

# Contract Procedure Rules

1.	Introduction.....	2
	Executive Summary .....	2
	Purpose .....	3
	Exemptions.....	3
	Requirements.....	4
	Risk, Insurance and Other Forms of Security .....	5
	Insurance.....	5
	Security .....	6
	Approval to Procure .....	7
	Procurement and Commissioning Review Board .....	8
	Specialist Procurement .....	8
2.	Calculating the Value of a Contract .....	9
3.	Procurement Thresholds.....	11
	Contracts for Construction Works .....	13
	Evaluation Criteria and Going out to the Market .....	13
4.	Frameworks.....	14
5.	Concessions or Contracts with Income Elements.....	15
6.	Application & Waiver of the Rules.....	15
7.	Variations to Contracts.....	16
8.	Exceptions to Competitive Tendering .....	16
9.	Invitations to Quote/Tender & Advertising .....	18
10.	Receipt and Opening of Tenders and Quotes .....	18
11.	Sustainable Procurement.....	18
12.	Contract Award and Execution.....	19
	Letter of Acceptance .....	20
13.	Terms and Conditions .....	20
14.	Post-Tender Negotiations .....	21
15.	Working in Partnerships / Shared Services .....	21
16.	Prevention of Corruption .....	21
	General standards of conduct.....	21
	Declaring an interest .....	22
	Organised Crime .....	22
17.	Record Keeping .....	22
18.	Claims from Contractors/Suppliers .....	23
19.	Guidance and Advice .....	23
20.	Contract management.....	24
21.	IR35 Rules.....	24
22.	Consultation .....	25
23.	Glossary of Terms .....	26
	ASSUMPTIONS .....	26

# 1. Introduction

## Executive Summary

1.1 These Contract Procedure Rules (Rules) form part of the [Council's Constitution](#). It is important that the Rules are applied correctly to protect the Council from challenge and protect the public purse.

The Procurement & Commissioning Hub (P&C Hub) will lead on all procurements over the EU Threshold, and service departments will be expected to self-serve up to £50,000. Procurements above £50,000 but below the EU Threshold will be supported by the P&C Hub.

The following 10 principles should be followed by service departments in all procurements to ensure that contracts are entered in a compliant manner and deliver value for money to the Council:

- All procurement projects must follow the overarching principles of value for money, transparency, equal treatment and non-discrimination.
- Plan the procurement ahead of the requirement (or expiry of existing contract) to allow sufficient time to carry out a compliant process.
- Consider what approach will deliver outcomes for the Council in a way that will maximise value for money i.e. should the Council buy the same product/service in the same way as previously, or is there a more effective or efficient way to deliver desired outcomes?
- To ensure a clear audit trail, all procurement projects over £1000 must be managed through the [E-Tendering Portal](#), including all communication with bidders; clarification questions, the usage of standard templates with all documentation relating to the process maintained and stored within the [E-Tendering Portal](#) (including a copy of the contract awarded).
- Demonstrate value for money by carrying out some form of competitive tender; and ensuring that the minimum number of quotes (including local suppliers where appropriate) has been **received** in accordance with Rule.
- That the service department takes responsibility for the specification and ensures that it is neither over or underspecified, meets the services department's needs and is clear and concise.
- That there is budget available for the contract and that approval to proceed has been given.
- All procurement activity must follow these Rules and be compliant with [Public Contract Regulations 2105](#) and Council Policy.

- That the procuring officer ensures that Council governance processes have been followed and contracts are let in line with the Council's Scheme of Delegation.
  - If in doubt, seek guidance from the Procurement and Commissioning Hub (P&C Hub) or Legal Services (where required).
- 1.2 In all cases where there is uncertainty regarding the Rules contact the P&C Hub/Legal Services (where required) for clarification. Additional information is available within the **Contract Procedure Rules Guidance Document** which provides greater depth of information regarding these Rules and processes.

## **Purpose**

- 1.3 These Rules apply to the procurement by the Council of Works, Supplies and Services and the granting of [Concessions Contracts](#) (as defined by [Public Contract Regulations 2105](#)). This includes where there may be no, or little monetary value to the contract; or there is income or profit sharing. They are intended to ensure that a contract is entered into only in circumstances which can demonstrate:
- Understanding of the terms of the Contract
  - Consistency in the application of the law and Council policy
  - Probity
  - Value for money
- 1.4 To achieve these objectives, these Rules must be followed every time the Council commences a procurement and/or enters into a contract. These Rules are made under section 135 of the Local Government Act 1972.

