value of returned bids for below threshold contracting activity takes the project over the procurement threshold, then Notifications must be published as those needed for a Public Contract (above threshold) and all activity must follow the above threshold process.
- 20.9 Market engagement will provide useful feedback on the specification, Contract terms, and the opportunity in general. Changes can be made prior to going to the market to maximise responses and bidders. This is important to ensure that pricing is within the threshold for the route to market.
- 20.10 When carrying out Contracting Activity for Construction it is important to ensure that proper estimates have been applied, as 'contract creepage' is common in this area. Tender notices must include the intention to extend, and if there are likely to be any 'unforeseen consequences' or this will affect the options to vary later. Known Risks must be set out in the Tender Notice or the Transparency Notice prior to the award of the Contract. Refer to the Construction Code for more information.



20.11 Where construction line is used for Regulated Below Threshold Contracts, it is important to ensure that a 'fair and transparent' method of selection is used to invite Suppliers to Tender/bid. If there is a challenge the Service Department must be able to demonstrate that robust and fair selection processes have been used and not anticompetitive. Rule 26 on checking if the Supplier is on the Debarred list or Excluded or Excludable supplier and Rule 21 on Conflict of Interest still apply. **Construction Line can only be used for Public Contracts as part of the evaluation of compliance to Health & Safety etc.**

20.12 It is against the Rules to deliberately disaggregate the value of a Contract and split the value up to reduce the number of quotes to be obtained or carry out multiple procurements to avoid the Rules. Procurement Services will monitor compliance with this requirement. Officers need to be mindful of aggregation of spend (see Rule 16).20.13 The use of lots also can help smaller Suppliers to bid for larger Contracts.

20.14 Use the [procurement checklist](#) to help.

Estimated Total Contract Value including VAT & possible extensions.	Minimum No. of Quotations & Local Quotations	Evaluation & Supplier Selection	Additional Requirements (if applicable)	Method of issuing a Contract	Advertising or Notification	Responsibility for Procurement Process
<b>Regulated Below Threshold Contracts Process</b>						
Up to £30,000. Must be done via the Procurement System if over £5,000.	1 quote. Must seek local Supplier in the first instance. Seek 'best and final offer'.	Check if Supplier is on Debarred list or should be Excluded or are Excludable.	Must seek best and final offer to ensure VFM.	<ul style="list-style-type: none"> <li>Use of Purchase Order for <b>Goods and Services, and limited Works Contracts only</b> (see <a href="#">Procurement Code</a>) or</li> <li>Contract Template (or other form of Contract approved by Legal Services) for more complex requirements or where the level of risk needs to be addressed.</li> </ul>	Advertising not required.	Self-service in line with Rules and Procurement Legislation.
Contracts from £30,001 to £100,000 for Supplies and Services.  Or  £30,001 to £500,000 for Works:	3 quotes 2 local Suppliers in the first instance Where VFM is better met by going to the open market then this must be the first	Ensure Suppliers meet conditions of participation and evaluation criteria. See Rule 26  Check that Suppliers are not on Debarred list or should be	If less than three quotes are <b>received</b> the Service must seek the relevant level of approval within their Service to award and must ensure that VFM has been demonstrated. The decision must be recorded in writing and the decision retained in the <a href="#">Procurement System</a> . Once selected winning	<ul style="list-style-type: none"> <li>Use of Purchase Order for <b>Goods and Services. For construction (Works and Services)</b> See <a href="#">Procurement Code</a>. Or</li> <li>Contract Template (or other form of Contract approved by Legal Services) for more complex requirements, or where the level of risk needs to be addressed.</li> </ul>	Advertising not required where quotations are by invitation only from particular or pre-selected Suppliers.  Where open competition takes place then a Below	Self-service via the <a href="#">Procurement System</a> and in line with the Rules and <a href="#">Procurement Code</a> . Must be visible on the Contract Register to meet transparency code.  Must publish a Regulated Contracts Details Notice on the

	option.	Excluded or are Excludable. Ensure conflict of interest is assessed.	bidder must ask for best and final offer to obtain VFM. Refer to the Construction Guide for Works Contracts.	Please also refer to Rule 31 for requirements for sealing. Ensure added to the <a href="#">Key Decision List</a> if Contract award is over £500,000 or procurement costs are over £500,000.	Threshold Tender Notice must be published. See <a href="#">Procurement Code</a> . <b>In all cases</b> must publish a Regulated Contract Details Notice.	Central Digital Platform via the Procurement System for award.
Contracts above £100,000 to PA23 Threshold <sup>3</sup> for Supplies and Services  Or  £500,000 to Procurement Legislation Threshold for Works.  Or	5 quotes.  2 Local Suppliers where possible.  Where VFM is better met by going to the open market then this must be the first option.		If less than five quotes are <b>received</b> the Service must seek the relevant level of approval within their Service to award and must ensure that VFM has been demonstrated. The decision must be recorded in writing and the decision retained in the <a href="#">Procurement System</a> .  The decision must be recorded in writing and all documentation supporting the decision retained in the	Up to £500,000: <ul style="list-style-type: none"> <li>Signature on Contract Template (or other form of Contract approved by Legal Services) or sealed by Legal Services if required</li> </ul> Over £500,000: <ul style="list-style-type: none"> <li>Contract Template (or other form of Contract approved by Legal Services) sealed by Legal Services.</li> </ul> Please refer Rule 31 (requirements for sealing)	Advertising not required where quotations are by invitation only from particular or pre-selected Suppliers. Where open competition takes place then a Below Threshold Tender Notice must be published. <b>In all cases</b>	Self-service via the <a href="#">Procurement System</a> and in line with the Procurement Legislation. Must be visible on the Contract register to meet transparency regulations.  Must publish a Regulated Contract Details Notice on the Central Digital Platform via the Procurement System for award.

<sup>3</sup> \*The Procurement Legislation thresholds change regularly, so please refer to the Procurement Code or intranet pages for up-to-date figures.

£100,000 to Light Touch Threshold for Light Touch Services			<a href="#">Procurement System</a> .  Once selected winning bidder must ask for best and final offer to obtain VFM.  Refer to the Construction Guide for Works Contracts.		must publish a Regulated Contract Details Notice.	
<b>Public Contracts Process</b>						
Above Procurement Legislation Threshold <sup>4</sup> for Goods, Services and Works and Light Touch	Follow Procurement Legislation processes.  Consider how to develop local market within the procurement and social value.	Ensure Suppliers meet conditions of participation and evaluation criteria.  Check that Suppliers are not on Debarred list or should be Excluded or are Excludable.  Ensure conflict of interest is assessed.	A fully compliant process must be carried out in accordance with the processes set out in the PA23 for Public Contracts. Possible routes to market: <ul style="list-style-type: none"> <li>• Open Procedure</li> <li>• Competitive Flexible Procedure</li> <li>• Frameworks</li> <li>• Dynamic Markets</li> <li>• Light Touch</li> </ul>	Up to £500,000: <ul style="list-style-type: none"> <li>• Signature on Contract Template (or other form of Contract approved by Legal Services) or Sealed by Legal Services if required</li> </ul> Over £500,000: <ul style="list-style-type: none"> <li>• Contract Template (or other form of Contract approved by Legal Services) sealed by Legal Services</li> </ul> Please refer to Rule 31. Ensure added to the <a href="#">Forward Plan</a> if award is over £500,000.	Notifications must be published in line with the PA23 and the <a href="#">Procurement Code</a> . (See Light Tough Code) for all Notifications. Notifications apply if Procurement Process is Terminated. Standstill periods must be	Project managed by Procurement Services with engagement from Legal Services as appropriate.  All procurements over the PA23 Threshold must follow processes set out in the PA23 and the <a href="#">Procurement Code</a> .  Service departments are responsible for: <ul style="list-style-type: none"> <li>• Specification</li> <li>• Governance &amp; authority</li> </ul>

<sup>4</sup> \*The Procurement Legislation thresholds change regularly, so please refer to the Procurement Code or intranet pages for up-to-date figures.

					followed.	• Evaluation
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## **21. Provider Selection Regime (PSR) – Rule 21**

21.1 See PSR Code for specific elements relating to the PSR.

## **22. Light Touch Services – Rule 22**

22.1 See Light Touch Code for specific elements relating to Contracts covered by Light Touch Services arrangements.

## **23. Notifications – Rule 23**

23.1 The PA23 places more emphasis on transparency and stipulates that notices are published at stages throughout Contracting activity. Service Departments must ensure that these notices are adhered to and carried out in accordance with the PA23 to ensure compliance to Council Rules and Procurement Legislation.

23.2 As set out in the Rules the Council does not require advertisement of opportunities for Regulated Below Threshold Contracts where quotation is by invitation only. Where VFM is better delivered through an open opportunity to the market then Service Departments are expected to carry out open competition. Service Departments carrying out open competition for a Regulated Below Threshold Contract must ensure that the necessary notices are published for this route to market. Contact Procurement Services.

23.3 Service Departments must ensure that the minimum number of Suppliers are invited (see Rule 20) and that a variety of Suppliers are invited. Non-compliance is monitored and reported.

23.4 Service Departments **MUST NOT** invite the same Suppliers to bid for opportunities on a regular basis as this may be seen as aggregation or anti-competitive, and open to challenge. If the same Suppliers are needed for the same provision on a regular basis, then Service Departments must set up a framework for the type of Suppliers they are using repeatedly. Procurement Services may review practices within Service Departments who are misusing this Rule.

23.5 Due to the emphasis on transparency, the current procurement legislation requires the Council to inform the market at different milestones throughout the procurement process, and changes to the Contract post procurement.

23.6 Please refer to the PA23 for all Notifications, and the Procurement Regulations 2024 for the format of the Notifications. Notifications must appear on the Central Digital Platform prior to publication on other platforms.

Notifications are now required at the following points. Not all of these apply at all levels of procurement. See table below:

Procurement Lifecycle	Notices for Regulated Below Threshold Contracts	Mandatory or Optional	Contract Brief Description	When:
Plan	Below Threshold Tender Notice	Mandatory If carrying out an open process	A notice inviting tenders or quotations for Contracts with an estimated value below the relevant threshold	Prior to starting procurement for a Regulated Below Threshold Contract via <b>open process</b>  For all Regulated Below Threshold Contracts that are advertised (i.e. not where tenders are invited from particular or pre-selected Suppliers)
Procure	Contract Details Notice- Below threshold	Mandatory	A notice setting out that the Council has entered into a below threshold Contract	For all Regulated Below Threshold Contracts (above £30k and below threshold) as soon as reasonably practicable after entering into the Contract
Procurement Lifecycle	Notices for Covered Contracts	Mandatory or Optional	Contract Brief Description	When:
Plan	UK1	Mandatory	List of all procurement projects for	Within 56 days of the start of the

	Pipeline Notification		Contracts over £2m to be reprocured in the next 18 months.	financial year.
Define	UK2 Preliminary Market engagement Notice	Mandatory* *Unless set out in the tender documentation and Tender Notification as to why	A notice to announce that the Council is planning to conduct, or has conducted, a pre-market engagement exercise Contract	Before publishing a tender notice for all Covered Contracts (above threshold modification). Mandatory for covered procurements if a preliminary market engagement is carried out unless the Council can provide the justification for not doing so in the tender notice.
Procure	UK3 Planned Procurement Notice	Optional	A notice setting out the Council's intention to commence a procurement in the future	If intention is to reduce the procurement timescales, it must be published at least 40 days but no more than 12 months before the tender notice is published
Procure	UK4 Tender Notice	Mandatory	A Notice setting out the Council's intention to award a public Contract and commence a procurement process Contract	Prior to starting procurement exercise for Contract all Public Contracts (Above threshold procurement) Both for open and competitive flexible procedure.
Procure	UK5 Transparency Notice	Mandatory (Except for User Choice Contracts)	A notice setting out that the Council intends to make a Direct Award relying on the permitted grounds for a Direct Award in the PA23	Prior to award



Procure	UK6 Contract Award Notice	Mandatory (Except for User Choice Contracts)	A notice setting out that the Council intends to award a Contract	After issuing Assessment Summaries and prior to award of (Above threshold Contract) and the publication starts the Standstill Period
Procure	UK7 Contract Details Notice	Mandatory (Except for User Choice Contracts)	A notice setting out that the Council has entered into a Contract	Within 30 days beginning with the day the Public Contract is entered into (including Frameworks) or within 120 days for Light Touch Contracts.
	Redacted Version of the Contract And  Publication of Contract with modification	Mandatory (for all Contracts over £5m)	A copy of the Contract with a value above £5m must be published after:  (i) redacting sensitive commercial information; and  (ii) (ii) complying with the UK GDPR.  After Contract Modification	Within 90 days of the public Contract being entered into or within 180 days for Light Touch Services Contract.  Within 90 days from the date of the modification.
Procure	UK12 Procurement Termination Notice	Mandatory	A notice that the Council has decided to abandon a procurement after publishing a tender or transparency notice	As soon as reasonable after making the decision to abandon
Procure	UK 13 to 16	Mandatory	A set of notices on the establishment	When advertising,

	Dynamic Market notice		and running of Dynamic Markets	establishing, changing or terminating a dynamic market
Manage	UK8 Contract Payment notice	Mandatory (Except for Concession Contracts and Contracts awarded by Schools)	Details of payments of more than £30k made by the Council under a Public Contract	Quarterly
Manage	UK9 Contract Performance Notice	Mandatory for all Contracts over £5m in value let under PA23 or all Convertible Contracts where a modification takes the Contract value above £5m (Except for Light Touch Contracts. Concession Contracts are exempt from KPI publication but must publish for poor performance/breach)	A notice publishing information in relation to:  (i) Performance assessment against key performance indicators in the Contract  (ii) Supplier performance/breach of contract poor	(i) Once in every 12 months during the lifecycle of the Contract and on termination.  (ii) Where there is a breach or the Supplier is not performing, and has not improved, then before the end of period of 30 days starting on which a particular breach or failure to perform.
Manage	UK10 Contract Change Notice	Mandatory prior to a qualifying modification taking place (copy of	Contract Change notice: A notice setting out that the Council intends to modify a Public Contract or a Convertible Contract	Before modification of a Convertible Contract (Contract where the modification will result in a Regulated Contract being

		modified contract for Public Contracts over £5m to be published) (Except for Light Touch Contracts)		converted to a Covered Contract i.e. above threshold) Exemptions apply for certain modifications in value and term of the Contract – please see Rule 29.
Manage	UK11 Contract Termination Notice	Mandatory (Except for User Choice Contracts)	A notice setting out that a covered Contracts has been terminated or has expired or come to an end Contract.	Before the end of 30 days from the date of Termination (Termination means expiry, discharge, termination by a party, rescission or via a Court order).
Manage	UK17 Payments Compliance Notice	Mandatory (Except for Concession Contracts and Contracts award by Schools).	Details of the Council’s performance against the 30-day payment terms in Contracts.	Twice annually - Before the end of the period of 30 days beginning with the last day of a Reporting Period. Reporting Period is every six-month period ending on 31 <sup>st</sup> March or 30 <sup>th</sup> September.

## **24. Preliminary Market Engagement – Rule 24**

- 24.1 The PA23 requires that a preliminary market engagement notice is considered when carrying out Contracting Activity for a Public Contract. This is not a mandatory notice, but if one is not published, then the Tender Notice must explain why this was not published and noted in the Tender Documentation
- 24.2 Before publishing a Tender notice in respect of a public contract, a contracting authority may engage with suppliers and other persons for the purpose of:
- (i) developing the authority's requirements and approach to the procurement
  - (ii) designing a procedure, conditions of participation or award criteria
  - (iii) preparing the tender notice and associated tender documents
  - (iv) identifying suppliers that may be able to supply the goods, services or works required
  - (v) identifying likely contractual terms
  - (vi) building capacity among suppliers in relation to the contract being awarded.
- 24.3 Service Departments MUST not use preliminary market engagement as a method of restricting or selecting Suppliers.
- 24.4 Care must be taken to ensure that Suppliers that attend preliminary market engagement are not given unfair advantages to those that are invited to bid but did not attend.

## **25. Receipting and Opening of Tenders and Quotes – Rule 25**

- 25.1 LTP must be used for all Contracting Activity projects over £5,000. This ensures that the opening of tenders is fully audited and complies with e-tendering regulations.
- 25.2 If there are situations where it is felt that the LTP cannot be used, then Procurement Services must be contacted, and this discussed. In all cases the Contract must be recorded in the LTP if let via an external portal.
- 25.3 There are regulations around using electronic tendering which must be complied with. Using the LTP protects the officer, Service Department and Council from risk of challenge from Suppliers as it provides a safe and complaint procurement process which is fully audited and prevents the seeing of bids from Suppliers prior to other Supplier bids. It is recommended to use the Procurement System for ALL competitive procurement.

25.4 When setting the end date and time for a tender it is good practice to make these within working hours and when the commissioner is available to respond to last minute issues or questions, eg not at the end of the working day.

25.5 The same applies to end dates of Contracts, these should be working days.

## **26. Award Criteria and Evaluation – Rule 26**

26.1 The Council has developed a set of **Procurement Principles** which cover evaluation criteria. These must be followed in all cases unless an exception is applied for via PAG.

26.2 The Council has mandated that Price should be no less than 70% of the evaluation criteria, (i.e Quality/Price ratio).

26.3 For Regulated Below Threshold Contracts the Council may not restrict the submission of tenders/ quotations by reference to an assessment of a Supplier's suitability to perform the Contract. This includes:

- (i) Legal, economic and financial capacity
- (ii) Technical and professional ability

26.4 This restriction does not apply in relation to Works Contracts over the value set out in the Procurement Code, or Contracts awarded in accordance with a Framework.