## **Exemptions**

- 1.5 The following types of procurement do not fall within the scope of the Rules:
- 1.5.1 contracts of direct employment;
  - 1.5.2 contracts solely for the sale or purchase of land, which are subject to the Property Procedure Rules (NB: Some property transactions may fall within the scope of the EU Procurement regime where works, supplies or services relate to the property transaction, contact the P&C Hub / Legal Services for advice);
  - 1.5.3 the instruction of barristers
  - 1.5.4 specialist professional services necessary for legal proceedings (including expert witnesses, experts, mediators, adjudicators, arbitrators and costs draftsmen);

- 1.5.5 unconditional grants by the Council;
  - 1.5.6 genuine emergencies beyond the control of the Council (NB: Lack of sufficient planning and/or internal process delays will not constitute special, exceptional or emergency circumstances);
  - 1.5.7 individual care packages or education placements where it is considered in the Council's interest or the Council is required to meet obligations under the relevant legislation
  - 1.5.8 adult social care service packages managed by the Council on behalf of a client under the personalisation agenda e.g. managed accounts & direct payments/individual budgets.
- 1.6 The Council recognises the benefits to be gained from e-tendering, e-auctions, e-reverse auctions, purchasing cards and e-purchase-to-pay software. For the purposes of the Rules, the term "contract" refers to both paper/hard copy documents and processes and their replication by electronic media. Only e-tendering systems approved by the P&C Hub may be used.
- 1.7 References to 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.
- 1.8 No contract shall be entered into, nor any tender/quotation invited, unless provision is made in the annual budget or is otherwise agreed by the officer with appropriate delegated authority and such is in accordance with the [Financial Regulations](#).
- 1.9 Failure to comply with these Rules may lead to a disciplinary action when letting contracts. Council employees have a duty to report breaches of the Rules to an appropriate senior manager and the Director of Legal and Governance under the [Council's Whistle-Blowing Policy](#).

## **Requirements**

- 1.10 All contracts will be awarded in accordance with these Rules, and the [Financial Regulations](#).
- 1.11 No contract may be awarded unless there is sufficient budget available for the goods, supplies, services or works being procured and appropriate delegated authority to award the contract
- 1.12 The officer awarding the contract has a duty to ensure and demonstrate that Best Value is obtained, having regard to the appropriate balance between quality and price.

- 1.13 All contracts over £1,000 must be managed via the [E-Tendering Portal](#) to ensure transparency and equality and comply with [Public Contract Regulations 2015](#) regarding e-procurement and e-communications.
- 1.14 Executive Directors, Directors, Assistant Directors and Heads of Service are responsible for ensuring:
- 1.14.1 all relevant staff are familiar with the provisions of the Rules and the [CPR Guidance](#) and that they receive adequate training on their operation;
  - 1.14.2 compliance with any guidelines issued in respect of these Rules;
  - 1.14.3 immediate action is taken in the event of a breach of these Rules within their department or service area;
  - 1.14.4 proper records, of all contractual and procurement documents are kept within the [E-Tendering Portal](#); including minutes of tender evaluation panels and other meetings which may be inspected by a member of the Council at any time during office hours and may need to be disclosed by law;
  - 1.14.5 provision to the P&C Hub of information and resources to support procurement activity that is managed by the P&C Hub to ensure success of the project;
  - 1.14.6 effective contract management, contract reviews and monitoring during the lifetime of all contracts in their areas ensuring KPIs are met;
  - 1.14.7 records of [waivers](#) of any provision of these Rules are maintained;
  - 1.14.8 advice is sought from the P&C Hub/Legal Services, should there be any ambiguity or lack of clarity of the Rules to ensure compliance;
  - 1.14.9 that the standard templates and contracts in the [E-Tendering Portal](#) are used to support a robust procurement process;
  - 1.14.10 that guidance is followed for completion of contracts, where applicable.

## **Risk, Insurance and Other Forms of Security**

- 1.15 The risks associated with any procurement process and/or contract must be assessed by the service department in line with the Council's Risk Strategy using the [Council's Corporate Risk](#) assessment template and must be documented on file. Appropriate actions should be taken to ensure that the Council's potential and actual exposure is managed or minimised. This includes provision of an issues log and estimated costs against any risks as contingency. These should be set out in any [Authority Report](#) within the risk section where appropriate. Where there is a high risk, financial checks may need to be carried out and appropriate procedures followed.

### **Insurance**

- 1.16 Service departments should ensure that each contract includes adequate insurance requirements, seeking advice from the Council's Insurance Department where required and undertaking a risk assessment to ensure the

levels of insurance are adequate. All contracts are expected as a minimum to have employer's liability insurance and public liability insurance. Contracts where there is direct advice and/or design services provided by a contractor, including all consultancy and construction arrangements, must include a requirement for professional indemnity insurance.

## Security

1.17 Where there is doubt as to the contractor's financial viability, or no external report evidencing financial viability is available, then Financial Management Services shall provide expert advice during the procurement process and prior to any contract award.

1.18 For contracts over £250,000 the following Rule must be applied:

<b>£250,000 - £1,000,000</b>	<b>£1,000,000 and over</b>
Sufficient security from the contractor should be considered at this value to manage risk.	The contractor <b>must</b> be required to provide sufficient security.
Evidence of the form of security required, or why no security was required, must be stored and retained on the <a href="#">E-Tendering Portal</a> for audit purposes.	Evidence of the form of security required, or why no security was required, must be stored and retained on the <a href="#">E-Tendering Portal</a> for audit purposes.

Sufficient security shall take one of the following forms:

- 1.18.1 parent company, ultimate holding company or holding company guarantee where their finances prove acceptable;
  - 1.18.2 Director's guarantee or personal guarantee where their finances prove acceptable;
  - 1.18.3 Performance Bond, retained funds or cash deposit;
  - 1.18.4 Any other security as determined by Financial Management Services and/or Legal Services.
- 1.19 For contracts over £1,000,000 where the contractor cannot provide security but the Council has no acceptable alternative provider or has decided to accept the level of risk, then the Executive Director of Finance, Resources and Customer Services must approve the award. The relevant [Authority Report](#) must set out the reason why it is proposed that the contract should be awarded despite absence of security and what measures are to be taken to manage this risk.
- 1.20 Security for performance should also be considered when looking at risk.

## Business Continuity

- 1.21 During the risk assessment, supplier failure or failure to deliver should be assessed. Where delivery of the services is assessed as critical, or there would be major reputational damage in the event of a failure to supply; then Business Continuity Plans should be requested as part of the contract. These suppliers must be identified in the service department's business impact assessment form and logged with the P&C hub to ensure that a record of the Council's critical suppliers is maintained.

## Approval to Procure

- 1.22 Authority to procure must be obtained for **all** procurement; and evidence uploaded onto the [E-Tendering Portal](#) for contracts over £1,000. It is the responsibility of the service department to obtain the necessary authority/approval including any [Authority Report](#) were required seeking advice from Governance Services.

Level of Authorisation and Acceptance.	Contract Value*	
	Up to £250,000	Over £250,000
Authority to Procure	Director/Assistant Director (or as defined in Scheme of Delegation) via an <a href="#">Authority Report</a> or other evidence of authority to procure.	Director and Cabinet Member or Council via <a href="#">Authority Report</a> and <a href="#">Key Decision Process</a>
Authority to Award	Director/Assistant Director (or as defined in Scheme of Delegation) via an <a href="#">Authority Report</a> or other evidence of authority to procure.	Director and Cabinet Member or Council via <a href="#">Authority Report</a> and <a href="#">Key Decision List</a>
Authority to Vary or extend contract	Director/Assistant Director (or as defined in Scheme of Delegation) via an <a href="#">Authority Report</a> or other evidence of authority to procure.	Director and Cabinet Member or Council via <a href="#">Authority Report</a> and <a href="#">Key Decision List</a>

- 1.22.1 No procurement process shall commence without formal approval and budget sign off by the appropriate Council officer in accordance with the Scheme of Delegation. The Head of the P&C Hub must be notified of procurement projects over EU Threshold for goods and services and works. The P&C Hub reserves the right not to support any procurement project that cannot demonstrate approval to procure.
- 1.22.2 An [Authority Report](#) must be produced by the service department for all requirements with a contract value above the Key Decision threshold (£250,000). The [Authority Report](#) must be approved in accordance with the Scheme of Delegation and Council governance. The P&C Hub should be consulted at the planning stage to provide advice on the route to market.
- 1.22.4 A 'Key Decision' within the [Council's Constitution](#) is defined as a proposal:

- (a) which involves expenditure/savings of **£250,000** or above – this includes proposals phased over more than one year and match/grant aided funding, with a total of **£250,000** or above; or
- (b) which has significant impact on the local community in one or more wards.

Therefore, for all contracts that fall within the Key Decision definition, the [Authority Report](#) will need to follow the Key Decision governance process, in addition to these Rules.

- 1.22.5 The Head of the P&C Hub may, at their discretion take lead responsibility for any procurement and will take responsibility for all procurements above the EU Thresholds for supplies, services and works.
- 1.22.6 For extensions to contracts where the entire contract value (including the extension value) exceeds the EU Threshold for supplies/services or exceeds £1,000,000 for works, a business case relating to that extension must be reported to the Procurement and Commissioning Review Board for approval.

## **Procurement and Commissioning Review Board**

- 1.25 For contracts over the EU Threshold for goods & services and over £1,000,000 for works a business case must be taken to the Procurement and Commissioning Review Board to approve the procurement. This must be done with the involvement of the Procurement and Commissioning lead officer.
- 1.26 The Procurement and Commissioning Review Board has the right to call any procurement project for review by the Board.
- 1.27 The Procurement and Commissioning Review Board may also establish a subcommittee to take responsibility for lower risk procurements, where there is insufficient capacity within the regular Board, or to deal with emergency requests.
- 1.28 All activity of any sub-committee will be reported at the Procurement and Commissioning Review Board.

## **Specialist Procurement**

- 1.29 Where there is a requirement to undertake procurement and there is expertise and knowledge within a Council Hub/Service or centralised budget in the Council such as (but not limited to):
  - CCTV & Monitoring
  - Catering
  - Corporate Maintenance and Construction Team

- Financial Management Services & Pensions/Payroll
- Fleet Services
- Facilities Management
- Human Resources & Learning & Development
- ICT
- Insurance
- Legal Services
- Procurement Services
- Property Services
- Temporary Accommodation

These need to be procured in conjunction with the specialist department or by the specialist department and follow any Council governance that is in place for these areas of spend. E.g. All IT hardware and software is procured and managed by ICT Services.