26.5 Evaluation criteria must be clearly set out in the tendering documentation and must:

- (i) relate to the subject matter of the Contract,
- (ii) be sufficiently clear, measurable and specific,
- (iii) be proportionate having regard to the nature, complexity and cost of the Contract, and
- (iv) comply with the rules on technical specifications as follows:
  - a) it must not refer to design, licensing model or description of characteristics where they could refer to performance or functional requirements,
  - b) it must not refer to a UK standard unless it permits an internally recognised equivalent or there is no such internally recognised equivalent,
  - c) if it refers to a UK standard, it must specify that equivalent standards will be accepted and may require certification to confirm the equivalence, and

- d) it may not refer to a particular trademark, trade name, patent or type, place of origin, producer or supplier unless necessary to make the requirements understood, and if so, it must allow for equivalents.
- 26.6 Bids can only be evaluated on the pre-determined evaluation criteria set out in the Tender documentation (unless permitted within the Flexible Competitive Procedure), and the written responses from the Supplier. Refer to the [Evaluation Guide](#) for more information.
- 26.7 Award Criteria in reference to the subject-matter of a Contract includes a reference to
- (i) the Goods, Services or Works to be supplied under the Contract, including in respect of any aspect of their production, trading or other stage in their life-cycle
  - (ii) how or when those Goods, Services or Works are to be Supplied
  - (iii) the qualifications, experience, ability, management or organisation of staff where those factors are likely to make a material difference to the quality of goods, Services or Works being supplied
  - (iv) price, other costs or value for money in all the circumstances.
- 26.8 Ensuring written evidence for the individual Supplier evaluation, consensus scores and the reasons for these is documented via moderation records is strongly recommended by Procurement Services. If there is a challenge to the evaluation process, these may be needed and can also be requested under a Freedom of Information request. All evaluation documentation must be uploaded into the LTP for audit trail (these are not in the public domain) and ensure that all documentation relating to the Contracting activity is maintained in one place to meet retention policies and record keeping obligations under the Procurement Legislation.
- 26.9 Where evaluation process is to include Supplier presentations or Supplier interviews then these must be clearly stated how they will be carried out, evaluated and scored within the Council's tender documentation. It is important to ensure that there is a 'script' to ensure equal, fair, and consistent assessments between Suppliers, and should disclose the requirements and any questions to be raised prior to a Supplier presentation or interview. Note, the use of Supplier presentations should be very carefully considered as they can be very subjective and difficult to ensure all presentations are managed the same. Procurement Services recommend an independent moderator from Procurement Services.

26.10 Note: Service Departments **MUST NOT** use 'average scoring' when carrying out evaluation. Procurement case law has shown this to be bad practice and may invalidate the contract award if challenged. When using an evaluation panel, all panel members must be technically competent and score individually prior to attending a moderation session(s) to agree consensus scores for each element /question. To ensure transparency, equal treatment, and objectivity that the reasons for the scores given and what moderation took place must be recorded and filed in the Procurement System. Do remember this is information could be subject to an FOI request and will be needed for the Assessment Summaries.

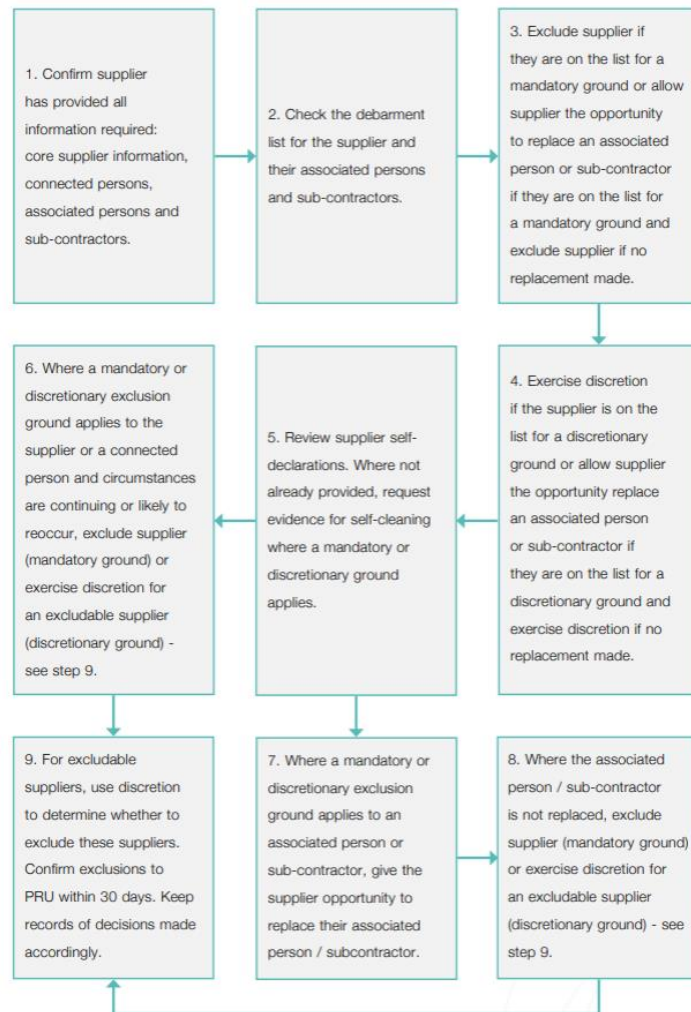
26.11 For Public Contracts, information at evaluation stage is needed for the Assessment Summaries at Contract Award, therefore it is vital that robust processes and evidence is maintained.

26.12 In assessing Tenders, Service Department:

- (i) must disregard any Tender from a Supplier that does not satisfy the conditions of participation set out in the Tender documents
- (ii) may disregard any Tender from a Supplier that
  - a) is not a United Kingdom Supplier or treaty state Supplier, or
  - b) intends to sub-Contract the performance of all or part of the Contract to a Supplier that is not a United Kingdom Supplier or treaty state Supplier.
- (iii) may disregard any Tender that offers a price that the Council considers to be abnormally low for performance of the Contract, provided the requirements set out in Procurement Legislation are met
- (iv) may disregard any Tender which breaches a procedural requirement set out in the Tender notice or associated Tender documents.

26.13 Exclusion and Debarment

26.14 The PA23 asks that checks are made to ensure that the Council is not Contracting with a Debarred or Excluded Suppliers or Subcontractors or Connected Persons to a Supplier. Checks should also be carried out to establish if a Supplier, Subcontractor or Connected Persons are Excludable Supplier. Prior to excluding an Excluded Supplier or an Excludable Supplier, self-cleaning must process must be followed. Please refer to the [Exclusion Checklist](#) and Procurement Services.



## 26.15 Excluded Suppliers

### 26.16 Service Departments must exclude a Supplier where:

- (i) A mandatory exclusion ground applies to the Supplier or an associated person and
- (ii) The circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again or
- (iii) The Supplier or an associated person is on the debarment list by virtue of a mandatory exclusion ground. Service Departments **MUST** contact Procurement Services prior to starting any actions here.

### 26.17 Excludable Supplier

26.18 The Service Departments **MAY** exclude a Supplier where a discretionary exclusion ground applies]. Suppliers can be excluded at the commencement of



the process, during the process or post award. Service Departments MUST contact Procurement Services prior to starting any actions here.

26.19 Service Departments must use [Exceptions and Waiver Form](#) and present at PAG where they want to award to an Excludable Supplier. The Council must request details of any intention to use sub-Contractor, where a sub-Contractor is an Excluded or Excludable Supplier, the Supplier must be given an opportunity to replace the Sub-Contractor.

26.20 Improper Behaviour

26.21 Suppliers that have acted improperly in relation to the award of a public Contract

- (i) Failing to provide information requested by the Council
- (ii) Providing information that is incomplete, inaccurate, or misleading
- (iii) Accessing confidential information or
- (iv) Unduly influencing the Councils decision making
- (v) Obtained an unfair advantage, wither by participating in pre-market engagement or through a conflict of interest, that cannot be otherwise avoided.

26.22 Where the Service Department decides to exclude a Supplier they must use the [Exceptions and Waiver Form](#) and present at PAG to review the decision and then ensure that the relevant authority is informed as set out in the current Procurement Legislation. The relevant authority will carry out an investigation before adding them to the Debarment list.

## **27. Contract Award and Execution – Rule 27**

27.1 Contracts must be awarded in accordance with the Rules and UK regulations. The Rules follow the PA23 and ensures that the Council is compliant in all Contracting activity. This includes adherence to any Standstill Periods that apply within the PA2023.

27.2 In all cases approval to award Contracts must be sought and at the appropriate level of authority, for the value of the Contract. This evidence should be retained and loaded into the LTP.

27.3 Awarded Contracts must be signed and where necessary sealed by Legal. These must be scanned and uploaded to the LTP. See Rule 31

27.4 Letter of acceptance & Limited Liability

- 27.5 Letters of acceptance/ intent are generally not used by the Council. There are situations where these might be necessary. Agreement from Head of Legal Contracts Team or Director of Legal and Governance Services should be obtained and must be written by Legal (to comply with legislation).
- 27.6 Limited Liability Letters may only be used where there is a requirement for urgent Works mobilisation (not simply to allow site access) and only if such has been approved by the Director of Law and Governance (unless a previously approved template is used) and the appropriate authority report in accordance with the Councils Constitution has been signed off.
- 27.7 Letters of acceptance must be set out on a proper template agreed by Legal. This should include (but not limited to):
- (i) Price,
  - (ii) Duration
  - (iii) Supplier
  - (iv) What is to be supplied/delivered
- 27.8 Letters of acceptance are only binding on the Council and the Contracting party where the letter expressly states that their Tender has been accepted and the Council agrees to pay them the tender sum. The letter of acceptance should normally seek to incorporate the terms and conditions of the relevant Council standard Contract or relevant industry standard Contract (e.g. JCT, ICE, NEC) indicating the Council's intention to enter into a formal, written Contract with the Contracting party, to carry out the Works/Services or supplies described in the letter, such Works/Services or supply of Goods to commence on a date specified or at any rate before the parties execute the formal, written Contract, until then the Contracting parties obligations to the Council shall be governed by the Invitation to Tender documentation.
- 27.9 Letters of acceptance are not a substitute for a signed Contract, especially for Contracts under seal.
- 27.10 These should also be loaded into the London Tenders Portal for audit requirements.

## **28. Post Tender Negotiations – Rule 28**

- 28.1 Post-Tender negotiations for Public Contracts, may only take place if using the Competitive Flexible Procedure, and the Tender documents expressly allow for negotiation.
- 28.2 For Regulated Below Threshold Contracts, best and final offer must be requested.

## 29. Contract Modifications, Novation & Termination to Contracts – Rule 29

- 29.1 Members and Senior managers are increasingly asking for better and more transparent decision-making regarding extensions and variations. These Contract Modifications can commit the Council to Contract and budget expenditure, and often little or no review has been undertaken to ensure that the Contract still delivers VFM. Contract extension clauses are an opportunity to review the Contract, and if needed reduce or reconfigure the delivery for efficiency or savings.
- 29.2 Some Contract Modifications are subject to notifications under the Procurement Act 2023. It is important to ensure that the relevant [Contract Extension Variation form](#) is completed and presented at PAG for compliance.
- 29.3 The PA23 has new legislation relating to Contract Modification.
- 29.4 Contract Modifications can be classified as but not limited to:
- (i) Changes to the term (extension)
  - (ii) Changes to service offer or increasing/decreasing the scope (variation)
  - (iii) Changes to KPI's (variation)
  - (iv) Reprioritising of Services (variation)
  - (v) Change of provider or name of Supplier (novation)
- 29.5 Where the original Contract value is over £100k then the Service Department **must** complete the [Contract Extension Variation form](#) and send to Procurement Services for presentation at PAG. This will ensure a review is carried out, and that an extension is appropriate and compliant.
- 29.6 Where Service Department have not engaged with Procurement Services on a Contract Modification then procurement implications will state this and will not provide assurance of processes being followed. Service Departments that have not engaged will be required to carry out any notifications regarding the Contract modification.
- 29.7 Service Departments must start to review the Contract for extension in plenty of time so that should it be agreed that the extension will not be taken, there is time for a re-procurement. This can be as early as 24 – 12 months prior to the extension.
- 29.8 Any changes to Contract must be in line with the CPR's, the Procurement Legislation that covers that Contract, and properly recorded.

29.9 Contracts covered by the Public Contract Regulations 2015 then the modification must be in line with this legislation and cannot be more than 50% of the original Contract value or take the Contract over the threshold.

29.10 For Contracts covered by the PA23 then the permitted modifications are set out in the CPRs table Rule 29.5. Regulated Below Threshold Contracts are also now covered by the Act. If a Regulated Below Threshold Contract is modified and it takes the value above the procurement threshold, then it becomes a converted Contract and must follow rules for covered Contracts going forward.

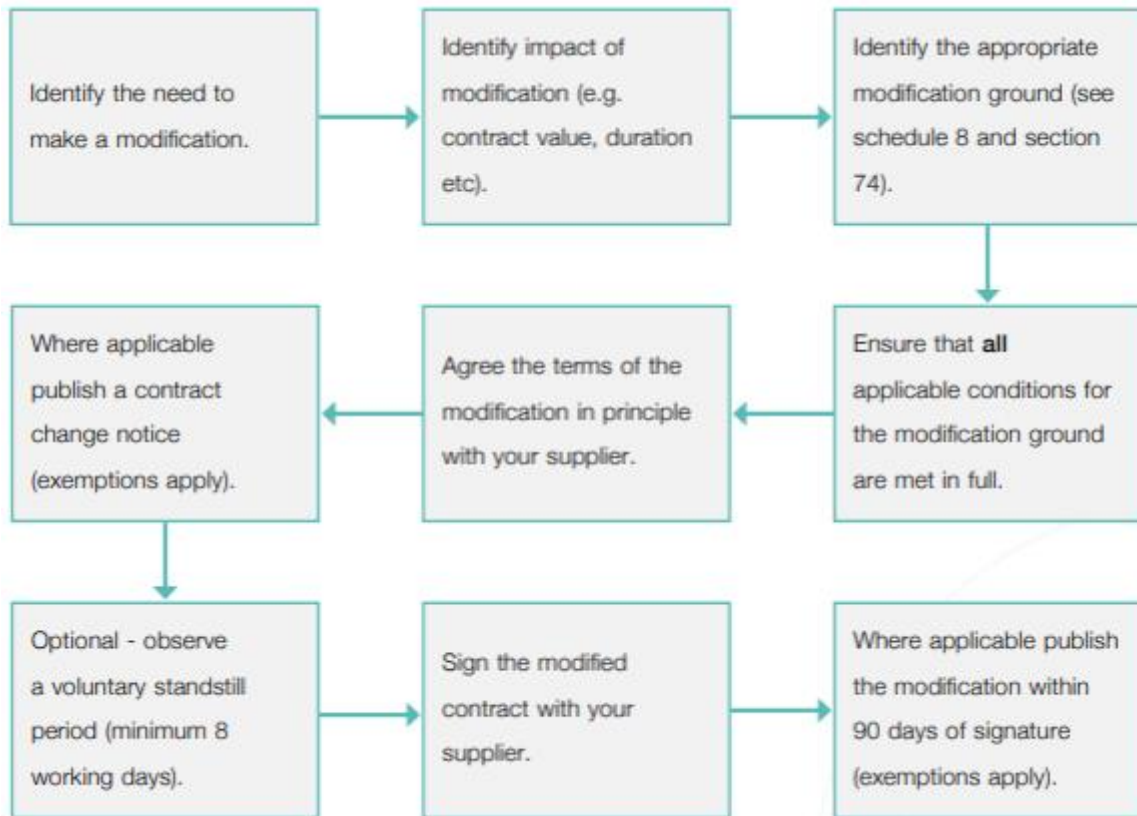
29.11 Conversations and negotiations can be entered into with a Supplier vary the contract and can be agreed if mutually agreeable to both parties. Any changes must be within the core delivery of the contract. For example, a Supplier of food could not be asked to include the supply of stationery in their contract.

29.12 Remember that the variation of a contract to include additional requirements may be a lack of competition and may be challenged by other Suppliers. In all cases best value must be obtained.

29.13 Variations must first:

- (i) Have budget approval
- (ii) Demonstrate best value
- (iii) Have appropriate approval to proceed
- (iv) Must be in line with the existing contract
- (v) Must demonstrate VFM
- (vi) Be within the CPR's

29.14 Contract Modification Workflow



29.15 Variations must follow the same approval process as letting a new Contract; and must be updated in the LTP. This is the responsibility of the Service Department to do this, unless engaged via PAG.

29.16 The Service Department must show that a full and thorough review of the Contract has taken place and justification that the Contract is still viable, performing well, and continues to meet the Councils objectives, prior to extension.

29.17 Contract Novation's

29.18 Service Department must complete the [Contract Novation Pro-Forma and follow the Novation process](#) for **ALL** Novation's (set out below) as these are now subject to Procurement Legislation, and notifications.

29.20 A Contract Novation involves the transfer of a party's rights and obligations under a Contract to a third party. Technically, Novation cancels the original Contract and replaces it with a new Contract, under which a third party takes up rights and obligations which mirror those of the outgoing party. The outgoing party surrenders its rights and is released from its obligations in the process.

This means where a Contract with the Council is novated, there are three parties involved - the Council, the existing Supplier, and the new Supplier.

29.21 Where the Service Department decide to Novate the Contract then Council Governance must be followed to enter into a new Contract with the new Supplier. Where the Contract is over the KD threshold then a KD report will be needed.

29.22 Service Departments must ensure:

- (i) There is a copy of the original Contract
- (ii) There is a Novation agreement (signed by all three parties)
- (iii) Due diligence & financial checks have been carried out on the new Supplier
- (iv) Governance as per department's Scheme of Delegation (SOD), and Council Policy See Rule 11
- (v) The LTP and other records are updated
- (vi) The new Supplier will only be set up if the LTP is set up correctly
- (vii) Close the old Supplier off

29.23 Termination

29.24 Under the PA23 all Public Contracts that are terminated or come to a natural end require a Termination Notification. Speak to Procurement Services.

29.25 All Terminations of Contracts over £100k must come to PAG via the [Contract Termination Pro-Forma](#).

## **30. Contract Management – Rule 30**

30.1 For all Contract Managers are expected to ensure that all costs are monitored, that any overspend is approved by Finance and through the relevant Council Governance. That regular reviews are carried out and that performance and delivery are managed. A Contract review schedule should be in place for those Contracts that are Platinum or Gold Council.

30.2 Contract Management is the responsibility of the Service Department. For Contracts over **£100,000** (Whole life Contract value) a nominated Contract Manager must be allocated on the London Tenders Portal. This person **must** have access to the [Procurement System](#) and is responsible for maintaining all records in the LTP appertaining to the Contract.

30.3 Public Contracts over £5m must have a nominated Contract Manger in the [Procurement System](#) and comply with the PA23 requirements on KPI's and Performance Management Reporting, with evidence uploaded to the

[Procurement System](#) and publication of a redacted copy of the signed Contract. If a Public Contract over £5m which is covered by the PA23 defaults or is poorly performing, then contact Procurement Services as Notifications are needed.

30.4 Performance must be measured against the criteria set out

Rating	Description
Good	Performance is meeting or exceeding the key performance indicators
Approaching target	Performance is close to meeting the key performance indicators
Requires Improvement	Performance is below the key performance indicators
Inadequate	Performance is significantly below the key performance indicators
Other	Performance cannot be described as good, approaching target, requires improvement or inadequate.

30.5 Contract Management is vital to ensure delivery of the Services and that VFM is maintained. All Contract Managers must follow the [Councils Contract Management Framework](#), that sets out what activities are expected to carry out for effective Contract management.