- 1.30 To maximise value for money for the Council, procurement should be done in collaboration with other Council service areas or use or amend existing contracts where possible. Please seek advice from the P&C Hub.

[Click here for further information on this section.](#)

## **2. Calculating the Value of a Contract**

- 2.1 In calculating the value of the contract,

- 2.1.1 values are total lifetime contract values not annual values;
- 2.1.2 values exclude VAT;
- 2.1.3 values are to be aggregated – for example, if there is a recurring need on an annual basis for supplies;
- 2.1.4 an estimate shall be made of the total purchasing requirement/whole life costing/financial implications – for example, including ongoing maintenance and support costs. If there are variables which result in the estimate being a range of figures rather than a single figure, then the highest figure in the range will be the value of the contract for the purposes of these Rules;
- 2.1.5 the valuation shall include the value of possible contract extensions and possible additional options;
- 2.1.6 where a contract is of indeterminate length the value of the contract shall be monthly value multiplied by 48;
- 2.1.7 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 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;
- 2.1.8 if the value of the tender is less than 10% below the EU Thresholds, then officers must consider procuring in accordance with [Public Contract Regulations 2105](#).

- 2.2 It is a breach of these Rules to deliberately divide up contracts to evade the need to follow a more complex/lengthy procurement procedure or evade the requirements of [Public Contract Regulations 2105](#).
- 2.3 Where contract value may change, due to uncertainty of the project or slippage, then this must be factored into the costs; to ensure sufficient budget is approved for the project. Additional questions in the Tender/Quotation may be necessary to cover the risk of additional costs.

[Click here for further information on this section.](#)

### 3. Procurement Thresholds

- 3.1 The procurement requirements in the table below apply according to the estimated total value of the contract. The procurement requirements below are **minimum requirements**. In order to obtain Best Value, services departments should consider market testing prior to inviting suppliers to bid, and inviting more than the minimum number to cover for bidders dropping out.
- 3.2 The value of the contract is the total value over the whole contract including any potential extensions.
- 3.3 The P&C Hub reserves the right to bring any procurement into the P&C Hub to manage due to either risk to the Council (including reputational risk) or complexity.
- 3.4 Frameworks and other corporate agreements, where they exist, should be used (provided Best Value can be demonstrated) and managers must retain sufficient evidence to demonstrate compliance.
- 3.5 **All quotations over £1,000 must be via the Council's [E-Tendering Portal](#).** For quotations under £1,000, written evidence of expenditure must be retained e.g. invoice receipt etc.

Estimated Total Contract Value	Minimum Number of Quotations	Minimum Number of Local Quotations	Additional Requirements (if applicable)	Method of issuing a contract	Responsibility for Procurement Process
Up to £10,000	1	1 Where practicable	Where a local quotation could not be sought then this must be recorded on the <a href="#">E-Tendering Portal</a> .	Use of Purchase Order.	Self-service within the service centre via the <a href="#">E-Tendering Portal</a> .
Contracts from £10,001 to £50,000	2	1 Where practicable	If less than two quotes are received the Divisional Director or Head of Service must approve the award. The decision must be recorded in writing and all documentation supporting the decision retained in the <a href="#">E-Tendering Portal</a> .	Use of Purchase Order or standard contract for more complex requirements. Please also refer to 17.2 for requirements for sealing.	Self-service within the service centre via the <a href="#">E-Tendering Portal</a> .
Contracts from £50,001 to £100,000 (for supplies and services) or £500,000 (for	3	1 Where practicable	If less than three quotes are received the P&C Hub must approve the award. The decision must be recorded in writing and all documentation supporting the decision retained in the <a href="#">E-Tendering Portal</a> .  Rule 3.7 applies to works contracts in	Use standard contract Please also refer to 17.2 requirements for sealing.	Self-service via the <a href="#">E-Tendering Portal</a> with support from the P&C Hub.