30.6 All Contracts over £30k must be classified using the [Contract classification tiering tool](#), this will determine the classification and this will drive what actions are required under the [Councils Contract Management Framework](#). **A copy must be sent to procurement services and a copy uploaded to the portal.** All Contracts over £30k must be classified using the [Contract classification tiering tool](#), this will determine the classification and this will drive what actions are required under the [Councils Contract Management Framework](#). **A copy must be sent to Procurement Services and a copy uploaded to the portal.**

30.7 For Contracting Activity carried out by Procurement Services at award a Gateway 4 Report will be completed in conjunction with the Service Department to ensure that a Contract Management plan is set up and ensure that the Contract Manager is familiar with the Contract terms. It is vital to ensure that the Contract is signed and uploaded to the [Procurement System](#). That the Contract Manager is fully conversant with the terms of the Contract.

30.8 Service Departments are expected to present annually for all [Platinum and Gold](#) Contracts, performance reports to their Executive Director or Director. Service Departments are expected to present performance reports annually for all [Platinum and Gold](#) Contracts, to their Executive Director or Director.

- 30.9 Issues of poor performance should be dealt with promptly and professionally with recorded actions and timescales for improvement.
- 30.10 Withholding payment could be in breach of Contract and is not advised unless Legal advice and been sought.
- 30.11 It is the responsibility of the Service Department to ensure that Contracts due to expire are put on their work plan to replace the Contract. Service Departments will be held to account for Contracts that have expired, and no action has been taken. Suppliers that have active spend that cannot be linked to a Contract in the Contracts Register will be blocked as non-compliant.
- 30.12 Service Departments must ensure, specifically for high value, high-risk Contracts and where Contracts are registered on their Business Impact Analysis Form, a signed copy of the Contract:
- (i) Is in the [Procurement System](#)
  - (ii) Is on the Corporate Contract Register
  - (iii) Has KPIs and regular reviews, both for performance and commercial elements; and
  - (iv) Regular monitoring of Risk is carried out via the Supplier Resilience Tool; and copies uploaded to the [Procurement System](#) and sent to Emergency Planning if on the BIA.
- 30.13 It is recommended that Contract Managers use the [toolkits](#) on the Procurement Services intranet site for Contract meetings and minutes to ensure all elements are covered.
- 30.14 Social Value commitments in Contracts must be measured and monitored as this formed part of the evaluation criteria, specification and Contract.

## **31. Record Keeping – Rule 31**

- 31.1 It is recommended that Contract Managers use the [toolkits](#) on the Procurement Services intranet site for Contract meetings and minutes to ensure all elements are covered.
- 31.2 Keeping records of Contracts is vital and over the PA23 threshold as part of the regulations. For information on how long records should be kept please refer to the [Council's Records Retention Schedule](#).
- 31.3 As a minimum, all documentation relating to the procurement project must be held on the [Procurement System](#). As this is part of the CPRs Service Departments will fail audits where this cannot be demonstrated.



- 31.4 If the Contract is over £500,000 then the legal department will need to hold the original of the Contract and must be signed under seal.
- 31.5 Ensure that awarded Contracts are registered on to the Corporate Contract register, by 'promoting' within the [Procurement System](#).
- 31.6 Legal Services are responsible for the process of sealing the Contracts. The affixing of the common seal of LBE is attested by an authorised officer from Legal Services, whose signature will be seen as executing the Contract on behalf of the Council. The Supplier must validly execute the Contract, and Legal Services should be consulted as to the appropriate execution clause'. The Supplier must affix its company seal, which must be attested by two directors or one director AND a company secretary.

## **32. Contracts and Terms and Conditions – Rule 32**

- 32.1 All Contracting Activity must have a written Contract setting out the terms and Conditions of agreement, in a form approved by Legal Services.
- 32.2 Legal Services has developed [Contract Templates](#) with standard terms and conditions which are available on the Legal Services intranet. For above Threshold Contract Legal Services to be instructed. For below threshold Contracts officers are expected to self-service and read the accompanying user guides on the same site. All Contracts over the PA23 threshold must be drawn up by Legal Services. Please factor in sufficient time for Legal Services to develop the Contract. Contracts must be ready at the time of going to the market.
- 32.3 Where Service Departments use the Purchase Order Terms, then a risk assessment must be carried out to ensure that the PO terms cover risk and Insurances. See Rule 20 for when the Purchase Order Terms can be used. For low value construction projects please use the low value construction template.
- 32.3 Council Contracts should wherever possible be fixed price with no indexation uplifts. Where it is necessary to include uplifts, these must be CPI. Where RPI or CPR + or other indices are required these need to be agreed via Procurement Services prior to awarding the Contract.
- 32.3 For Public Contracts over £5m as set out in **Rule 32.3**, a redacted copy of the Contract must be published within the timescales defined below.
- (i) For Contracts that are Light Touch Services, before the end of the period of 180 days beginning with the day on which the Contract is entered into.

- (ii) Otherwise, before the end of the period of 90 days beginning with the day on which the Contract is entered into.
- 32.4 In the limited circumstances where the Contract Templates are not appropriate (for example, call off Contracts from Framework Agreements, or construction Contracts) then Legal advice must be sought to ensure the Contract is in a suitable form.
- 32.5 A signed copy of the Contract MUST be obtained for all Contracting Activity. All signed copies MUST be uploaded to the LTP for reference.
- 32.6 Officer must be aware that a Contract can be verbal or implied, even if not formally signed.
- 32.7 Electronic invoicing is implied, and every Contract entered by the Council must accept and process for payment an electronic invoice to the Council for payment.
- 32.8 Payment terms are implied to be 30 days beginning with the day on which the invoice is received, except Concession Contracts and Schools Contracts, including sub-contractors.

### **33. Prevention of Corruption – Rule 33**

- 33.1 Officers must follow the [Councils Code of Conduct](#). It is important that officers do not accept gifts or rewards from Suppliers or potential Suppliers that may be an inducement or where information may be imparted that may give advantage to a bidder over another bidder. This may include pricing or design specifications.
- 33.2 The Council requires Members, employees and Suppliers working on its behalf to act with honesty and integrity always, when dealing with resources owned by the Council or those for which it is responsible. This includes the responsibility for ensuring that assets are safeguarded and that procedures exist within areas of their responsibility to prevent and detect fraud.
- 33.3 The Council actively encourages the reporting of concerns about fraud and corruption through the [Council's Whistle-Blowing Policy](#).
- 33.4 High standards of ethical conduct are mandatory. Staff shall take steps to ensure that their behaviour could not lead to accusations of corruption. Corrupt behaviour will lead to dismissal and is a crime under the [Bribery Act 2010](#) and Section 117 of the [Local Government Act 1972](#).
- 33.5 Service Departments or Officer that have any concerns over fraud or corruption must raise this under the Councils [Council's Whistle Blowing Policy](#).

- 33.6 Suppliers are expected to act with integrity and not try to influence decision making or put undue pressure on Council Officers. Suppliers can be Excluded for improper behaviour. See Rule 18 on Conflicts of Interest, and Rule 26 on Award Criteria.
- 33.7 All hospitality, gifts or other inducements received must be recorded in the Service Department's hospitality register.
- 33.8 Organised Crime
- 33.9 The Council needs to protect itself from organised crime. Where it is suspected that there is organised crime within the industry that a Service Department is procuring in, Procurement Services must be contacted, or the [Council's Whistle-Blowing Policy](#) used, to inform management. Officers need to be aware of the [Council's Anti-Money Laundering Policy](#); and ensure that any procurement/Contract award does not have implications for money laundering.
- 33.10 Areas to consider are:
- (i) Construction
  - (ii) Taxis
  - (iii) Cleaning

#### **34. Grant Funding – Rule 34**

- 34.1 All applications for grants must be in line with the Financial Regulations and must be recorded and reported to Finance to meet government regulations.
- 34.2 Any Contracting Activity that is to be funded by grant funding is subject to these Rules, and if over the threshold, submitted for timely entry onto the Annual Procurement Plan, to ensure resources available to support the forthcoming procurement.

#### **35. IR 35 – Rule 35**

- 35.1 In April 2017 the government introduced new taxation rules affecting those people who are self-employed Suppliers. It is important that officers or Service Departments letting a Contract for Services that IR35 is considered, especially if awarding the Contract to an SME or individual. Where the Rules are applied incorrectly the Council is liable to any miscalculation of tax.
- 35.2 From October 2020, the Chief Executive has banned the use of Bloom and other similar arrangements. Use of any vendor neutral arrangement including Matrix MM must be via [Exceptions and Waiver form](#), prior to any contact being let via

this route. Use of any vendor neutral arrangement including Matrix MM must be via [Exceptions and Waiver form](#), prior to any Contract being let via this route.

- 35.3 The Council has a policy of ensuring that all temporary staff are engaged through the Council's Vendor Neutral Supplier (Matrix) unless agreed with Head of HR or Director of HR & OD. Staff must be engaged through recruitment or through the Council's Vendor Neutral Supplier.
- 35.4 Procurement must only be used to procure Services and not to provide individual staff members. Officers must refer to the [Principles of Managing Agency Workers](#) and [IR35 HR guidance](#) before proceeding to procurement where IR35 may apply.
- 35.6 Before commencing Contracting Activity, officers must first consider if the person carrying out the work is likely to fall within IR35 regulations, speak to HR or carry out the test.
- 35.7 If the specification is based on a Job description or person specification, then this implies the role is inside IR35. Whether IR35 applies, should be ascertained at the point of identifying the business need. This way the Council can engage those operating outside IR35 in a compliant way. The evaluation process, therefore, should commence when the need for a resource has been identified and not a person (this is not needed if recruiting).
- 35.8 It should be completed, where there is an understanding that the market for Contractors who typically operate via Ltd companies whose preference often is to work outside of IR35. Members of the HR team will be able to advise on the circumstances which this type of review may be necessary).
- 35.9 The judging of status needs to follow the Councils Assessing IR35 Status guidance, to ensure Council guidelines and HMRC regulations are followed.
- 35.10 Evaluating whether a role would be employment if an intermediary were not in place, is not clear cut. That is why HMRC have lost some of their own court cases. It is a matter of judgement against a set of criteria. There are certain factors that typically would make a role more akin to employment than a business-to-business arrangement and these have been extracted below. It is also useful to consider 'the spirit' of the regulations and the key tests. Specifically:
  - (i) **Control:** Will management control be exerted over the person performing the role or will they be asked to manage and control others.
  - (ii) **Mutuality of Obligation:** Will the Authority feel obliged to pay the worker 'for being present' or will they be paid for work completed in the same way that a business is paid once a service had been delivered? Is

there an implied sense of an on-going Contract for work beyond the scope of the assignment? Will the person performing the role feel obliged to turn up – even if there is a pause in the project?

- (iii) **Part and Parcel:** Is the person treated as ‘part and parcel of the organisation’ (e.g. would they be asked to represent the organisation externally, make decisions about budgets and finances, be the ‘go to person’ for other staff, be part of a published management structure, have a P.A. or assistant)?
- (iv) **Substitution:** Will the Authority accept a suitable substitute should an individual be unable to continue with the project for any reason?

35.11 A questionnaire has also been included in the guide to help managers reflect on the ‘spirit’ of the regulations and make their final judgements.

35.12 There is an online Employment Status Service (ESS) test that provides the view of HMRC on whether a worker on a specific engagement/Contract should be classed as employed or self –employed for tax purposes.

35.13 Remember that the risk now sits with the Council, and we will be liable for any unpaid NI; therefore, if there is any doubt please speak to HR. <https://www.gov.uk/guidance/check-employment-status-for-tax>

35.13 The employment check must be uploaded into the [Procurement System](#) as evidence where a consultant/individual has been procured. This is particularly important where the Supplier is a Personal Service Company.

## 36. Consultation – Rule 36

36.1 For Housing procurement Contracts the [Commonhold and Leasehold Reform Act 2002](#) (CLRA) may apply. Where applicable, officers must undertake the required consultation with leaseholders. Leaseholders can nominate Suppliers for inclusion on a tender list for specific, below PA23Threshold, procurement projects. Officers must liaise with Home Ownership Services to clarify the requirements under the CLRA before commencing with any procurement likely to affect leaseholders.

36.2 For all other procurement’s officers shall ensure that where applicable consultation with stakeholders is undertaken within the appropriate period of the procurement process.

## 37. Procurement Processes

37.1 The following sections are additional information that support the CPRs and Contracting activity.

## 38. Partnerships/shared services

- 38.1 Where the Council is working in partnership or in a shared service then the Rules still apply. Remember that there may be no procurement process to access a Pan London Agreement, but this is still entering into a Contract and therefore the Rules still apply. Governance still applies.
- 38.2 Also consider any partnerships that include staff and where these sit in the Contract.

## 39. TUPE

- 39.1 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) protect employees where there is either business transfer or a service provision change as defined under TUPE. Where the TUPE conditions are met, employment contracts will transfer over the new business owner/service provider.
- 39.2 Officers must ensure that appropriate provisions are included in Contracts to deal with staff transfer at both entering and exiting the Contract and, irrespective of whether TUPE applies on entry, if there are employees eligible for Best Value Direction pension protection then the appropriate pensions provisions will also need to be included. The Contract Templates contain suitable provisions to address TUPE.
- 39.3 If TUPE is likely to apply, Officers must also ensure that relevant enquiries are made and necessary information is provided during the procurement process, with advice being taken from Procurement and Legal Services, as well as Pensions Services where applicable.

## 40. Supplier Creation and Paying Suppliers

- 40.1 Once a Contract is awarded to a Supplier, they **MUST** be set up for payment in the Purchase Order System (Neptune). Suppliers must be set up and Purchase Orders **raised prior to any commitment of work or invoices**. All Suppliers set up via Contracting Activity should be paid via a Purchase Order and not AP or Purchase Card. The Council is bound by the prompt payment regulations and must pay properly rendered invoices within 30 days.
- 40.2 For Contracts over £5,000:
- (i) Send the [Commercial Supplier Request Form](#) through the Procurement System with the DN Ref on the form for security.
  - (ii) Email to [verdors@enfield.gov.uk](mailto:verdors@enfield.gov.uk) to expect the Supplier pack.

- 40.3 Suppliers will not be set up unless the LTP project is fully completed. This is detailed in the [LTP guidance](#).
- 40.4 For Contracts under £5,000
- (i) Complete the [Supplier request form](#) (with start and end date of Contract)
  - (ii) Attach quotation
- 40.5 Once the goods or Services specified in the Contract have been delivered or the term has come to an end, then the contract has ended. Where the spend exceeds the value of the procurement route the Supplier will be blocked and a new Procurement will be needed to unblock the Supplier.
- 40.6 Additional Services or goods need to be procured or a Contract Modification executed EG; delivery of 5 training sessions. At the end of the 5 session the Contract has been delivered and any additional Services must be re-procured or extended if this is within PCR's.
- 40.7 For the prevention of fraud, Suppliers that have not received a payment for over 14 months will be blocked, and a new procurement will be needed to unblock them.

## **41. Procurement Activity Below £5,000**

- 41.1 The portal must be used where the total cost of the Contract is above £5,000. The LTP can still be use below this where there is a need for transparency, to maintain a Contract on the register, or where a competitive process is taking place.
- 41.2 When not using the portal, the following are still required:
- (i) Written Specification
  - (ii) Contract (or use PO terms and conditions – if manages risk)
  - (iii) Evaluation criteria (probably only price)
  - (iv) Approval to procure and award
  - (v) Signed Contract at the end
- 41.3 For audit purposes and management of Contracts after procurement, it is recommended that Service Departments have a space in the departmental shared folder to store information. Alternatively use any work management system to hold the information.

## 42. Glossary Of Defined Terms

42.1 Where these Rules refer to approval required from a person in a specified role (e.g. Head of Procurement Services) such approval may be delegated to another officer by that person.

Advertising	Where Request for Quotations and Tenders are advertised to the open market for opportunity.
Aggregation	Is the requirement to add together the estimated value of separate Contracts for meeting a single requirement. Procurement Legislation expressly prohibits the splitting of requirements into smaller units or orders to avoid the process relating to Public Contracts.
Business Impact Analysis Form/ BIA	Business Continuity Form for Emergency Planning.
<a href="#">Bribery Act 2010</a>	Bribery Act 2010
<a href="#">Code of Conduct</a>	The Councils code of Conduct and how officers must carry out their duties in terms of conduct.
Concessions	A type of Contractual arrangement under which, rather than paying the Supplier to deliver a work or service, the Council grants the Supplier the right to exploit an opportunity and receive some or all of its income from third parties (e.g. the public), retaining the profit.
Connected Person	A person in relation to a supplier is a person with significant control over the supplier (as set out in Companies House). A Director or shadow director, a parent undertaking or a subsidiary. See Schedule 6 for full description
Consultation	A formal process to consult or discuss
Contract	Means an agreement between the Council and any other organisation, including another public authority, made by formal agreement or by issue of a letter of acceptance or official purchase order for Works, Supplies or Services.
Contracting Activity	Any action, process of decision making that relates to the creation of a Contract for the supply of Goods, Services or Works. Including all elements of the sourcing cycle from market research, engagement, Tendering, evaluation, award, and Contract management to the end of the Contract term including Termination.
Contract Management	The management and monitoring of a Contract to ensure delivery and performance; including commercial elements and payments.
Contract Manager	Person responsible for the management of Council Contract to ensure delivery of performance and outcomes.



Contract Management Framework	The Councils Contract management framework, that sets out requirements for Service Departments to ensure that Contracts are effectively managed to deliver VFM.
Contract Templates	Standardised Contracts to be used by Service Departments and procuring officers that have been drawn up by Legal Services for the Contracting of Goods and Services (for Works, industry standard construction contracts such as the JCT or NEC suite are generally used)
Converted Contract/ Convertible Contract	A below Threshold Contract, that after modification has become a Public Contract, and therefore has become a Converted Contract.
Corporate Contract Register	Corporate Register of Contracts held by Procurement Services within the <a href="#">Procurement System</a> .
<a href="#">Council's Constitution</a>	Documents (s) that sets out how the Council is governed.
Debarred Supplier	Supplier that is on the Cabinets Office list of Debarred suppliers.
Directors	Means Directors and Executive Directors of Enfield Council
Direct Award	Entering into a Contract where no competition has taken place.
Dynamic Market	Arrangement for the purpose of the Council awarding Public Contract by reference to Suppliers' participation in the arrangements.
Exception	Contracting Activity where Direct Award is permissible in certain circumstances.
Excluded & Excludable Suppliers	Supplier that can be Excluded in line with the discretionary or mandatory requirements for exclusion.
Exempted Contracts	Contracting Activity that is not covered by the Procurement Act 2023.
Extension	Facility to extend a Contract term.
Financial Regulations	Financial regulations forming part of the <a href="#">Council's Constitution</a> ; that set out financial management regulations for the council.
Framework Agreement	An agreement with Suppliers which sets out the terms and conditions under which specific purchases can be made throughout the term of the agreement and which where necessary has been Tendered in accordance with Procurement Legislation.
Goods	Tangible products that can be consumable or non-consumable.

Council Governance Reports	Reports set out as standard templates by Governance Department to be used for decisions and authority, or for Key Decision Process. See <a href="#">Non-Key Officer Report</a> or Standard Corporate Report Template
Hamburg	Contracts entered into between two or more contracting authorities with the aim of achieving common objectives. No more than 20% of the activities are intended to be carried out other than for the purpose of the public functions of the authorities.
Health and Wellbeing Strategy	Council Policy to improve the health and wellbeing of staff and residents of the borough
Health Services	Contracts that provide Services relating to health care provision but not social care.
Horizontal Arrangement	Contract or arrangement with another authority with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions, solely in the public interest.
IR35	HRMC regulations regarding working regulations and TAX for agency workers, interims and consultants.
Key Decision	Council's governance process for projects that meet the Key Decision criteria.
Known Risk	Means: <ul style="list-style-type: none"> <li>a) Could jeopardise the satisfactory performance of the contract, but</li> <li>b) Because of its nature, could not be addressed in the contract as awarded and</li> <li>c) Was identified in the Tender or transparency notice for award, detailing a description of the risk and possibility of modification</li> </ul>
Legislation	Legal regulations set out by the Government.
Light Touch Services	The Services set out in the Public Procurement Regulations 2024 that cover areas in Schedule 3; namely Adult social care and other areas listed in schedule 3.
Local Supplier	Supplier that is based in the London Borough of Enfield
Modern Slavery Charter	Charter signed by the Council to support the eradication of Modern Slavery; specifically, within the Council supply chain.
<a href="#">Non-Key Officer Report</a>	Part of the <a href="#">Reports Process for Non-Key Officer Decisions</a> .
Notification	A Notice placed in the public domain to notify the market of Contracting Activity to ensure transparency.
Novation	A Council Contract that is moved from one Supplier to another.
Open Framework	A scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.
Operational Processes	Processes that are not set out in the CPRs but support the process of Contracting Activity and are operational in nature.

Other Authority	Where a Standard Corporate Report Template is not used within a Service, the authority to procurement must be set out clearly in some other report, email or policy etc. (See Standard Corporate Report Template).
Performance Bond	A bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a Supplier.
Platinum or Gold Contract	Contract classified as Platinum or Gold that will be either high value, high risk, complex or all the aforementioned.
Price Quality Ratio	Award criteria set out in the Procurement Principles on the ratio of Price and Quality within a Tender.
Procurement Act Thresholds. Procurement Threshold	Threshold set over which the Procurement Legislation applies.
Procurement Act 2023 (PA23)	Procurement Legislation covering public procurement. Came into effect 28 <sup>th</sup> October 2024.
Procurement Assurance Group (PAG)	Procurement Assurance Group, that oversees procurement assurance, and robust procurement governance is in place.
Procurement Code	Document that supports the CPR's and sets out the processes and governance to be followed for all Contracting Activity. Provides more detailed information and links to supporting information to ensure compliance with these rules.
Procurement Legislation	Procurement Legislation covering Public Contract requirements for England. <ul style="list-style-type: none"> <li>• Procurement Act 2023</li> <li>• Provider Selection Regime</li> <li>• Public Contract Regulations 2015</li> </ul>
Procurement Principles	Set of Principles set out to meet Council requirements and may change from time to time.
<a href="#">Procurement System</a>	The Councils digital platform used for e-Tendering, Contract management and Contract register, used to meet legislative requirements.
Property Procedure Rules	Rules set out to manage property procurement and form part of the constitution
Provider Selection Regime (PSR)	Procurement Legislation came into effect January 2024. Covers Health Services Contracts. A set of rules for procuring health care Services set out in the Health Care Services (Provider Selection Regime) Regulations 2023.
Provider Selection Regime Code	Document that supports the CPRs and sets out rules and operational processes in relation to the PSR.
Public Procurement Regulations 2015	Procurement legislation came into effect 2015. Only applied to contracts let under this legislation.
Public Contract	A Contract of a kind specified in Procurement Legislation: A contract with a value of not less than the Procurement Threshold and: <ul style="list-style-type: none"> <li>• Not an Exempted Contract</li> <li>• A framework</li> <li>• A concession contract</li> </ul>

Regulated Below Threshold Contract	Contracts covered by the Procurement Act. Contracts let via Procurement Act 2023 which are below Threshold.
Quotation	A formal statement or promise usually submitted by a potential Supplier in response to a request for a quotation to supply specified Supplies, Works or Services required by a purchaser at specific prices within a specific time frame. (A quotation should be distinguished from an Estimate, which is not a fixed price). N.B. A Contract arises on acceptance of a quotation. Unless otherwise specified a quotation may be subject to the Supplier's terms and conditions of business and those terms and conditions become part of the Contract. Therefore, a request for quotations should specify that the quotation is subject to the Council's terms and conditions.
Resilience Requirements	Resilience Requirements needed by the Council to mitigate risk in emergencies
Schools Code	Code setting out modifications within the Procurement Act 2023 for Schools.
Services	Services such as maintenance of equipment, transportation, consultancy, technical Services. etc. as defined by the Procurement Legislation.
Service Department. The Service	Department or team within the Council, commissioning or carrying out Contracting Activity, who define the requirement and manage the Contract.
SME (Small, Medium Enterprise)	Small and medium sized enterprise supplier as defined in section 123 of the Procurement Act 2023.
Special Service Vehicle	A <b>special purpose vehicle</b> (also referred to as an SPV) is a legal entity created for a limited purpose. It's created by a parent or primary company to isolate financial risks. In other words, in the event a parent company were to go bankrupt, the <b>SPV company (which is essentially legally separate) will not be affected</b> .
Standard Corporate Report Template	<a href="#">Standard Corporate Report Template</a> to be used for any decision that meets the KD threshold of expenditure/savings of £500k or more and/or has a significant impact on the community in two or more wards. Should also be used for all Portfolio decisions whether they are Key or Non-Key
Supplier	A person/ company that will provide Goods, Service or Works to the Council. A bidder within a competitive process.
Supplies	Can be tangible object delivered in relation to a Contract. See also Goods.
<a href="#">Supplier Resilience Tool</a>	Tool used to ascertain the risk in the supply chain and the Supplier risk.
Transparency	Regulations relating to what is to be published in the public domain relating to Contracting Activity
Teckal Company	Is a specific type of entity used by Public Authorities to deliver local services without going through a competitive Tender Process.

Tender	A sealed bid submitted in response to an invitation to Tender, which invitation contains detailed information on requirements including a specification and terms and conditions
Termination	Where a Contract or procurement activity is stopped or ended (terminated).
The Council	London Borough of Enfield
Threshold	The value at which Contracting Activity must follow Procurement Legislation processes.
Value for Money (VFM)	Value for Money (VFM) is a balanced judgement about finding the best way to use public resources to deliver policy objectives.
Variation	Any alteration, modification, addition to or deletion of any requirement of the Contract terms or specification.
Vertical Arrangement	A contract between a contracting authority and a person that is controlled by— <ul style="list-style-type: none"> <li>b. the contracting authority,</li> <li>c. the contracting authority acting jointly with one or more other contracting authorities,</li> <li>d. another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or</li> <li>d. another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).</li> </ul>
Works	The outcome of building or civil engineering as defined under the Procurement Legislation.

### 43. Useful Documents

Document	Supports
<a href="#">Sustainable procurement policy</a> <a href="#">Sustainable procurement check list</a>	Council Policy on Sustainable and Ethical Procurement.
<a href="#">Checklist</a>	Ensures that all elements of the procurement activity are carried out compliantly. This should be used to support all procurement activity.
<a href="#">Contract Management Guidance</a>	Ensures that Contracts are managed effectively
<a href="#">Procurement Quick Quote guidance</a>	Helps guide you into what process to follow
<a href="#">London Tenders Guidance</a>	London Tenders Portal Guide. This is a step-by-step user guide for LTP.
<a href="#">Equalities in Procurement Guide to Suppliers.</a> <a href="#">Fairer Enfield Policy</a>	Equalities in Procurement guides to follow.  Enfield's Fairer Enfield Policy
<a href="#">Suite of Request for quotation documents</a>	Request for quotation pack to be used for self-service:  <a href="#">Self-Serve Process Flow</a> <a href="#">Specification Guidance &amp; Template</a> <a href="#">Invitation to quote (ITQ)</a> <a href="#">Contract Templates*</a>

#### 44. Terminology Changes from PCR 2015

<b>Public Contract Regulations 2015 Terminology</b>	<b>Procurement Act 2023 Wording</b>
"In-scope procurement"	"Covered procurement" - Section 1 (1) (b)/ Section 11 (1) PA23
"Prior Information Notice (PIN)"	"Planned Procurement Notice" – Section 15 (2) PA23
"Contract Notice"	"Tender Notice" – Section 21 (2) PA23
"Contract Award Notice"	"Contract Details Notice" – Section 53 (2) PA23
"Standstill Notice"	"Assessment Summary" – Section 50 (4) PA23
"Selection Criteria"	"Conditions of Participation" – Section 22 (2) PA23
"Most Economically Advantageous Tender"	"Most Advantageous Tender" – Section 19 (2) PA23
"VEAT Notice"	"Transparency Notice" – Section 44 (2) PA23
"Further Competition"	"Competitive Selection Process" Section 46 (10) PA23
"In-scope procurement"	"Covered procurement"
"Prior Information Notice (PIN)"	"Planned Procurement Notice"
"Contract Notice"	"Tender Notice"
"Contract Award Notice"	"Contract Details Notice"
"Standstill Notice"	"Assessment Summary"
"Selection Criteria"	"Conditions of Participation"
"Most Economically Advantageous Tender"	"Most Advantageous Tender"
"VEAT Notice"	"Transparency Notice"
"Further Competition"	
"Central Purchasing Body"	"Centralised Procurement Authority" - Section 1 (4) PA23
"Prompt payment report" (under Reg 113 PCR 2015)	"Payments Compliance Notice" - Section 69 (2) PA23
"Below-Threshold Procurement"	"Regulated Below-Threshold contract" – Section 84 PA23
"Award Decision Notice"	"Contract Award Notice" – Section 50 (4) PA23
"Economic and Financial Standing"	"Legal and Financial Capacity" – Section 22 (1) (a) PA23
"Technical and professional ability"	"Technical ability" - Section 22 (1) (a) PA23 ,Section 36(1)(b) & Section 85
"Direct Award (under FA, not mini competition)"	"Award Without Competition" – Section 45 (4) PA23
"Dynamic Purchasing System"	"Dynamic Market (in part)"- Sections 34 (8) & 35

	(1) PA23
“Evaluation Methodology”	“Assessment Methodology” – Section 23 (3) PA23
“Modification Notice”	“Contract Change Notice” - Section 75 (3) PA23
“Negotiated procedure without Notice”	“Direct Award” - Section 41 PA23
“Pre-Market Engagement”	“Preliminary Market Engagement” – Section 16 PA23
“Procurement Process/Procedure”	“Competitive Tendering Procedure” – Section 20 (2) PA23
“Qualifying Organisation”	“Public Service Mutual” – Section 33 (6) PA23
“Restricted Procedure/Competitive Dialogue/Competitive Procedure with Negotiation”	“Multi-Staged Procedure” – Para 146 Ex Notes
“Selection Stage”	“Participation Period” - Sections 54 (3) PA23
“Supplier subject to Mandatory Exclusion”	“Excluded Supplier” - Section 57 (1) PA23
“Supplier subject to Discretionary Exclusion”	“Excludable Supplier” - Section 57 (2) PA23
“Tender Stage”	“Tendering Period” – Section 54 (5) PA23
“Teckal/ In-House Contracts”	“Vertical Arrangement” – Schedule 2 PA23
“Hamburg / Collaboration”	“Horizontal Arrangement” – Schedule 2 Part 1 Section 3(2)
“Buyer Profile”	“Pipeline Notice” – Section 93 (3) PA23
“Invitation to Tender”	“Associated Tender Documents” – Section (4) PA23
N/A	“Below-Threshold Tender Notice” - Section 87 (5) PA23
N/A	“Conflicts Assessment” - Section 83 PA23
N/A	“Contract Termination Notice” – Section 80 PA23
N/A	“Convertible Contract” – Section 74 (1) PA23
N/A	“Debarment List” – Section 62 PA23
N/A	“Dynamic Market Notice” – Schedule 39 PA23
N/A	“Preliminary Market Engagement Notice”- Sections 17 PA23
N/A	“Procurement Termination Notice” – Section 55 PA23
N/A	“Connected Person”, “Associated Person” “Subcontractor”
N/A	“Special Regime Contract” – Section 10 PA23
N/A	“Treaty State Supplier” – Section 19 (3) PA23



N/A	“Central Digital Platform” – Reg 5(2) PR24
N/A	“Competitive Flexible Procedure” - Section (20(2)(b) PA23
N/A	“Exempted Contract” - Sch 2 PA23
N/A	“National Security Unit for Procurement”
N/A	“Open Framework Agreement” – Section 49 PA23

# Appendix D Provider Selection Regime

## Provider Selection Regime Code

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# Provider Selection Regime (PSR) Code

## 1. Introduction

- 1.1 The PSR came into force on 01 January 2024 and replaced the Public Contracts Regulations 2015, when procuring Health Care Services covered by CPV codes set out under [Schedule 1 \(Relevant Health Care Services\)](#).
- 1.2 This document details the requirements for carrying out compliant procurement using the Provider Selection Regime (PSR). This PSR Code (Code), MUST be used in conjunction with the [Contract Procedure Rules](#) (Rules), AND the Procurement Code, which forms the Councils Contract Standing Orders in how to carry out contracting activity for PSR processes. These documents serve as a roadmap for Service Departments, outlining the key principles, procedures, and best practices to uphold throughout all contracting activity in relation to PSR.
- 1.3 [Procurement Services](#), will lead all in scope PSR Contracting Activity unless agreed otherwise/with Procurement Services to ensure strict compliance with the relevant legislation, adoption of best practices, and achievement of Value for Money (VFM). Procurement Services reserves the right to manage any PSR Contracting Activity due to either risk to the Council (including reputational risk) or complexity.
- 1.4 The CPRs and Procurement Code must be followed in addition to this Code for all:
  - (i) Council Governance,
  - (ii) Financial assessments, Security
  - (iii) Procurement Assurance Group,
  - (iv) Insurance
- 1.5 **The PSR Legislation, CPRs and this Code apply to all Contracts and Contracting activity covered by the Common Procurement Vocabulary (CPV) codes set out under [Schedule 1 \(Relevant Health Care Services\)](#) and meets the [PSR principles as summarised below](#), regardless of value.**
- 1.6 [PSR Principles](#) require the commissioner to:
  - (i) act with a view to:
    - a. securing **the needs of the people who use the Services**
    - b. **improving the quality of the Services**; and

- c. **improving the efficiency of the Services**, including through integrated service delivery with other Health Care Services, health related Services or social care Services
  - (ii) act transparently, fairly, and proportionately
  
- 1.7 This Code applies to any of the PSR procurement processes, which includes the following:
  - (i) Direct Award Process A
  - (ii) Direct Award Process B
  - (iii) Direct Award Process C
  - (iv) Most Suitable Provider processes
  - (v) The Competitive Process
  - (vi) Variations to Contracts covered by the PSR
  - (vii) Frameworks let via the PSR
  
- 1.8 This document explains the Rules and operational processes to be followed when carrying out Contracting Activity; it is not intended as a replacement for training. Service Departments and officers who carry out regular Contracting activity including Contract Management are recommended to look on iLearn for training courses or speak to Procurement Services regarding training via [procurement.support@enfield.gov.uk](mailto:procurement.support@enfield.gov.uk).
  
- 1.9 [Procurement Services intranet](#) site is kept up to date to support Service Departments. It is expected that Service Departments will review the site content including Rules, Code and guidance, prior to contacting Procurement Services for support.
  
- 1.10 The PSR is not exempt from using the [Procurement System](#) and must be used for all Contracts over £5k to ensure they are on the [Council's Corporate Contract Register](#). Service Departments must maintain a record of all Contracts let via PSR for Annual Summary requirements (Rule 15)

## 2. Scope of the PSR

- 2.1 The Council is required to follow the PSR when arranging Relevant Health Care Services, irrespective of whether the providers they are considering are from the NHS, the independent, or voluntary sector. The PSR covers procurement by:

- (i) NHS England
  - (ii) Integrated trusts and foundation trusts
  - (iii) Local authorities or combined authorities
- 2.2 In scope Contracts are listed in the PSR [Common Procurement Vocabulary codes](#) (CPV) under Schedule 1 (Relevant Health Care Services) of the PSR. Any procurement of these in scope Contracts that fall outside of these Rules and the PSR will be non-compliant. For any doubt in determining whether a requirement is 'in-scope' of the PSR, consult Procurement Services.
- 2.3 Procurements that **are not in scope** of the PSR:
- (i) Goods (medicines, medical equipment)
  - (ii) Social Care Services
  - (iii) Non-Health Care Services or health-adjacent Services (e.g. Capital Works, business consultancy, catering) that do not provide health care to an individual
  - (iv) Any Contract that is covered by the Procurement Act 2023. Refer to the Council's Contract Procedure Rules
- 2.4 If the procurement relates to a mixed Contract (a Contract comprising of a mixture of in-scope Health Care Services and out of scope Services or Goods), the PSR and this Code will apply when both the below grounds are met:
- (i) The main subject matter of the procurement is a relevant health care service(s) in England. This means that the health care service element must be more than 50% of the estimated total value of the Contract.
  - (ii) That the Service Department is of the view that the other Goods or Service could not reasonably be supplied under a separate Contract. This means that the Service Department is of the view that procuring the Health Care Services and the other Goods and Services separately might or might be likely to have a material adverse impact on the Service Department's ability to act in accordance with the PSR Principles (see 1.5 for the PSR Principles).
- 2.5 When procuring to award a Contract under the PSR, the Service Department must identify which PSR route to market process is applicable for the Health Care Services they are arranging.