works):			addition to the above.		
Contracts above £100,000 to EU threshold * (for supplies and services) or above £500,000 (for works)	5	2 Where practicable	If less than 5 quotes are received the P&C Hub must approve the award. The decision must be recorded in writing and all documentation supporting the decision retained in the <a href="#">E-Tendering Portal</a> .  Rule 3.7 applies to works contracts in addition to the above.	Up to £250,000:  Signature on standard contract or sealed by Legal Services if required  Over £250,000:  Standard contract sealed by Legal Services  Please refer to 17.1 (form to be approved by Legal Services) & 17.3 (requirements for sealing) Ensure added to the <a href="#">Key Decision List</a>	Self-service via the <a href="#">E-Tendering Portal</a> with support from the P&C Hub.  Works contracts over £1,000,000 must have gained approval from P&C Review Board prior to commencement of procurement.  Service departments are responsible for: <ul style="list-style-type: none"> <li>• Specification</li> <li>• Governance &amp; authority</li> <li>• Evaluation</li> </ul>
Above EU threshold for goods, services and works (including Light Touch Regime)			A fully compliant process must be carried out in accordance with the <a href="#">Public Contract Regulations 2015</a> Possible routes to market: <ul style="list-style-type: none"> <li>• Open</li> <li>• Restricted</li> <li>• Negotiated</li> <li>• Competitive dialogue</li> <li>• Competitive procedure with Negotiation</li> <li>• Frameworks</li> <li>• DPS</li> </ul> This must be led by the P&C Hub.	Up to £250,000: Signature on standard contract or sealed by Legal Services if required  Over £250,000:  Standard contract sealed by Legal Services  Please refer to 17.1 (form to be approved by Legal Services) & 17.3 (requirements for sealing) Ensure added to the <a href="#">Key Decision List</a>	Project managed by the P&C Hub with cooperation from Legal Services as appropriate.  All procurements over EU Threshold must have gained approval from the P&C Review Board prior to commencement of procurement.  Service departments are responsible for: <ul style="list-style-type: none"> <li>• Specification</li> <li>• Governance &amp; authority</li> <li>• Evaluation</li> </ul>

3.6 When seeking quotes on a regular basis; officers must ensure that they rotate those suppliers invited to quote i.e. that different suppliers are invited for each exercise. It is acceptable to invite a previously successful supplier for a similar contract, if that supplier performed well. The P&C Hub will monitor compliance with this requirement. Officers need to be mindful of aggregation of spend.

## Contracts for Construction Works

- 3.7 Officers may use [Constructionline](#) for the selection of pre-approved suppliers for Works procurements falling below the EU Threshold.
- 3.8 Written authority must be carried out to gain approval for each construction project in line with Council policy and evidenced within the [E-Tendering Portal](#). This should include approval for any:
- Pre-construction services
  - Development control planning applications
  - Funding for the entire scheme
- 3.9 For all procurements with a contract value higher than £1,000,000 for Works, a business case must be reported to the Procurement and Commissioning Review Board and the [Authority Report](#) must follow the Key Decision approval process.
- 3.10 For all works procurements over the EU threshold, the procurement process should, where relevant, use the PAS91 tender template.
- 3.11 Where appropriate systems are in place, JCT or equivalent industry recognised standard contracts should be processed online referring to accompanying guidance.
- 3.12 During the risk assessment, risk related to slippage or delay must also be considered and questions regarding contingency may need to be considered in the quotation/tender.

## Evaluation Criteria and Going out to the Market

- 3.13 The award of all contracts shall be based on fair and appropriate evaluation criteria in accordance with these Rules and [Public Contract Regulations 2105](#) (if applicable). Full and complete written records of the evaluation process must be maintained by the service department, and uploaded onto the [E-Tendering Portal](#).
- 3.14 Weightings (price/quality) and detailed criteria and scoring mechanisms must be set out in the Invitation to Tender/ Quote to ensure transparency.
- 3.15 Outcomes need to be considered when setting evaluation criteria to ensure that what is scored and marked is central to the delivery of the contract and represents Best Value.
- 3.16 Where there is ambiguity or uncertainty regarding responses then clarification questions may be asked through the [E-Tendering Portal](#). Where there is still ambiguity then advice should be sought from the P&C Hub.

- 3.17 Responses to bidders' questions must be managed through the [E-Tendering Portal](#). Steps must be taken to ensure that no advantage is given to any bidder over others.
- 3.18 A draft contract should be included with all invitations to tender or quote to ensure terms are set out clearly at the start of the process.
- 3.19 The contract/procurement pack must include a clear specification which should include any standards required and any policies needed to be followed such as:
- DBS check requirements
  - Health & safety policies and standards
  - Industry standards

[Click here for further information on this section.](#)

## **4. Frameworks**

- 4.1 Where it demonstrates Best Value, a Framework (where available) should be used.
- 4.1.1 Any use of a Framework must be agreed by the P&C Hub. Use of a Framework is not exempt from P&C Review Board, and where over the EU threshold will be managed via the P&C Hub.
- 4.1.2 Where a single supplier Framework is to be used, evidence that this provides Best Value must be provided to the P&C Hub prior to approval.
- 4.1.3 No direct award over £10,000 can be made via a Framework without documented approval from the P&C Hub.
- 4.1.4 Only legally compliant frameworks will be approved and the P&C Hub will ensure that Due Diligence is carried out on the Framework prior to any procurement.
- 4.1.5 Any call-off from a Framework must be carried out in line with the relevant framework process and via the [E-Tendering Portal](#), with all documentation retained.
- 4.1.6 Where the Council is setting up a Framework, the P&C Hub and Legal Services must be consulted along with other Council departments where applicable. Commercial opportunities should also be explored.

[Click here for further information on this section.](#)

## 5. Concessions or Contracts with Income Elements

- 5.1 When letting a concession contract or a contract that has no or minimal monetary value, these Rules must still be considered and applied in principle. The [Concession Contracts Regulations 2016](#) should also be considered.
- 5.2 Officers should explore areas for income generation and commercialisation. Where a contract is to be set up to generate income, advice should be sought from the P&C Hub and Legal Services, at project commencement.
- 5.3 The overarching principles along with compliance with [Public Contract Regulations 2105](#) and Council policy apply equally to concessions and contracts generating income.
- 5.4 In the interests of transparency use of the [E-Tendering Portal](#) is advised.

[Click here for further information on this section.](#)

## 6. Application & Waiver of the Rules

- 6.1 These Rules apply to all contracts for Supplies, Works or Services entered into 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 Best Value.
- 6.2 The Council must comply with the requirements of [Public Contract Regulations 2105](#) as it is not possible to waive these requirements.
- 6.3 All waivers are reported to the Procurement and Commissioning Review Board and will be reported to the Council's Audit Committee on an annual basis by the Head of the P&C Hub.
- 6.4 The officer requesting the [waiver](#) **must** keep a written record of any waiver of the Rules. Application of a waiver can be made via the [standard form for waivers](#) and will be reviewed by the Head of the P&C Hub.
- 6.5 Contracts let via a [waiver](#) must have documentation held on the [E-Tendering Portal](#).
- 6.6 [Waivers](#) will only be issued for a period of 12 months, unless agreed otherwise by the Head of the P&C Hub.

[Click here for further information on this section.](#)

## 7. Variations to Contracts

- 7.1 The contract manager may agree with a contractor to carry out additional Works or Services that were not included in the original contract but which, through change control or unforeseen circumstances have become necessary. Variations to existing contracts are generally not permitted except where the following conditions are satisfied:
- 7.1.1 All contract variations or extensions exceeding the EU Threshold for supplies/services and over £1,000,000 for Works must be reported to the Procurement and Commissioning Review Board.
  - 7.1.2 Budget is allocated for that expenditure.
  - 7.1.3 Value for money is demonstrated and appropriate authority for the variation is in place.
  - 7.1.4 Variations must be implemented in accordance with the terms of the Contract.
  - 7.1.5 Where the variation itself is a [Key Decision](#), then the rules relating to Key Decisions are followed.
  - 7.1.6 In addition to the requirements above, where the value of the variation exceeds the relevant EU Threshold, officers must comply with [Public Contract Regulations 2105](#) and advice should be sought from the Head of the P&C Hub/ Legal Services when considering whether the proposed variation is lawful.
- 7.2 Where there is any doubt, advice should be sought from the P&C Hub / Legal Services.
- [Click here for further information on this section.](#)

## 8. Exceptions to Competitive Tendering

- 8.1 Competitive tendering or the obtaining of quotes is not required where:
- 8.1.1 Agreement has been given by the P&C Hub to use a legally compliant Framework which the Council has procured or has the right to access (subject to complying with the rules applicable to that Framework, including mini competition);
  - 8.1.2 a suitable corporate contract is in place for the Services/Supplies/Works being procured;
  - 8.1.3 competition is prevented by government or statutory control;
  - 8.1.4 repairs, services, works, parts, goods or materials are required relating to existing machinery, vehicles, plant or equipment of a proprietary nature, where no suitable alternative supplier exists;
  - 8.1.5 ongoing maintenance, updating, licencing and support is required relating to existing ICT hardware and/or software that is proprietary in nature and no suitable alternative supplier exists;

- 8.1.6 the contract provides in writing for an extension to the length of the contract's term and the following conditions are met:
- a. the extension is for substantially the same works, supplies and/or services provided in the original contract;
  - b. the financial terms for the extension are as agreed in the original contract;
  - c. the length of the extension is no longer than that permitted by the original contract;
  - d. such extension would not breach the [Public Contract Regulations 2015](#); and
  - e. the appropriate authority/approval is in place in accordance with the Scheme of Delegation.
- 8.1.7 the contracts being procured are for special education needs or social care services below relevant EU Threshold and, in the opinion of the responsible officer following consultation with the P&C Hub, it is considered in the Council's interest or is required to meet obligations under relevant legislation. If above EU Threshold, officers are reminded that the Light Touch Regime applies.
- 8.1.8 Upon evidence of extensive market testing and consultation with P&C Hub / Legal Services, the goods, services or works are only available from a single supplier and no suitable alternative is available.
- 8.1.9 Contracts below EU Threshold being procured are for specialist professional services necessary to support children's or adult services where service users/clients select the supplier, but the grant funding is via the Council.
- 8.1.10 In relation to the exceptions, advice should be sought from Head of the P&C Hub and (where applicable) the Director of Governance Legal Services as to whether there is any risk of the Council breaching [Public Contract Regulations 2105](#).
- 8.1.11 Any decision not to seek competitive tenders must fully comply with this Rule 8, be reasonable in all the circumstances and be in the best interests of the Council. The decision must be recorded in writing and all documentation supporting the decision must be retained on the [E-Tendering Portal](#).
- 8.1.12 Where a contract is entered into via any of the rules above then the contract must be recorded on the [E-Tendering Portal](#).
- 8.1.13 In relation to the exceptions, the requirement to comply with the [Public Contract Regulations 2015](#) remains. Officers should consider publishing a Voluntary Ex-Ante Transparency ('VEAT') Notice for any exception granted that is higher than the EU

Threshold and the procedures leading to the award under the Regulations must be followed. A VEAT Notice can only be issued with approval from the Head of the P&C Hub.