The options for the routes to market under the PSR are as follows (See paragraph 5 below for details):

- (i) Direct Award Processes: A, B or C
- (ii) Most Suitable Provider Process
- (iii) Competitive Process
- (iv) Call-Off under an established PSR Framework Agreement

### **3. Basic Selection Criteria**

- 3.1 The Service Department must not award a Contract to or conclude a Framework Agreement with a Supplier who does not meet the Basic Selection Criteria set out in Rule 3.3.
- 3.2 This does not apply to:
- (i) Where Direct Award A or Direct Award B is followed
  - (ii) Where the Contract is a Framework Agreement
- 3.3 Basic Selection Criteria that the Supplier must meet may relate to:
- (i) Suitability to pursue a particular activity
  - (ii) Economic and financial standing (see CPRs Rule 11)
  - (iii) Technical and professional ability

### **4. Key Criteria**

- 4.1 All the [Key Criteria](#) must be considered, when following:
- (i) direct award process C,
  - (ii) the most suitable provider process,
  - (iii) or the competitive process.
- 4.2 How they are considered must be recorded. The Council expects that none of the key criteria are discounted. Service Departments are expected to be aware of wider requirements or duties when considering procurement decisions, such as Social Value commitment, and the need to ensure value for money when arranging Health Care Services. The flexibilities offered by the regime do not mean that Service Departments do not have to comply with those obligations
- 4.3 The [Key Criteria](#) are:

- (i) **Quality and innovation** - that is the need to ensure good quality Services and the need to support the potential for the development and implementation of new or significantly improved Services or processes that will improve the delivery of health care and health outcomes.
- (ii) **Value** - that is the need to strive to achieve good value in terms of the balance of costs, overall benefits and the financial implications of a proposed Contracting arrangement.
- (iii) **Integration, collaboration and service sustainability** - that is the extent to which Services can be provided in:
  - a) An integrated way (including with other Health Care Services, health related Services or social care Services)
  - b) A collaborative way (including with providers and with persons providing health related Services or social care Services)
  - c) A sustainable way (which includes the stability of good quality Health Care Services or service continuity of Health Care Services).
- (iv) **Improving access, reducing health inequalities, and facilitating choice** - that is ensuring accessibility to Services and treatments for all eligible patients, improving health inequalities and ensuring that patients have choice in respect of their health care.
- (v) **Social value** - that is whether what is proposed might improve economic, social and environmental wellbeing in the geographical area relevant to a proposed Contracting arrangement.

4.4 For more information follow [guidance](#).

## 5. Procurement Process – Routes to Market

- 5.1 The Service Department must ensure that the right decision-making process is followed when appraising the [different routes to market](#) and recommending which procurement process to utilise. A clear audit trail of the decision-making process and assessment of bid(s) must be kept and retained to comply with the record keeping obligations under the PSR (Information Requirements Rule 15) and in case it may have to be produced for the PSR Review Panel.
- 5.2 It must be recognised that Value for Money can only be achieved via a competitive exercise.



- 5.3 All Direct Awards must use the [PSR Direct Award Form](#) and be presented at PAG regardless of value.
- 5.4 All other Contracting Activity must come to PAG over £100k and follow the Gateway Process.

**5.5 Overview of Routes to Market**

Direct Award Processes			The Most Suitable Provider Process	The Competitive Process
A	B	C	Allows the Service Department to make a judgement on which	The Service Department cannot use any of the other

<p>The existing provider is the only capable provider, and the Council is satisfied that the Services are capable of being provided by the existing provider.</p> <p>It cannot be used to set up a Framework Agreement</p>	<p>Service Users have a choice of providers, and the number of providers is not restricted by the Service Department.</p> <p>The Service Department offer Contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the Relevant Health care Services to Service Users.</p> <p>The Service Department has arrangements in place to enable providers to express an interest in providing the Relevant Health care Services.</p> <p>It cannot be used to set up a Framework Agreement</p>	<p>The existing provider is:</p> <p>(i) satisfying the existing Contract,</p> <p>(ii) will likely satisfy the proposed new Contract to a sufficient standard, and</p> <p>(iii) considerable change threshold is not met.</p> <p>It cannot be used to set up a Framework Agreement.</p>	<p>provider is most suitable based on the 5 (five) key criteria and basic selection criteria, and to award a Contract without competitive tender.</p> <p>It cannot be used to set up a Framework Agreement</p>	<p>processes or wishes to run a competitive exercise.</p>
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## **5.6 Direct Award Process A (existing provider)**

- 5.7 The Service Department must follow Direct Award Process A, where:
- (i) there is an existing provider of the relevant Health Care Services to which the proposed Contracting arrangements relate,
  - (ii) the Service Department is satisfied that the relevant Health Care Services to which the proposed Contracting arrangements relate are capable of being provided only by the existing provider due to the nature of the relevant Health Care Services, and
  - (iii) the procurement is not to conclude a Framework Agreement.
- 5.8 The Service Department does not need to refer to the 5 (five) Key Criteria for this process but make careful consideration as to whether there really is no other provider who can deliver the Contract and maintain a record to support this decision.
- 5.9 The Service Department must publish a notice within 30 days of Contract being awarded.
- 5.10 Ensure that robust audit trail is maintained of decision making, that it is kept with the Contract and uploaded to the LTP.
- 5.11 For more information follow [guidance](#).

## **5.12 Direct Award Process B (patient choice)**

- 5.11 The Service Department must follow Direct Award Process B, where:
- (i) the proposed Contracting arrangements relate to relevant Health Care Services in respect of which a patient is offered a choice of provider.
  - (ii) the number of providers is not restricted by the Service Department.
  - (iii) the Service Department will offer Contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the relevant Health Care Services to patients.
  - (iv) the Service Department has arrangements in place to enable providers to express an interest in providing the relevant Health Care Services, and
  - (v) the procurement is not to conclude a Framework Agreement.
- 5.12 The Service Department does not need to refer to the 5 (five) Key Criteria for this process.

- 5.13 The Service Department must publish a notice within 30 days of Contract being awarded.
- 5.14 Ensure that robust audit trail is maintained of decision making, that is kept with the Contract and uploaded to the LTP.
- 5.15 For more information follow [guidance](#).

### **5.16 Direct Award Process C (retaining incumbent Supplier)**

- 5.17 The Service Department must follow Direct Award Process C, where:
- (i) the Service Department is not required to follow Direct Award Process A or Direct Award Process B
  - (ii) the term of an existing Contract is due to expire, and the Service Department proposes a new Contract to replace that existing Contract at the end of its term.
  - (iii) The proposed contracting arrangements are permitted under the Considerable Change Threshold where:
    - a) The proposed contracting arrangements are materially different in character to the existing contract when that existing contract was entered into or
    - b) Changes in the relevant Health Care Services to which the proposed contracting arrangement relate (compared with the existing Contract) are attributable to a decision of the Service Department.
    - c) The lifetime value for the proposed contracting arrangements is at the least £500,000 higher than the lifetime value of the existing Contract when that existing Contract was entered into and
    - d) The lifetime value of the proposed contracting arrangements is at least 25% higher than the lifetime value of the existing Contract when that existing Contract was entered into.
  - (iv) the Service Department is of the view that the existing provider is satisfying the existing Contract and will likely satisfy the proposed Contract to a sufficient standard, and
  - (v) the procurement is not to establish a Framework Agreement

- (vi) the procurement is not to award a Contract for newly established Services.

5.18 The Service Department must:

- (i) Consider and document how the Key Criteria and the basic selection criteria were assessed in the decision that the existing Supplier is satisfying the original Contract and will likely satisfy the proposed Contract Submit a notice of intention to award Contract to the existing supplier.
- (ii) Observe Standstill Period.
- (iii) Comply with standstill and where no written representations are received, enter into Contract and submit a notice of award of Contract within 30 days of the Contract being awarded
- (iv) If relevant representations are received, please consult with Procurement Services and Legal Services, prior to entering into Contract.
- (v) Ensure that robust audit trail is maintained of decision making, that it is kept with the Contract and uploaded to the LTP.

5.19 Lifetime value of a Contract means the total value of the Contract over the full length of the Contract. If there is an option to extend stated explicitly in the Contract, then the value of the extension should also be considered in the lifetime value. Unplanned modifications made to the Contract during its term are not to be included in this calculation.

5.20 For more information follow [guidance](#).

## **5.21 Most Suitable Provider Process**

5.22 The Service Department must follow Most Suitable Provider Process where:

- (i) the Service Department is not required to follow Direct Award Process A or B and does not wish to or cannot follow Direct Award Process C
- (ii) the Service Department is of the view, considering likely providers and all relevant information available to the Service Department at the time, that is likely to be able to identify the most suitable provider, and satisfying the existing Contract and will likely satisfy the proposed Contract to a sufficient standard, and
- (iii) the procurement is not to conclude a Framework Agreement.

5.23 The Service Department must:

- (i) Publish a notice of intention to follow the Most Suitable Provider process.
- (ii) Identify the potential providers who may be suitable with reference to the Key Criteria and the basic selection criteria (must not complete this step before the end of 14 days after the day of the publication of the notice under (i)).
- (iii) Assess and document the potential providers identified against the Key Criteria and the basic selection criteria to identify the preferred supplier.
- (iv) Submit for publication a notice of intention to make an award to the preferred provider.
- (v) Observe Standstill Period.
- (vi) Comply with standstill and where no written representations are received enter into Contract and submit a notice of award of Contract within 30 days of the Contract being awarded.

5.24 If relevant representations are received, please consult with Procurement Services and Legal Services, prior to entering into Contract.

5.25 Ensure that robust audit trail is maintained of decision making, that it is kept with the Contract and uploaded to the LTP.

5.26 For more information follow [guidance](#).

### **5.27 Competitive Process (multi provider process)**

5.28 The Service Department must follow the Competitive Process where:

- (i) The Service Department is not required to follow Direct Award Process A or B
- (ii) The Service Department cannot or does not wish to follow Direct Award Process C or the Most Suitable Provider Process
- (iii) The procurement is to establish a Framework Agreement

5.29 The Service Department must:

- (i) Prepare a Service Specification setting out the Council's requirements for the service (in doing so, the Service Department may consider undertaking a pre-market engagement).
- (ii) Determine the award criteria taking into account the Key Criteria and applying the basic selection criteria
- (iii) Submit a notice for publication inviting tenders for the Contract

- (iv) Assess tenders submitted in accordance with the published award criteria.
  - (v) Once a decision is taken in accordance with the Council governance process, send out feedback letters to the successful and unsuccessful Tenderers including the information set out in the Schedule 9 of the PSR.
  - (vi) Submit for publication a notice of intention to make an award to the preferred provider
  - (vii) Observe Standstill Period
  - (viii) Comply with standstill and where no written representations are received enter into Contract and submit a notice of award of Contract within 30 days of the Contract being awarded
  - (ix) If relevant representations are received, please consult with Procurement Services and Legal Services, prior to entering into Contract.
- 5.30 Where, having taken steps to follow a particular process chosen at its discretion in accordance with Rule 5.1, the Service Department decides that a different process would be more suitable, the Service Department may decide to abandon the procurement in accordance with Rule 9 abandonment of or repletion of steps and follow a different process in accordance with this Rule.
- 5.31 Ensure that robust audit trail is maintained of decision making, that is kept with the Contract and uploaded to the LTP.
- 5.32 For more information follow [guidance](#).

## **6. Standstill Process and Decisions During Standstill**

- 6.1 Following Direct Award Process C, the Most Suitable Provider Process, and the Competitive Process, the standstill period of eight working days (which may be extended) must be followed, following the publication of the Intention to Award a Contract Notification.
- 6.2 The Standstill Period begins on the day after the day a notice of intention to award or conclude is published on the UK e-notification service in accordance with the regulations.
- 6.3 Any provider of the Services to which the Contract or Framework Agreement relates who:
- (i) is aggrieved by the decision, and



- (ii) believes that there has been a failure to comply with the PSR Legislation,
  - (iii) may make written representations to the Council before midnight at the end of the 8<sup>th</sup> working day after the day the standstill period begins.
- 6.4 The Standstill Period allows the Council to consider any representations received and to respond as appropriate. The Service Department must allow the provider five working days to consider the feedback before closing the Standstill Period.
- 6.5 The Standstill Period should be extended if the representation is to be considered by the Internal PSR Review Panel or external Independent Patient Choice and Procurement Panel (IPCPP). Procurement Services and Legal Services must be contacted to convene an Internal PSR Review Panel. The Internal PSR review Panel will be made up of officers from across the Service Department who are impartial and have not been involved in the Procurement Process.
- 6.6 No Contract or Framework Agreement can be awarded, entered into or concluded during the standstill period.
- 6.7 If a representation is received, then the Service Department must:
  - (i) ensure that the provider has been afforded the opportunity to explain or clarify their representation
  - (ii) Provide an indicative timeframe for when the representation might be considered by
  - (iii) Provide any information requested by the provider that the Service Department is required to keep under PSR legislation Regulation 24
  - (iv) must consider the representation(s) made, and review evidence and information used to make the original decision
  - (v) must consider whether the representation has merit, ie in identifying that process has not been correctly followed
  - (vi) must decide whether to return to an earlier Step, abandon the process, or award the Contract as originally intended.
  - (vii) must communicate the decision promptly to all interested parties and wait at least five working days before closing the standstill period.

## 7. Modifications of Contracts and Framework Agreements

- 7.1 There will be situations where Contracts or Framework Agreements need to be modified to reflect/account for changes to services/circumstances during their term. All Contract modifications must be via the [Contract Extension Variation Pro-Forma](#) and presented at PAG.
- 7.2 One aim of the regime is to avoid processes that only bring limited value to people who use the services. Therefore, this regime allows for certain modifications to be made to Contracts or Framework Agreement during their term without reassessment of the existing provider.
- 7.3 Depending on circumstance, permitted modifications can be made without following a new provider selection process, but in some cases will require the publication of transparency notices.
- 7.4 Modifications, which make an existing Contract or Framework Agreement materially different in character are not permitted under the regime and require a new provider selection process to be undertaken. Further information on permitted and not permitted modifications is given below.
- 7.5 The Service Department is expected to consider this section in conjunction with the modifications (variations) provisions of the relevant Contract or sub-contract.
- 7.6 The provisions in this section must only be used for modification of Contracts during their term and not to circumvent the PSR regulations when a Contract ends and a new one needs to be awarded. For more information follow [guidance](#).

### 7.7 Permitted Modifications

- 7.8 Under this regime, some modifications are permitted and so do not require a new selection process. In all cases the Service Department must ensure that it maintains clear decision-making audit trail and maintains these within the LTP.

### 7.9 Modifications to Contracts originally awarded under direct award process A or B:

- (i) Where the original Contract was awarded under direct award process A or B and the modification does not materially alter the character of the Contract, then the modification is permitted. Audit trail must be recorded as to why not materially different.
- (ii) If that modification is attributable to a decision of the Service Department and the cumulative change in the lifetime value of the

Contract since it was entered into is £500,000 or more, the modification is still permitted, but the Service Department must publish a transparency notice.

7.10 Where the original Contract was awarded under direct award process C, the most suitable provider process, or the competitive process (including agreements), or where the Contract was originally awarded under the Public Contracts Regulations 2015, then modifications are permitted in the following instances:

- (i) The modification is clearly and unambiguously provided for in the Contract or Framework Agreement documents (i.e., the scope and nature of the potential change has been described in detail in the existing Contract).
- (ii) The modification is solely a change in the identity of the provider due to succession into the position of provider following corporate changes (e.g., as the result of a corporate takeover, merger, acquisition or insolvency), and where the relevant authority is satisfied that the provider meets the basic selection criteria.
- (iii) The modification is made in response to external factors beyond the control of the relevant authority and the provider, including but not limited to changes in:
  - a) patient or service user volume
  - b) prices in accordance with a formula provided for in the Contract documents (e.g., uplifts in prices due to index linking) which do not render the Contract or agreement materially different in character.
- (iv) The modification is attributable to a decision of the Service Department or Council and does not materially alter the character of the Contract or Framework Agreement, and the cumulative change in the lifetime value of the Contract or Framework Agreement, compared to its value when it was entered into, is under £500,000 or under 25%.

7.11 If the Service Department makes a permitted modification (to a Contract that was originally awarded under direct award process C, the most suitable provider process, and the competitive process or where the Contract was originally awarded under the Publics Regulations 2015), it must publish a transparency notice where all the below apply:

- (i) that modification is attributable to a decision of the Service Department or Council
- (ii) the cumulative change in the lifetime value of the Contract or Framework Agreement is £500,000 or more.

7.12 Contracts entered into before the commencement of the PSR (1 January 2024) must be modified in line with these rules and the PSR Legislation.

### **7.13 Modifications that are not permitted**

7.14 Modifications that make the existing Contract or Framework Agreement materially different in character are not permitted without undertaking a new provider selection process.

7.15 Modifications are also not permitted where the original Contract was awarded following direct award process C, the most suitable provider process, or the competitive process (including Framework Agreements), or where the original Contract was awarded under the Public Contracts Regulations 2015 and where:

- (i) the decision to make the modification is attributable to the Service Department or Council and it represents (a) a cumulative change of 25% or more in the lifetime value of the original Contract or Framework Agreement and (b) £500,000 or more compared to the lifetime value of the original Contract or Framework Agreement (when it was entered into).

7.16 In these cases, the Council must follow the appropriate decision-making process to select a provider (or group of providers) for the substantially changed service.

### **7.17 Contract modifications in urgent situations**

7.18 Please see section on urgent awards or modification for details of the circumstances this ground applies and the transparency/publication requirements.

## **8. Urgent Award or Modification**

8.1 In justified circumstances, the Service Department may make an Urgent Award or Modification where it considers that:

- (i) an award or modification must be made urgently,
- (ii) the reason for the urgency was not foreseeable by and not attributable to the Service Department, and
- (iii) delaying the award of the Contract or modification to satisfy the requirements of regulations 6 to 13 of the PSR Legislation would be likely to pose a risk to patient or public safety.

- 8.2 Urgent decisions during Standstill Period are permitted under Regulation 14(3) where the Service Department are waiting for advice from the Panel during Standstill period, the existing Contract is likely to expire before the end of the standstill period and, it is considered necessary or expedient to modify the existing contract prior to the new Contract to ensure continuity.
- (i) The Service Department is expected to limit the Contract term or Contract Modification to that which is strictly necessary
  - (ii) It is expected that it will be no longer than 12 months. If longer must justify the reason and record the decision.
  - (iii) Must keep records of the decision making, including a justification for using an urgent award.
- 8.3 All Direct Awards made under this Rule must be via the [PSR Direct Award Form](#), be approved at the correct level of the organisation and have a clear audit trail of decision making. For more information follow [guidance](#).

## **9. Abandonment of, or Repetition of Steps in a Procurement**

- 9.1 Where the Service Department want to abandon a Contracting Activity or repeat steps then they must do so in line with legislation and speak to Procurement Services prior to any action.

## **10. Framework Agreements**

- 10.1 In these Rules, a Framework Agreement is an agreement between one or more relevant authorities and one or more providers.
- 10.2 The Service Department must contact [Procurement Services](#) if they want to establish a Framework Agreement the Competitive Process to establish a Framework Agreement.
- 10.3 A Framework Agreement must, when established, identify the relevant authorities which may award Contracts based on the Framework Agreement.
- 10.4** The term of a Framework Agreement must not exceed 4 years, other than in exceptional cases where the Service Department is satisfied that the subject-matter of the Framework Agreement justifies a longer term.