[Click here for further information on this section.](#)

## 9. Invitations to Quote/Tender & Advertising

9.1 [Public Contract Regulations 2105](#) expects all competitive processes over £25,000 to be advertised. Where a competitive process is to be undertaken, quotations will, as a minimum be advertised as follows:

Estimated Contract Value	Advertising Requirements
Contracts up to the OJEU Thresholds	<a href="http://www.londontenders.org">www.londontenders.org</a> (please note the Council's internet site points suppliers to this link)
Contracts above OJEU Thresholds	Compliance with EU advertising rules including issue of Prior Information Notice (where appropriate) and Contract Notice in the Official Journal of the European Union (OJEU) (via the Council's tendering portal – <a href="http://www.londontenders.org">www.londontenders.org</a> ).

## 10. Receipt and Opening of Tenders and Quotes

10.1 The Council's [E-Tendering Portal](#) must be used in all procurements over £1,000, including those scenarios where arrangements are caught by the exceptions and exemptions.

10.2 Permission from the P&C Hub not to use the [E-Tendering Portal](#) must be obtained and all paperwork will be managed by the P&C Hub. This includes submissions by post or where documentation/additional information in relation to the tender is sent via post and not the Portal. [E-Tendering Portal](#) is compulsory for EU Procurements.

[Click here for further information on this section.](#)

## 11. Sustainable Procurement

11.1 At pre-procurement 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 environment well-being of the area and the procurement process should support Council outcomes to generate community benefits.

11.2 Appropriate measures could include:

- Using local suppliers;
- Adding selection criteria to your bid to encourage:

- Apprentice opportunities for local residents;
  - Employment opportunities for local residents, long term unemployed or people with a disability;
  - Environmental benefits.
- 11.3 Where it is considered that some form of community benefit could be delivered via the procurement process, authorised officers must consider the following at pre-procurement stage:
- how the proposed procurement might improve the economic, social and environmental well-being of the “relevant area”;
  - how in conducting a procurement process the Council might act with a view to securing that improvement;
  - whether to undertake a consultation on these matters.
- 11.4 The Council’s [Sustainable Procurement Policy](#) recommends the inclusion of up to 10% evaluation weighting for sustainability in all procurements that are tendered through open competition.
- 11.5 Any community benefits delivered via the contract must be recorded in the [E-Tendering Portal](#) and information provided to the P&C Hub for central tracking via an email to [corporate.procurement@enfield.gov.uk](mailto:corporate.procurement@enfield.gov.uk).
- 11.6 For more information refer to the [Community Benefits Tool Kit](#).  
[Click here for further information on this section.](#)

## **12. Contract Award and Execution**

- 12.1 All contract awards that are [Key Decisions](#) must be awarded in accordance with the [Council’s Constitution](#) and must follow the Key Decision approval process.
- 12.2 Contracts can only be awarded by officers that have been delegated the power to do so under the Council’s Scheme of Delegation or relevant [Authority Report](#).
- 12.3 All contracts must be awarded based on the advertised evaluation criteria included in the advert or invitation to tender documentation and cannot be changed after the receipt of submissions, unless in line with [Public Contract Regulations 2015](#) or from advice from the P&C Hub.
- 12.4 Where a contract has been tendered in accordance with [Public Contract Regulations 2105](#) the contract cannot come into force until;
- 12.4.1 where applicable the appropriate [Authority Report](#) has been signed off and the call-in period in accordance with the [Council’s Constitution](#) has expired, and;

- 12.4.2 a mandatory 'standstill' period of at least ten calendar days has elapsed from the date of notifying bidders in writing of the Contract award decision.
- 12.5 Contracts are executed in accordance with the table in Rule 3. Officers must ensure that the Council's Scheme of Delegation permits the relevant officer to commit to the level of spend within the contract.
- 12.6 Where applicable a Contract Award Notice in OJEU via the [E-Tendering Portal](#) should be published.
- 12.7 All contracts awarded must be promoted through to the contracts register within the [E-Tendering Portal](#).

### **Letter of Acceptance**

- 12.8 The Council does not recommend the use of these but accepts that there are circumstances in which a letter to the successful bidder is needed where a contract cannot be issued in time. These should not be used without the prior approval of Legal Services.
- 12.9 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 this has been approved by Legal Services and the appropriate [Authority Report](#) in accordance with the [Council's Constitution](#) has been approved.