### **10.5 Additional provider parties of a Framework Agreement during its term**

- 10.6 The Service Department may, during the term of a Framework Agreement, select further providers to be party to the Framework Agreement and the rules for doing so should be clearly set out within the Service Department's procurement documents and the terms and conditions of the Framework Agreement itself.
- 10.7 The Service Department must follow the Competitive Process to select such further providers, in the same way as when setting up the Framework Agreement initially.

### **10.8 Contracts based on a Framework Agreement**

- 10.9 A Contract based on a Framework Agreement may only be awarded in accordance with this Rule.
- 10.10 Contracts based on a Framework Agreement must not entail substantial modifications to the terms laid down in that Framework Agreement.
- 10.11 Where a Framework Agreement is established with a single provider, the Service Department may award a Contract without a competition in accordance with that Framework Agreement. The [PSR Direct Award Form](#) is to be used to record this and be presented at PAG for review in line with Service Department policy.
- 10.12 Where a Framework Agreement is established with more than one provider, the Service Department may award a Contract either without a competition or by following the Competitive Process, such choice being at the discretion of the Service Department but must be made in accordance with call-off mechanisms set out within the Framework Agreement.
- 10.13 Where the Service Department awards a Contract based on a Framework Agreement without a competition, the Service Department must submit for publication on the UK e-notification service a notice of the award. The notice must:
- (i) include the information set out in Schedule 2 of the legislation, and
  - (ii) be submitted for publication within 30 days of the Contract being awarded.
- 10.14 Where a Service Department follows the Competitive Process to award a Contract based on a Framework Agreement, the Service Department must not publish a notification, but invite all providers who are party to the framework agreement to submit an offer.

## **11. Exclusions**

- 11.1 Subject to Rule 5, the Service Department must not award a Contract to a provider and may exclude a provider from a procurement process under these Rules, where the Service Department would be obliged to exclude the provider from participation in a procurement procedure under Regulation 57 of the Public Contracts Regulations 2015.
- 11.2 For more information follow [guidance](#).

## **112. Conflicts of Interest**

- 12.1 Where a 'Conflict of Interest' may occur, it is a good practice to routinely declare and manage such conflicts of interest. This is a part of good governance and is critical for maintaining public confidence in the Service Department's decision-making and in protecting the Service Department and the Council from risks.
- 12.2 The Service Department must take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement processes under these Rules. Throughout the Contracting Activity the potential conflicts of interest assessment must be kept under review and revised/updated at each stage of Contracting activity. Records of the assessments must be kept and uploaded to the LTP to ensure a clear audit trail.
- 12.3 For the purposes of this Rule:
- (i) the concept of conflicts of interest includes any situation where an individual has, directly or indirectly, a financial, economic, or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement process, and
  - (ii) any such individual is required to recuse themselves from the decision-making process of that procurement process.
- 12.4 Any individual with a conflict of interest must remove themselves from the decision-making process of the procurement process.
- 12.5 The personal and professional interests of all individuals involved in decisions about provider selection need to be declared, recorded, and managed appropriately, following the Service Department's established conflicts of interest arrangements. This includes being clear and specific about the nature

of any interest and of any conflict that may arise about a particular decision, and how any conflicts are managed for each decision. To fulfil the transparency requirements under this regime, the Service Department must keep internal records of individuals' conflicts of interest and how these were managed and upload them into the LTP.

12.6 Actions to mitigate conflicts of interest when making procurement decisions are expected to be proportionate and to seek to preserve the spirit of collective decision-making wherever possible. Mitigating actions are expected to account for a range of factors, including the impact that the perception of an unsound decision might have, and the risks and benefits of having a particular individual involved in making the decision. Mitigations may include:

- (i) excluding a conflicted person from both the discussion and the decision-making
- (ii) excluding the conflicted individual and securing technical or local expertise from an alternative, unconflicted source
- (iii) arranging decision-making structures so a range of views and perspectives are represented, rather than potentially conflicted individuals being in the majority
- (iv) convening a committee without the conflicted individual present, e.g., when dealing with particularly difficult or complex decisions where members may not be able to agree, or to prevent an unsound decision being taken and/or the appearance of bias.

12.7 The Service Department is expected to clearly distinguish between those individuals who are involved in formal decision-making and those whose input informs decisions but who are not involved in decision-making itself (such as through shaping the Service Department's understanding of how best to meet patients' needs and deliver care for its population). The way conflicts of interest are managed is expected to reflect this distinction. For example, where independent providers (including those in the VCSE sector) hold Contracts for Services, it would be appropriate and reasonable for the Service Department to involve them in discussions, such as about pathway design and service delivery, particularly at place level. However, this would be clearly distinct from any considerations around Contracting and commissioning, from which they would be excluded.

12.8 Any conflicts of interests and how they were managed must be published alongside the confirmation of the decision to select a provider (see transparency). When the decision is made by a committee/group, it is advised that the interests of the committee/group are declared and not the names of individuals in the committee/group to whom they relate. When the decision is made by an individual, then conflicts of interest are declared against the individual's job title rather than their name.



## **12.9 Conflicts of interest assessments**

12.10 Before publishing a tender or transparency notice in relation to procurement the Service Department must prepare a conflicts of interest assessment in relation to the procurement.

- (i) A conflicts assessment must include details of:
  - a) conflicts or potential conflicts of interest identified in accordance with definition above (duty to identify), and
  - b) any steps the Contracting authority has taken or will take for the purposes (duty to mitigate).

12.11 If the Service Department is aware of circumstances that it considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest, a conflicts assessment must also include details of any steps the Service Department has taken or will take to demonstrate that no such conflict or potential conflict exists.

- (i) The Service Department must
  - a) keep any conflict-of-interest assessment under review,
  - b) revise the assessment as necessary, and
  - c) when publishing any relevant notice, confirm that a conflicts assessment has been prepared and revised in accordance with this section.
  - d) To fulfil the transparency requirements under this Rule, the Service Department must keep internal records of individuals' conflicts of interest and how these were managed.

## **13. Termination of Contracts**

13.1 The Service Department must ensure that each Contract awarded contains provisions enabling its termination by the Service Department if:

- (i) the Contract has been subject to modifications that are not permitted under the PSR regime (see Contract modifications) without following a new provider selection process,
- (ii) the provider, at the time of the Contract award, should have been excluded from the procurement process in line with the exclusion criteria set out in Regulation 20 or the legislation.

13.2 The provisions allowing the termination of a Contract may address how such terminations would take place, e.g., by setting out a notice for terminations and by addressing any consequential matters that may arise from that termination.

13.3 If the Contract does not contain specific provisions allowing the Service Department to terminate on the grounds specified in Rule 11, there is an implied term of any Contract awarded under the PSR that the Service Department may do so by giving reasonable notice.

13.4 Termination proforma & PAG.

## 14. Transparency Requirements

14.1 The PSR provides for greater flexibility and allows the Service Department to award Contracts without using a competitive process, where appropriate. This means that other checks and balances need to be in place to ensure that the PSR is complied with and that the flexibilities are used appropriately and in the best interest of Service Users.

14.2 Transparency requirements:

Transparency Notice	PSR Process	Published Where	Timescales
Publishing the intended approach in advance	The Most Suitable Provider Process	Find a Tender via E-Tendering system	Within 30 days of the Contract being awarded.
Publishing a notice for a competitive tender	<ul style="list-style-type: none"> <li>The Competitive Process</li> <li>Establishing a Framework Agreement</li> </ul>	Find a Tender via E-Tendering system	Within 30 days of the Contract being awarded.
Publishing the intention to award notice	<ul style="list-style-type: none"> <li>Direct Award Process C</li> <li>The Most Suitable Provider Process</li> <li>The Competitive Process</li> <li>Establishing a Framework Agreement</li> </ul>	Find a Tender via E-Tendering system	At the start of the standstill period.

	<ul style="list-style-type: none"> <li>• Contracts based on a Framework Agreement following competition</li> </ul>		
Publishing a confirmation of award notice	<ul style="list-style-type: none"> <li>• Direct Award Process A</li> <li>• Direct Award Process B</li> <li>• Direct Award Process C</li> <li>• The Most Suitable Provider process</li> <li>• The Competitive process</li> <li>• Establishing a Framework Agreement</li> <li>• Contracts based on a Framework Agreement without competition</li> <li>• Contracts based on a Framework Agreement following competition</li> </ul>	Find a Tender via E-Tendering system	Within 30 days of the Contract being awarded.
Publishing a notice for Contract modifications	<ul style="list-style-type: none"> <li>• Direct Award Process A</li> <li>• Direct Award Process B</li> <li>• Direct Award Process C</li> <li>• The most suitable provider process</li> <li>• The Competitive Process</li> <li>• Establishing a Framework Agreement</li> <li>• Contracts based on a Framework Agreement without competition</li> <li>• Contracts based on a Framework Agreement following competition</li> </ul>	Find a Tender via E-Tendering system	Within 30 days of the modification or the Contract or Framework Agreement.
Annual Summary Publication	Details how many Contracts were awarded in the financial year using various provider selection processes and the notice must include all the information in section 16.4 below	Find a Tender via E-Tendering system	Publish annually on a publicly accessible free of charge website.

14.3 All notifications must be made via the Procurement System.

## 15. Information Requirements

15.1 The PSR also requires Service Departments to report annually all Contract let under the PSR legislation with decision making criteria.

- (i) The PSR sets out the need to keep a proper decision-making audit and maintain all documents to evidence the decision taken. The Service Department's [Procurement System](#) must be used for all Contracts over the value set out in the [Procurement Code](#). Ensuring all communication with bidder's clarification questions, the usage of any standard templates with all documentation relating to the process maintained and stored within the Portal (including an executed (signed) copy of the Contract awarded) to ensure a clear audit trail and Contract record.

15.2 The Service Department is responsible for ensuring that it meets the information requirements under the PSR. These must be maintained by the Service Department as a report format and in the Procurement System and updated as required. These records may be requested as part of a review during the standstill period (see Rule 6).

15.3 Records MUST include:

- (i) the name of any provider to whom it awards a Contract
- (ii) the name of any provider who is a party to a Framework Agreement
- (iii) the address of the registered office or principal place of business of each provider referred to in paragraph (a) or (b)
- (iv) the decision-making process followed, including the identity of individuals making decisions
- (v) where Direct Award Process C or the Most Suitable Provider Process was followed, a description of the way in which the key criteria were considered, and the basic selection criteria were assessed when making a decision
- (vi) where the Competitive Process was followed, a description of the way in which the key criteria were considered, the basic selection criteria were assessed, and Contract or framework award criteria were evaluated when making a decision
- (vii) the reasons for decisions made under these Regulations
- (viii) declared conflicts or potential conflicts of interest
- (ix) how any conflicts or potential conflicts of interest were managed for each decision

- (x) where a procurement is abandoned, the date on which it is abandoned.

#### **15.4 Annual Summary**

15.5 The Service Department is required to be published online, free of charge an annual summary of its Contracting activity for the provision of relevant Health Care Services, which must include:

- (i) the number of Contracts awarded in the year to which the summary relates where Direct Award Process A, Direct Award Process B or Direct Award C was followed.
- (ii) the number of Contracts awarded in the year to which the summary relates where the Most Suitable Provider Process was followed.
- (iii) the number of Contracts awarded in the year to which the summary relates where the Competitive Process was followed.
- (iv) the number of Framework Agreements concluded in the year to which the summary relates.
- (v) the number of Contracts awarded based on a Framework Agreement in the year to which the summary relates
- (vi) the number of Contracts awarded, and modifications made in reliance on regulation 14 (urgent award or modification) in the year to which the summary relates
- (vii) the number of new providers to whom a Contract was awarded in the year to which the summary relates
- (viii) the number of providers who held a Contract in the previous year but no longer hold any Contracts in the year to which the summary relates
- (ix) the number of written representations made in accordance with regulation 12(3) and received during standstill periods which ended in the year to which the summary relates and a summary of the nature and impact of those representations.

15.6 The Service Department must also publish an annual report of the results of the monitoring of these regulations and how non-compliance is addressed.

15.7 It is the responsibility of the Service Department to maintain a record of all Contracts let, the decision-making process and necessary information to meet the reporting requirements, as set out within the PSR.

## GLOSSARY OF TERMS

Considerable Change Threshold	Change that does not fall outside of the definition of a considerable change within the legislation.
Contract	Means an agreement between the Service Department and any other organisation, including another public authority, made by formal agreement or by issue of a letter of acceptance or official purchase order for works, supplies or Services.
Corporate Contract Register	Corporate Register of Contracts held by the P&C Hub within the London Tenders Portal
Framework Agreement	An agreement with suppliers which sets out the terms and conditions under which specific purchases can be made throughout the term of the agreement and which where necessary has been tendered in accordance with EU Procurement
Goods	Tangible products that can be consumable or non-consumable.
Modification	Any alteration, change, addition to or deletion of any requirement of the Contract terms or specification.
Procurement System	The Procurement System E-procurement portal to be used to meet e procurement regulations.
PSR Code	Document that supports this document and sets out the processes and governance to be followed for all procurements. Provides more detailed information and links to supporting information to ensure compliance these rules.
Procurement Act 2023	Means all relevant external procurement rules and regulations applying in England.
Written Representations/ Representations	Representations from Suppliers in regard to contracting activity, where they may have a challenge regarding the activity.
Services	Services such as maintenance of equipment, transportation, consultancy, technical Services. etc. as defined by the current Public Contract Regulations.

Service Department	Departments within the Service Department.
Supplier	A company that will provide goods, service or works to the Service Department after a competitive process.
Supplies	Can be tangible object delivered in relation to a Contract. See also goods.
Tender	A sealed bid submitted in response to an invitation to tender, which invitation contains detailed information on requirements including a specification and terms and conditions
Transparency Notice	
Variation	Any alteration, modification, addition to or deletion of any requirement of the Contract terms or specification.
Works	The outcome of building or civil engineering as defined under Schedule 2 of the Public Contract Regulations 2006, as amended

## **Appendix E**

### **Light Touch Services Code**

#### **Light Touch Services Contract Code**

*Use hyperlink index to go to relevant section*

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## 1. Introduction – Rule 1

- 1.1 This Light Touch Services Code (Code), MUST be used in conjunction with the [Contract Procedure Rules](#) (Rules), the [Procurement Code](#) and form the Council Contract Procured Rules in how to carry out Contracting Activity. This document, together with the Rules, serves as a roadmap for Service Departments, outlining the key principles, procedures, and best practices to uphold throughout all Contracting activity. The Rules form part of the [Council's Constitution](#) and mandatory.
- 1.2 Contracting Activity requires strategic decision-making, risk management, and fostering mutually beneficial relationships with vital Suppliers. By adhering to this Code, the Council can manage cost savings, mitigation of risks, maintain compliance with regulations, and ultimately contribute to the Council's plan.
- 1.3 All Council Officers at whatever role in the Council involved in Contracting activity must read this Code and the Rules to ensure there is a thorough understanding of how to carry out the steps within the sourcing lifecycle to ensure best practice and compliance to Council and UK Procurement Legislation.
- 1.4 Specifically, this document is intended to support understanding of the [Contract Procedure Rules](#) and how to implement them in regard to Light Touch Services Contracts. The [Procurement Code](#) sets out the operational elements of the Procurement Process and these should be followed in **conjunction with the CPR's**; and this Code, these documents together constitute the Contract Procedure Rules (Rules).

## 2. Purpose – Rule 2

- 2.1 The purpose of the Rules and this Code is to ensure that the Council is compliant for Light Touch Services Contracts and Procurement Act 2023 Legislation (PA23). Suppliers can take legal action where the Council does not apply the Rules or follow Legislation and therefore it is important to protect the Council from risk of challenge.
- 2.2 Light Touch Contracts are Contracts for certain social, health, education and other public Services and are subject to more flexible procurement rules. One thing these Services have in common is that they are Services provided directly to individuals or groups of people and therefore warrant special treatment and greater flexibility.
- 2.3 This Code deals only with the specific provisions that apply to Light Touch Contracts, for Health Care Services Contracts see the **PSR Code**.

- 2.4 Where there are no specific provisions, there is no difference for Light Touch Contracts and reference should be made to the [Rules](#) and [Procurement Code](#).
- 2.5 The Procurement Act Section 9 (Light Touch Contracts) defines a 'Light Touch Contract' and provides for regulations to specify which Services (referred to in the regulations as 'Light Touch Services') can be procured under a Light Touch Contract.
- 2.6 Procurement Regulations 2024 Schedule 1 (the Regulations) specifies which Services are Light Touch Services by description and reference to corresponding [Common Procurement Vocabulary \(CPV\) codes](#). Light Touch Contracts (that are not exempted Contracts) are Public Contracts if they are above the PA23 for the type of Contract.
- 2.7 PA23 Legislation (Reserving contracts to public service mutuals, Section 33) permits certain Light Touch Contracts to be reserved for public service mutuals, as long as the Contract term is for 5 years or less.

### 3. Application

- 3.1 A Light Touch Contract is a contract wholly or mainly for the supply of Services, as stated above and specified in Rule 2.6.
- 3.2 The specific Light Touch provisions in PA23 apply in procurements where:
  - a) the Light Touch Contract is a public contract; and
  - b) the procurement is not a regulated health procurement as defined in regulations made under the National Health Service Act 2006.
- 3.3 A Light Touch Contract is a Public Contract where:
  - (i) the estimated total Contract value exceeds the relevant financial Threshold; and
  - (ii) the Contract is not an exempted Contract as defined in the Act (see guidance on exempted Contracts).

#### 3.3 Financial Threshold

Light Touch Contract	Threshold
Concession Contract that is a Light Touch Contract	£5,372,609
All other Light Touch Contracts	£663,540

## **4. Reserving Contracts for Light Touch Services to public Services mutuals**

- 4.1 PA23 permits the Council to reserve certain types of Contracts for public sector mutuals (Section 33). This ability complements the social value agenda and can help the Council to deliver on social value commitments by awarding Contracts to Suppliers that have such priorities aligned to the Councils Plan. Whilst reserving Contracts is encouraged, doing so must be considered in the wider context of value for money.
- 4.2 Public service mutuals are organisations that:
- (i) operate for the purpose of delivering public Services and mainly for the purpose of delivering one or more ‘reservable Light Touch Services’ (see paragraph 23 below)
  - (ii) are not for profit, or provide for the distribution of profits only to its members; and
  - (iii) are under the management and control of their employees
- 4.3 In order to be awarded a ‘reserved Contract’, a public service mutual must be a ‘qualifying public service mutual’, which means that it must not have entered into a reserved Contract for the same kind of Light Touch Services with the same Contracting authority in the preceding three years.
- 4.4 The types of Light Touch Contracts that can be reserved under PA23 Section 33 are those for the supply of ‘reservable Light Touch Services’, which are identified by an “R” next to the description of the service in Schedule 1 in the Regulations.
- 4.5 Where a Contract is being reserved to a public service mutual, Section 33(2) requires the Council to use the competitive flexible procedure as, unlike the open procedure, it allows for the exclusion of Suppliers who do not meet this requirement.
- 4.6 PA23 under Section 33(4) requires the Council to disregard any Tenders from Suppliers that are not qualifying public service mutuals in assessing Tenders under Section 19 when carrying out such a procedure. This can be done at the participation stage or as part of the assessment of tenders, depending on how the procedure is structured.

## **5. Transparency – Rule 3**

- 5.1 The PA 2023 demands more transparency during the whole sourcing lifecycle, including, procurement, variations and extensions, terminations, and Contract Management. It is important to ensure that all transparency notifications are

actioned through the lifetime of the Contract. Failure to comply with the notifications is a failure to comply with Procurement Legislation and may result in a challenge, it may also affect extensions and modifications in the future.

5.2 Light Touch Contracts must be advertised using a Tender Notice unless a Direct Award justification applies. The Council is required to determine whether Suppliers are Excluded or Excludable Suppliers and consider conflicts of interest before awarding the Contract. Transparency will be maintained through publication requirements, including requirements for a Contract Award Notice, a Contract Details Notice and, when the estimated total Contract value is over £5 million, publication of a redacted copy of the Contract.

5.3 Table of main Notifications:

- (i) Planned procurement Notice
- (ii) Preliminary Market Engagement Notice
- (iii) Tender Notice
- (iv) Tender Notice (amended)
- (v) Dynamic Market Notice(s)
- (vi) Transparency Notice (Direct Award)
- (vii) Contract Award Notice
- (viii) Contract Details Notice
- (ix) Copies of Contracts (redacted)
- (x) Procurement Termination Notice
- (xi) Payments Compliance Notice
- (xii) Contract Performance Notice(s)
- (xiii) Contract Change Notice
- (xiv) Contract Termination Notice
- (xv) Below threshold procurement tender notices
- (xvi) Below threshold award notice
- (xvii) Pipeline Notice

5.4 The Light Touch Services has different timescales for some Notifications. These are set out Rule 24.

5.5 Under the Procurement Act 2023 the Council is obligated to report:

- (i) Percentage of Suppliers paid within 30 days
- (ii) Payments of over £30,000 to Suppliers is published quarterly.

- 5.6 These payment reports include ALL public Contracts, which include all Light Touch Services Contracts and User Choice Contracts. This means that these Contracts now need to be entered onto the London Tenders Portal for recording, so that Payment Notifications can include these see Rule 10.

## **6. Roles and Responsibilities – Rule 5**

- 6.1 All Officers or 3<sup>rd</sup> parties/consultants involved in Contracting Activity must ensure that they are aware of the Council’s Governance, Contract Procedures Rules, and the operational rules within this Procurement Code. As a Local Authority we have a duty to protect the public purse.
- 6.2 All roles and responsibilities are set out in the Rules and this Code. Officers carrying out Contracting Activity for Light Touch Services must ensure they apply the correct Rules set out in this Code and Procurement Code.

## **7. Direct Award and Exceptions to Competitive Tendering – Rule 9**

- 7.1 Carrying out competitive Contracting Activity is the best way to ensure VFM. Direct Award is only permitted in the limited circumstances set out in this Rule or if one of the grounds under Schedule 5 of the Procurement Act 2023 applies. Refer to the CPRs and Procurement Code for process for Direct Award.
- 7.2 Section 41 (Direct award in special cases) permits the Council to award a Contract without first running a competitive tender process when a direct award justification (set out in PA23 Schedule 5) applies. Whilst other justifications may be relevant, there is a specific justification for Contracts for ‘user choice Services’ and those set out below may be particularly relevant. See Procurement Code and CPRs.
- 7.3 Transparency Notifications apply when directly awarding a Light Touch Contract.
- 7.4 Contract for User Choice Contracts were exempt from the Public Contracts Regulations 2015 but are now part of the Procurement Act 2023. Direct Award is permissible however, but the Contracts must be recorded to ensure compliance to Transparency regulations, and Payment Notifications.

### **7.5 Direct Award for User Choice Services Contracts**

A User Choice Contract must be one that meets **all** of the criteria set out in the Current Procurement Legislation.

- (i) Must be set out in the Light Touch [CPV](#) codes

- (ii) Must be for the benefit of a particular individual or Service recipient
- (iii) Services where the Council are legally required to consider the views of the individual, or their carer, in relation to the supply of Services
- (iv) To use this ground the following conditions must be met:
  - (b) the individual or carer has expressed a preference as to who should supply the Service, or the nature of the Services is such that only one Supplier is capable of providing the Service, and the Council considers that it is not in the best interests of the individual to carry out a competitive procurement process.

7.6 Refer to the [Procurement Code](#) for recording these Contracts.

## **8. Frameworks Agreements & Dynamic Markets – Rule 18**

- 8.1 The definition of a Light Touch Contract under PA23 includes a 'Light Touch Framework Agreement', which is a Contract that provides for the future award of Contracts that are wholly or mainly for Light Touch Services.
- 8.2 Where a Framework Agreement that is not a Light Touch Contract is being used for the award of Contracts for Light Touch Services, PA23 applies in full, including, for example, the competitive selection process set out in the Framework Agreement.
- 8.3 The PA23 Section 45(9) provides that Section 45(3 to 5) about the selection processes for the award of Contracts and what information must be included in the Framework Agreement does not apply when a Framework Agreement is a Light Touch Contract (i.e. it is a Framework Agreement wholly or mainly for the future award of Light Touch Contracts).
- 8.4 The PA23 Section 46(11) states rules around competitive selection processes does not apply where the Framework Agreement is a Light Touch Contract.
- 8.5 The PA23 Section 47(5)(c) states that the rules governing the maximum term of a Framework Agreement does not apply to Framework Agreements which are Light Touch Contracts.

## **9. Procurement Thresholds – Rule 21**

- 9.1 The estimated total Contract Value determines the which part of the Procurement Act 2023 needs to be followed and informs the route to market.

9.2 Light Touch Services Contracts have their own Threshold as set out below in the table. All thresholds are **inclusive of VAT**, when calculating the Contract value.

9.3 **Thresholds:**

<b>Category</b>	<b>Value Including VAT</b>	<b>Value Excluding VAT</b>
Goods and Services	£214,904	£179,086
Light Touch Services	£663,540	£552,950
Works	£5,372,609	£4,477,174
Concessions	£5,372,609	£4,477,174

9.4 Contracts below the Threshold are referred to in the Procurement Act 2023 as **'Regulated Contracts'**, and there are rules that apply to these Contracts in addition to Council Governance.

9.5 If a Light Touch Services Regulated Contract is varied in value and the value brings the Contract over the Light Touch Services Contract threshold, the Contract becomes a 'Converted Contract', and this Contract must now follow the PA23 Act as an above threshold Contract or 'Covered Contract'. If the value of the Contract is unknown, then a full above Threshold procurement must be carried out. (See Rule 17 of the CPRs).

9.6 The Duty to consider Lots (Section 18) applies to Light Touch Contracts and requires the Council to consider whether the requirement could be broken into Lots and the Services supplied under more than one Contract. However, for Light Touch Contracts Regulation 18(2)(q) provides that there is no requirement to provide a justification in the Tender Notice if not dividing the Contract into Lots.

9.7 Contracting authorities awarding Light Touch Contracts are subject to the same provisions relating to competitive tender procedures as apply when awarding other types of Contracts.

9.8 The participation and tender periods for Light Touch Contracts are not mandated by section 54 (Time limits) of PA23, allowing for Light Touch Services to be procured more swiftly. However, the Council must ensure that timescales are reasonable, for example, having regard to the nature of the requirement and the complexity of the Contract being awarded.

- 9.9 Modifying a section 19 procurement (Section 31(2)(b)) allows modifications to a competitive flexible procedure, even if they are considered to be substantial, to be made before the deadline for submission of final tenders where the procurement is for a Light Touch Contract.
- 9.10 When making such modifications the Council must:
- (i) ensure such modifications are in line with the procurement objectives at section 12 of PA23
  - (ii) consider revising any applicable timescales because of such modification
  - (iii) notify the participating Suppliers of such changes, where a participation period applies.
- 9.11 See the [Procurement Code](#) for more details on this.



Estimated Total Contract Value including VAT & possible extensions.	Minimum No. of Quotations & Local Quotations	Evaluation & Supplier Selection	Additional Requirements (if applicable)	Method of issuing a Contract	Advertising or Notification	Responsibility for Procurement Process
<b>Regulated Below Threshold Contracts Process</b>						
Up to £30,000. Must be done via the Procurement System if over £5,000.	1 quote.  Must seek local Supplier in the first instance.  Seek 'best and final offer'.	Check if Supplier is on Debarred list or should be Excluded or are Excludable.	Must seek best and final offer to ensure VFM.	<ul style="list-style-type: none"> <li>Use of Purchase Order for <b>Goods and Services, and limited Works Contracts only</b> (see <a href="#">Procurement Code</a>) or</li> <li><a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) for more complex requirements or where the level of risk needs to be addressed.</li> </ul>	Advertising not required.	Self-service in line with Rules and Procurement Legislation.
Contracts from £30,001 to £100,000 for Goods and Services.	3 quotes  2 local Suppliers in the first instance	Ensure Suppliers meet conditions of participation and evaluation criteria. See	If less than three quotes are <b>received</b> the Service must seek the relevant level of approval within their Service to award and must ensure that VFM has been demonstrated. The	<ul style="list-style-type: none"> <li>Use of Purchase Order for <b>Goods and Services. For construction (Works and Services) See <a href="#">Procurement Code</a>.</b> or</li> <li><a href="#">Contract Template</a> (or other</li> </ul>	Advertising not required where quotations are by invitation only from particular or pre-selected	Self-service via the <a href="#">Procurement System</a> and in line with the Rules and <a href="#">Procurement Code</a> . Must be visible on the <a href="#">Council's Corporate Contract</a>

<p>Or £30,001 to £500,000 for Works</p>	<p>Where VFM is better met by going to the open market then this must be the first option.</p>	<p>Rule 25</p> <p>Check that Suppliers are not on Debarred list or should be Excluded or are Excludable.</p> <p>Ensure conflict of interest is assessed.</p>	<p>decision must be recorded in writing and the decision retained in the <a href="#">Procurement System</a>.</p> <p>Once selected winning bidder must ask for best and final offer to obtain VFM.</p> <p>Refer to the Construction Guide for Works Contracts.</p>	<p>form of Contract approved by Legal Services) for more complex requirements, or where the level of risk needs to be addressed.</p> <p>Please also refer to Rule 31 for requirements for sealing.</p> <p>Ensure added to the <a href="#">Key Decision List</a> if Contract award is over £500,000.</p>	<p>Suppliers.</p> <p>Where open competition takes place then a Below Threshold Tender Notice must be published. See <a href="#">Procurement Code</a> .</p> <p><b>In all cases</b> must publish a Regulated Contract Details Notice.</p>	<p><a href="#">Register</a> to meet Transparency code.</p> <p>Must publish a Regulated Contracts Details Notice on the Central Digital Platform via the Procurement System for award.</p>
<p>Contracts above £100,000 to PA23 Threshold<sup>5</sup> for Goods and Services</p> <p>Or</p> <p>£500,000 to</p>	<p>5 quotes.</p> <p>2 Local Suppliers where possible.</p> <p>Where VFM is better met</p>		<p>If less than five quotes are <b>received</b> the Service must seek the relevant level of approval within their Service to award and must ensure that VFM has been demonstrated. The decision must be recorded in writing and the decision</p>	<p>Up to £500,000:</p> <ul style="list-style-type: none"> <li>Signature on <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) or sealed by Legal Services if required</li> </ul>	<p>Advertising not required where quotations are by invitation only from particular or pre-selected Suppliers.</p> <p>Where open</p>	<p>Self-service via the <a href="#">Procurement System</a> and in line with the Procurement Legislation. Must be visible on the Contract register to meet Transparency</p>

<sup>5</sup> \*The Procurement Legislation thresholds change regularly, so please refer to the Procurement Code or intranet pages for up-to-date figures.

<p>PA23 Threshold for Works:</p> <p>Or</p> <p>£100,000 to Light Touch Threshold for Light Touch Services</p>	<p>by going to the open market then this must be the first option.</p>		<p>retained in the <a href="#">Procurement System</a>.</p> <p>The decision must be recorded in writing and all documentation supporting the decision retained in the <a href="#">Procurement System</a>.</p> <p>Once selected winning bidder must ask for best and final offer to obtain VFM.</p> <p>Refer to the Construction Guide for Works Contracts.</p>	<p>Over £500,000:</p> <ul style="list-style-type: none"> <li>• <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) sealed by Legal Services</li> </ul> <p>Please refer Rule 31 (requirements for sealing)</p>	<p>competition takes place then a Below Threshold Tender Notice must be published.</p> <p><b>In all cases</b> must publish a Regulated Contract Details Notice.</p>	<p>regulations.</p> <p>Must publish a Regulated Contract Details Notice on the Central Digital Platform via the Procurement System for award.</p>
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### Public Contracts Process

<p>Above PA23 Threshold<sup>6</sup> for Goods, Services and Works and Light Touch Services</p>	<p>Follow Procurement Legislation processes.</p> <p>Consider how to develop local market</p>	<p>Ensure Suppliers meet conditions of participation and evaluation criteria.</p> <p>Check that</p>	<p>A fully compliant process must be carried out in accordance with the processes set out in the PA23 for Public Contracts.</p> <p>Possible routes to market:</p>	<p>Up to £500,000:</p> <ul style="list-style-type: none"> <li>• Signature on <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) or Sealed by Legal Services if required</li> </ul>	<p>Notifications must be published in line with the PA23 and the <a href="#">Procurement Code</a>.</p>	<p>Project managed by Procurement Services with engagement from Legal Services as appropriate.</p> <p>All procurements over the PA23 Threshold</p>
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<sup>6</sup> \*The Procurement Legislation thresholds change regularly, so please refer to the Procurement Code or intranet pages for up-to-date figures.

	<p>within the procurement and social value.</p>	<p>Suppliers are not on Debarred list or should be Excluded or are Excludable.</p> <p>Ensure conflict of interest is assessed.</p>	<ul style="list-style-type: none"> <li>• Open Procedure</li> <li>• Competitive Procedure Flexible</li> <li>• Frameworks</li> <li>• Dynamic Markets</li> <li>• Light Touch</li> </ul>	<p>Over £500,000:</p> <ul style="list-style-type: none"> <li>• <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) sealed by Legal Services</li> </ul> <p>Please refer to Rule 31.</p> <p>Ensure added to the <a href="#">Forward Plan</a> if award is over £500,000.</p>	<p>(See Light Tough Code) for all Notifications.</p> <p>Notifications apply if Procurement Process is Terminated.</p> <p>Standstill periods must be followed.</p>	<p>must follow processes set out in the PA23 and the <a href="#">Procurement Code</a>.</p> <p>Service departments are responsible for:</p> <ul style="list-style-type: none"> <li>• Specification</li> <li>• Governance authority &amp;</li> <li>• Evaluation</li> </ul>
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## **10. Advertising And Notifications – Rule 24**

- 10.1 The Procurement Act 2023 places more emphasis on transparency and stipulates that notices are published at stages throughout Contracting activity. Service Departments must ensure that these notices are adhered to and carried out in accordance with the Procurement Act 2023 to ensure compliance to Council Rules and Procurement Legislation. There are some differences for Light Touch Services Contract. See table below:

10.2 Notifications are now required at the following points and not all of these apply at all levels of procurement.

See tables below:

<b>Procurement Lifecycle</b>	<b>Notices for Regulated Below Threshold Contracts</b>	<b>Mandatory or Optional</b>	<b>Contract Brief Description</b>	<b>When:</b>
Plan	Below Threshold Tender Notice	Mandatory If carrying out an open process	A notice inviting tenders or quotations for Contracts with an estimated value below the relevant threshold	Prior to starting procurement for a Regulated Below Threshold Contract via <b>open process</b>  For all Regulated Below Threshold Contracts that are advertised (i.e. not where tenders are invited from particular or pre-selected Suppliers)
Procure	Contract Details Notice- Below threshold	Mandatory	A notice setting out that the Council has entered into a below threshold Contract	For all Regulated Below Threshold Contracts (above £30k and below threshold) as soon as reasonably practicable after entering into the Contract
<b>Procurement Lifecycle</b>	<b>Notices for Covered Contracts</b>	<b>Mandatory or Optional</b>	<b>Contract Brief Description</b>	<b>When:</b>
Plan	UK1 Pipeline Notification	Mandatory	List of all procurement projects for Contracts over £2m to be reprocured in the next 18 months.	Within 56 days of the start of the financial year.
Define	UK2 Preliminary	Mandatory* *Unless set out in the	A notice to announce that the Council is planning to	Before publishing a tender notice for all Covered Contracts (above threshold

	Market engagement Notice	tender documentation and Tender Notification as to why	conduct, or has conducted, a pre-market engagement exercise Contract	modification). Mandatory for covered procurements if a preliminary market engagement is carried out unless the Council can provide the justification for not doing so in the tender notice.
Procure	UK3 Planned Procurement Notice	Optional	A notice setting out the Council's intention to commence a procurement in the future	If intention is to reduce the procurement timescales, it must be published at least 40 days but no more than 12 months before the tender notice is published
Procure	UK4 Tender Notice	Mandatory	A Notice setting out the Council's intention to award a public Contract and commence a procurement process Contract	Prior to starting procurement exercise for Contract all Public Contracts (Above threshold procurement) Both for open and competitive flexible procedure.
Procure	UK5 Transparency Notice	Mandatory (Except for User Choice Contracts)	A notice setting out that the Council intends to make a Direct Award relying on the permitted grounds for a Direct Award in the PA23	Prior to award
Procure	UK6 Contract Award Notice	Mandatory (Except for User Choice Contracts)	A notice setting out that the Council intends to award a Contract	After issuing Assessment Summaries and prior to award of (Above threshold Contract) and the publication starts the Standstill Period
Procure	UK7	Mandatory	A notice setting out that	Within 30 days beginning with the day the

	Contract Details Notice	(Except for User Choice Contracts)	the Council has entered into a Contract	Public Contract is entered into (including Frameworks) or within 120 days for Light Touch Contracts.
	Redacted Version of the Contract and  Publication of Contract with modification	Mandatory (for all Contracts over £5m)	A copy of the Contract with a value above £5m must be published after: (iii) redacting sensitive commercial information; and (iv) (ii) complying with the UK GDPR.  After Contract Modification	Within 90 days of the public Contract being entered into or within 180 days for Light Touch Services Contract.  Within 90 days from the date of the modification.
Procure	UK12 Procurement Termination Notice	Mandatory	A notice that the Council has decided to abandon a procurement after publishing a tender or transparency notice	As soon as reasonable after making the decision to abandon
Procure	UK 13 to 16 Dynamic Market notice	Mandatory	A set of notices on the establishment and running of Dynamic Markets	When advertising, establishing, changing or terminating a dynamic market
Manage	UK8 Contract Payment notice	Mandatory (Except for Concession Contracts and Contracts awarded by Schools)	Details of payments of more than £30k made by the Council under a Public Contract	Quarterly



Manage	UK9 Contract Performance Notice	Mandatory for all Contracts over £5m in value let under PA23 or all Convertible Contracts where a modification takes the Contract value above £5m <b>(Except for Light Touch Contracts. Concession Contracts are exempt from KPI publication but must publish for poor performance/breach)</b>	A notice publishing information in relation to: (iii) Performance assessment against key performance indicators in the Contract  (iv) Supplier poor performance/breach of contract	(iii) Once in every 12 months during the lifecycle of the Contract and on termination.  (iv) Where there is a breach or the Supplier is not performing, and has not improved, then before the end of period of 30 days starting on which a particular breach or failure to perform.
Manage	UK10 Contract Change Notice	Mandatory prior to a qualifying modification taking place (copy of modified contract for Public Contracts over £5m to be published) <b>(Except for Light Touch Contracts)</b>	Contract Change notice: A notice setting out that the Council intends to modify a Public Contract or a Convertible Contract	Before modification of a Convertible Contract (Contract where the modification will result in a Regulated Contract being converted to a Covered Contract i.e. above threshold) Exemptions apply for certain modifications in value and term of the Contract – please see Rule 29.
Manage	UK11 Contract Termination	Mandatory (Except for User Choice Contracts)	A notice setting out that a covered Contracts has been terminated or has	Before the end of 30 days from the date of Termination (Termination means expiry, discharge, termination by a party, rescission

	Notice		expired or come to an end Contract.	or via a Court order).
Manage	UK17 Payments Compliance Notice	Mandatory (Except for Concession Contracts and Contracts award by Schools).	Details of the Council's performance against the 30-day payment terms in Contracts.	Twice annually - Before the end of the period of 30 days beginning with the last day of a Reporting Period. Reporting Period is every six-month period ending on 31 <sup>st</sup> March or 30 <sup>th</sup> September.

## **11. Award Criteria and Evaluation – Rule 26**

- 11.1 Section 23(6) (Award criteria) allows additional factors to be taken into account in award criteria for Light Touch Contracts, such as to reflect that a service recipient may have the right to exercise their choice or that proximity of the provider and service user may be important for the effective and efficient supply of Services (i.e. not having numerous care providers criss-crossing a county).
- 11.2 See CPRs and [Procurement Code](#).

## **12. Contract Award and Execution – Rule 28**

- 12.1 Light Touch Services Contracts are exempt from a standstill period, but the Council has taken a view that it will abide by this Rule as good practice and mitigation of risk. Therefore, the Council should apply the mandatory standstill period of eight (8) working days beginning with the day on which the Contract Award Notice is published.
- 12.2 There is no obligation to set out the standstill period in the Contract Award Notice for Light Touch Services, but this must be included where a voluntary standstill period is to be observed.

## **13. Contract Modifications, Novation & Termination to Contracts – Rule 30**

- 13.1 Light Touch Services Contracts are modifiable under the PA23.
- 13.2 PA23 allows the modification of Light Touch Contracts, without having to apply the other provisions of the section (Section 74(2) (Modifying a public Contract). In addition, in accordance with section 75(6) (Contract change notices), modification of a Light Touch Contract does not require the publication of a Contract change notice. Again, this reflects the overall intent to maintain less onerous light touch rules.
- 13.3 Light Touch Contracts may therefore be modified under the Act in any circumstances, provided Contracting authorities have regard to the procurement objectives in section.
- 13.4 See CPRs and [Procurement Code](#) for more details.

## **14. Contract Management – Rule 31**

- 14.1 Light Touch Contracts are exempt from publishing 3 Key Performance Indicators for Contracts over £5m.
- 14.2 Light Touch Contracts must publish a Contracts Details Notice within 120-day time period after the Contract is entered into. A copy of the redacted

signed Contract must be published within a 180-day time period of the date that it is entered into, if the estimated value exceeds £5 million.

14.3 Light Touch Contracts are exempt from publishing performance notifications in regard to a breach or failure to perform.

## 15. Glossary - Defined Terms

Advertising	Where Request for Quotations and Tenders are advertised to the open market for opportunity.
Aggregation	Is the requirement to add together the estimated value of separate Contracts for meeting a single requirement. Procurement Legislation expressly prohibits the splitting of requirements into smaller units or orders to avoid the process relating to Public Contracts.
Concessions	A type of Contractual arrangement under which, rather than paying the Supplier to deliver a work or service, the Council grants the Supplier the right to exploit an opportunity and receive some or all of its income from third parties (e.g. the public), retaining the profit.
Contract	Means an agreement between the Council and any other organisation, including another public authority, made by formal agreement or by issue of a letter of acceptance or official purchase order for Works, Supplies or Services.
Contracting Activity	Any action, process of decision making that relates to the creation of a Contract for the supply of Goods, Services or Works. Including all elements of the sourcing cycle from market research, engagement, Tendering, evaluation, award, and Contract management to the end of the Contract term including Termination.
Contract Management	The management and monitoring of a Contract to ensure delivery and performance; including commercial elements and payments.
Contract Manager	Person responsible for the management of Council Contract to ensure delivery of performance and outcomes.

Contract Management Framework	The Councils Contract management framework, that sets out requirements for Service Departments to ensure that Contracts are effectively managed to deliver VFM.
Contract Templates	Standardised Contracts to be used by Service Departments and procuring officers that have been drawn up by Legal Services for the Contracting of Goods and Services (for Works, industry standard construction contracts such as the JCT or NEC suite are generally used).
Convertible Contract	A below Threshold Contract, that after modification has become a Public Contract, and therefore has become a Converted Contract.
<a href="#">Council's Constitution</a>	Documents (s) that sets out how the Council is governed.
Debarred Supplier	Supplier that is on the Cabinets Office list of Debarred Suppliers.
Directors	Means Directors and Executive Directors of Enfield Council
Direct Award	Entering into a Contract where no competition has taken place.
Dynamic Market	Arrangement for the purpose of the Council awarding Public Contract by reference to Suppliers' participation in the arrangements.
Exception	Contracting Activity where Direct Award is permissible in certain circumstances.
Excluded & Excludable Suppliers	Supplier that can be Excluded in line with the discretionary or mandatory requirements for exclusion.
Extension	Facility to extend a Contract term.

Framework Agreement	An agreement with Suppliers which sets out the terms and conditions under which specific purchases can be made throughout the term of the agreement and which where necessary has been Tendered in accordance with Procurement Legislation.
Council Governance Reports	Reports set out as standard templates by Governance Department to be used for decisions and authority, or for Key Decision Process. See <a href="#">Non-Key Officer Report</a>
Health and Wellbeing Strategy	Council Policy to improve the health and wellbeing of staff and residents of the borough
Health Services	Contracts that provide Services relating to health care provision but not social care.
Key Decision	Council's governance process for projects that meet the Key Decision criteria.
Known Risk	Means:  5.1.1.1 Could jeopardise the satisfactory performance of the contract, but  5.1.1.2 Because of its nature, could not be addressed in the contract as awarded and  5.1.1.3 Was identified in the Tender or transparency notice for award, detailing a description of the risk and possibility of modification
Legislation	Legal regulations set out by the Government.
Light Touch Services	The Services set out in the Public Procurement Regulations 2024 that cover areas in Schedule 3; namely Adult social care and other areas listed in schedule 3.
Local Supplier	Supplier that is based in the London Borough of Enfield
<a href="#">Non-Key Officer</a>	Part of the <a href="#">Reports Process for Non-Key Officer Decisions</a> .

<a href="#">Report</a>	
Notification	A Notice placed in the public domain to notify the market of Contracting Activity to ensure transparency.
Novation	A Council Contract that is moved from one Supplier to another.
Open Framework	A scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.
Operational Processes	Processes that are not set out in the CPRs but support the process of Contracting Activity and are operational in nature.
Other Authority	Where a Standard Corporate Report Template is not used within a Service, the authority to procurement must be set out clearly in some other report, email or policy etc. (See Standard Corporate Report Template).
Platinum or Gold Contract	Contract classified as Platinum or Gold that will be either high value, high risk, complex or all the aforementioned.
Price Quality Ratio	Award criteria set out in the Procurement Principles on the ratio of Price and Quality within a Tender.
Procurement Act Thresholds.  Procurement Threshold	Threshold set over which the Procurement Legislation applies.
Procurement Act 2023 (PA23)	Procurement Legislation covering public procurement. Came into effect 28 <sup>th</sup> October 2024.
Procurement Assurance Group (PAG)	Procurement Assurance Group, that oversees procurement assurance, and robust procurement governance is in place.
<a href="#">Procurement Code</a>	Document that supports the CPR's and sets out the processes and governance to be followed for all Contracting Activity. Provides more detailed information and links to supporting information to ensure compliance with these rules.

Procurement Legislation	<p>Procurement Legislation covering Public Contract requirements for England.</p> <ul style="list-style-type: none"> <li>• Procurement Act 2023</li> <li>• Provider Selection Regime</li> <li>• Public Contract Regulations 2015</li> </ul>
Procurement Principles	Set of Principles set out to meet Council requirements and may change from time to time.
<a href="#">Procurement System</a>	The Councils digital platform used for e-Tendering, Contract management and Contract register, used to meet legislative requirements.
Provider Selection Regime (PSR)	Procurement Legislation came into effect January 2024. Covers Health Services Contracts. A set of rules for procuring health care Services set out in the Health Care Services (Provider Selection Regime) Regulations 2023.
Provider Selection Regime Code	Document that supports the CPRs and sets out rules and operational processes in relation to the PSR.
Public Procurement Regulations 2015	Procurement legislation came into effect 2015. Only applied to contracts let under this legislation.
Public Contract	<p>A Contract of a kind specified in Procurement Legislation:</p> <p>A contract with a value of not less than the Procurement Threshold and:</p> <ul style="list-style-type: none"> <li>• Not an Exempted Contract</li> <li>• A framework</li> <li>• A concession contract</li> </ul>
Regulated Below Threshold Contract	Contracts covered by the Procurement Act. Contracts let via Procurement Act 2023 which are below Threshold.
Quotation	A formal statement or promise usually submitted by a potential Supplier in response to a request for a quotation to supply specified Supplies, Works or Services required by a purchaser



	<p>at specific prices within a specific time frame. (A quotation should be distinguished from an Estimate, which is not a fixed price).</p> <p>N.B. A Contract arises on acceptance of a quotation. Unless otherwise specified a quotation may be subject to the Supplier's terms and conditions of business and those terms and conditions become part of the Contract. Therefore, a request for quotations should specify that the quotation is subject to the Council's terms and conditions.</p>
Services	Services such as maintenance of equipment, transportation, consultancy, technical Services. etc. as defined by the Procurement Legislation.
Service Department.  The Service	Department or team within the Council, commissioning or carrying out Contracting Activity, who define the requirement and manage the Contract.
SME  (Small, Medium Enterprise)	Small and medium sized enterprise Supplier as defined in section 123 of the Procurement Act 2023.
Standard Corporate Report Template	<a href="#">Standard Corporate Report Template</a> to be used for any decision that meets the KD threshold of expenditure/savings of £500k or more and/or has a significant impact on the community in two or more wards. Should also be used for all Portfolio decisions whether they are Key or Non-Key
Supplier	<p>A person/ company that will provide Goods, Service or Works to the Council.</p> <p>A bidder within a competitive process.</p>
Supplies	Can be tangible object delivered in relation to a Contract. See also Goods.
<a href="#">Supplier Resilience Tool</a>	Tool used to ascertain the risk in the supply chain and the Supplier risk.

Transparency	Regulations relating to what is to be published in the public domain relating to Contracting Activity
Tender	A sealed bid submitted in response to an invitation to Tender, which invitation contains detailed information on requirements including a specification and terms and conditions
Termination	Where a Contract or procurement activity is stopped or ended (terminated).
The Council	London Borough of Enfield
Threshold	The value at which Contracting Activity must follow Procurement Legislation processes.
Value for Money (VFM)	Value for Money (VFM) is a balanced judgement about finding the best way to use public resources to deliver policy objectives.
Variation	Any alteration, modification, addition to or deletion of any requirement of the Contract terms or specification.

## 16. Useful Documents

Document	Supports
Procurement Code	How to carry out procurement and what steps to take (this document)
<a href="#">Sustainable &amp; Ethical Procurement Policy</a> <a href="#">Sustainable procurement check list</a>	Council's Policy on Sustainable and Ethical Procurement
<a href="#">Procurement Checklist</a>	Ensures that all elements of the procurement activity are carried out compliantly.  This should be used to support all procurement activity
<a href="#">Contract Management Framework</a>	Ensures that Contracts are managed effectively

<a href="#">Procurement Quick Quote guidance</a>	Helps guide you into what process to follow
<a href="#">London Tenders Guidance</a>	London Tenders Portal Guide.  This is a step-by-step user guide for LTP
<a href="#">Equalities in Procurement Guide to Suppliers.</a> <a href="#">Fairer Enfield Policy</a>	Equalities in Procurement guides to follow. Enfield's Fairer Enfield Policy
<a href="#">Suite of Request for quotation documents</a>	Request for quotation pack to be used for self-service: <ul style="list-style-type: none"> <li>• <a href="#">Self-Serve Process Flow</a></li> <li>• <a href="#">Specification Guidance &amp; Template</a></li> <li>• <a href="#">Invitation to quote (ITQ)</a></li> <li>• <a href="#">Contract Templates</a>*</li> </ul>

## Appendix F Schools Code

### Schools Procurement Code

*Use hyperlink index to go to relevant section*

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## **1. Introduction**

- 15.1 This Schools Procurement Code (Code), MUST be used in conjunction with the Procurement Code and Contract Procedure Rules (Rules) and form the Council Contract Standing Orders in how to carry out Contracting Activity. This document, together with the Procurement Code and Rules, serves as a roadmap for Schools, outlining the key principles, procedures, and best practices to uphold throughout all Contracting activity.
- 15.2 Contracting Activity requires strategic decision-making, risk management, and fostering mutually beneficial relationships with vital suppliers. By adhering to this Code, the Council can manage cost savings, mitigation of risks, maintain compliance with regulations, and ultimately contribute to the Council's plan.
- 15.3 All Schools Officers at whatever role involved in Contracting activity must read this Code and the Rules to ensure there is a thorough understanding of how to carry out the steps within the Sourcing Cycle to ensure best practice and compliance to Council and UK Procurement Legislation.
- 15.4 Contracting Activity means:
- (i) Procurement (all elements of the process)
  - (ii) Direct Awards
  - (iii) Exceptions & Waivers
  - (iv) Variation & extensions
  - (v) Terminations
  - (vi) Novations
  - (vii) Contract Management

### **(ii) Getting Started**

- 16.1 This document explains what elements of the Rules and Procurement Code do not apply to Schools.
- 16.2 Schools need to abide by the Rules and the Procurement Code unless stated otherwise.
- 16.3 Throughout this document and the Rules, a 'Procuring Officer' is the person carrying out Contracting Activity, or the client working with

Procurement Services, or 3<sup>rd</sup> party/consultant working on behalf of the school.

16.4 The Procurement Act 2023 (PA23) brings Contract Management into procurement legislation for the first time. It is important that Contract Managers are familiar with these Rules and apply them as required.

16.5 For the first time there are several procurement legislations in place. Schools must ensure that the correct procurement legislation is applied to Contracts.

(i) Contracts let under the [Public Contract Regulations 2015](#) will remain under this legislation until the natural end date of the Contract or Framework agreement, therefore variations and extensions must be carried out under this legislation.

(ii) Contracts let under the [Procurement Act 2023](#) must follow this legislation.

(iii) Contracts that fall under the [Provider Selection Regime](#) (PSR) must follow that legislation, even if they were let under the Public Contracts Regulations 2015 (see PSR Code).

### **(iii) Procurement System**

3.1 The Council Procurement System is the London Tenders Portal and is to be used for all Contracting activity over £5k. Schools do not need to use the Council Procurement System but are expected to comply with the Procurement Act 2023 in regard to E-Tendering as set out in Procurement Act 2023 (Section 96 (1)). Schools must ensure that any portal used must be free of charge, generally available and must be accessible to people with a disability. . Any third party used should use a tendering portal. See Rule 31 on record keeping.

### **(iv) Introduction – Rule 1**

18.1 Authority run schools are subject to the Councils Contract Procedure Rules. These are mandatory. Procurement is the biggest area of failure for Schools.

## **(v) Purpose – Rule 2**

19.1 The purpose of the Rules is to ensure that the Council and its schools are compliant to all UK and Council rules and legislation. Suppliers can take legal action where the Council does not apply the Rules or follow Legislation and therefore it is important to protect the Council from risk of challenge.

## **(vi) Transparency – Rule 3**

20.1 Schools are exempt from some of the Procurement Act 2023 notifications.

A planned procurement Notice	
Pipeline Notice	
Preliminary Market Engagement Notice	
A Tender Notice	
Dynamic Market Notice	
Contract Award Notice	
Procurement Termination Notice	
Contract Details Notice	
Contract Change Notice	
Payments Compliance Notice	Exempt
Contract Performance Notice	
Contract Termination Notice	
Transparency Notice (Direct Award)	
Below threshold procurement tender notice	Exempt
Below threshold award notice	Exempt
Payment notification	Exempt

## **(vii) Procurement Governance and Assurance – Rule 6**

21.1 Schools are now bound by the Procurement Assurance Group.



**(viii) Annual Procurement Plan – Rule 7**

- 22.1 Schools do not have to provide information to Procurement Services for the Annual Procurement plan. However, for good practice schools should have a procurement plan for the 1 – 2 years of work.

**(ix) Insurance – Rule 9**

- 23.1 Schools are not bound by the Councils insurance levels.

**(x) Financial Due Diligence and Security– Rule 12**

- 24.1 Schools should carry out their own Financial Economic Standing tests.

**(xi) Business Continuity – Rule 13**

- 25.1 Schools do not need to comply with having business continuity plans for Emergency Planning, however it is good practice to ensure that key supplier have business continuity plans in place and are tested. School must follow any guidance from DoFE for this area.

**(xii) Contracting Activity Governance – Approvals – Rule 15**

- 26.1 Schools must follow their own governance for schools.

**(xiii) Record Keeping – Rule 32**

- 27.1 Schools should ensure that all records are kept in a central location, in line with the Procurement Act 2023:
- (i) 3 years from date the contract is entered into or if awarded but not entered into from the date of award. See section 98 of PA23.

**(xiv) Contracts, Terms and Conditions – Rule 33**

28.1 Schools do not need to apply the implied terms of 30-day payment terms.