[Click here for further information on this section.](#)

## **13. Terms and Conditions**

- 13.1 Every written contract or official order in lieu shall specify as a minimum:
- the Works, Supplies, Services or materials to be supplied or performed;
  - the price to be paid with a statement of discounts or other deductions;
  - the time or times within which the contract is to be performed;
  - the place or places for delivery or performance; and
  - the terms and conditions that apply to the contract.
- 13.2 Officers should be mindful that the default position for all procurements is to utilise the relevant template from the Council's standard suite of contracts referring to the accompanying Contract Procedure Rules guidance.
- 13.3 There may be occasions where it is necessary to use a supplier's terms and conditions of contract. The use of such terms must be approved by the P&C Hub/Legal Services to ensure that the Council can meet the contractual arrangements, especially in regard to payments

- 13.4 Every written contract shall include a clause which gives the Council the right to immediately terminate the contract if the contractor, or any of its employees or agents, commits an offence under the Bribery Act 2010.
- 13.5 Every written contract shall confirm that the Council's payment terms are 30 days and include a clause requiring any sub-contractor permitted to be employed by the contractor, to be paid by the contractor within 30 days of the issuing of a valid invoice.

[Click here for further information on this section.](#)

## **14. Post-Tender Negotiations**

- 14.1 Post-tender negotiations may only take place if the tender documents allow for negotiation, set out the basis for such negotiations and are permitted under [Public Contract Regulations 2105](#).
- 14.2 In all other circumstances, all permitted bidders should be invited to re-tender on a revised specification.

[Click here for further information on this section.](#)

## **15. Working in Partnerships / Shared Services**

- 15.1 When working in partnership or collaboration with other authorities, these Rules still apply and governance and decision making still lay with the Council.
- 15.2 Unless a partnership or other body has a separate legal identity from the Council and has delegated, contractual or statutory authority to act on the Council's behalf;
- 15.2.1 the partnership or body can only make recommendations to the Council in respect of the procurement of supplies, services and/or works;
  - 15.2.2 the Council will then decide whether to procure those services and will comply with these Rules *and*;
  - 15.2.3 the Council remains legally and financially accountable for its obligations under the contract.

[Click here for further information on this section.](#)

## **16. Prevention of Corruption**

### **General standards of conduct**

- 16.1 All persons involved in the award of contracts shall comply with the Council's [Code of Conduct](#) and shall not invite or accept any gift or reward or

inducement which could influence them in any way in relation to the award or monitoring of any Council contract. 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](#).

- 16.2 The Council requires Members, employees and contractors 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.
- 16.3 The Council actively encourages the reporting of concerns about fraud and corruption through the [Council's Whistle-Blowing Policy](#).

### **Declaring an interest**

- 16.4 Any employee who has a pecuniary or other interest in any actual or potential Council contract must declare it in writing to their Manager and the Head of P&C Hub. All hospitality, gifts or other inducements received shall be recorded in the service department's hospitality register.
- 16.5 Suppliers taking part in any procurement activity should also be asked to declare any interest in writing to the officer and where an interest is declared this should be reported to the Head of P&C Hub immediately.

### **Organised Crime**

- 16.6 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, the P&C Hub should be contacted or the Whistle-Blowing policy used, to inform management.

[Click here for further information on this section.](#)

## **17. Record Keeping**

- 17.1 To ensure that there is a full audit trail of procurement activity and that the Council is open and transparent, service departments must:
  - 17.1.1 keep a record of compliance with all stages of these Rules within the [E-Tendering Portal](#), retained in accordance with the periods set out in the [Council's Records Retention Schedule](#), or a minimum of six years from the contract end date, or if under seal for twelve years.

- 17.1.2 Where other records are kept, these must be stored in one location securely. Paper copies must be kept in one location on Council property, logged and secured. Access to these records should be by authorised officers only. Reference to these paper copies and their location must be held on the [E-Tendering Portal](#) for reference.
- 17.1.3 Records relating to the procurement and contract management are to be kept on the [E-Tendering Portal](#); including copies of the signed contract.
- 17.2 For contracts over £75,000 (Services and Supplies) and £100,000 (Works) the original contract must be sent to, or will be retained by Legal Services for secure storage or where appropriate processed online.
- 17.3 A contract must be sealed where:
- 17.3.1 the contract is over **£250,000** in value;
  - 17.3.2 the Council wishes to enforce the contract for a period of more than **6 years**;
  - 17.3.3 the price paid or received under the contract is a nominal price that does not reflect the value of the supplies or services;
  - 17.3.4 it is required by the parties;
- 17.4 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 contractor/supplier must affix its company seal (if any), which must be attested by two directors OR one director AND a company secretary.

[Click here for further information on this section.](#)

## **18. Claims from Contractors/Suppliers**

- 18.1 Claims from contractors/suppliers shall be referred to the P&C Hub for advice and where necessary to Legal Services for consideration of the Council's legal liability and, where necessary to the Director of Finance Resources and Customer Services for consideration, before a settlement is reached. No payment will be made in relation to a dispute to a contractor without the appropriate decision being made under the Scheme of Delegation.

## **19. Guidance and Advice**

- 19.1 Advice on the application of these Rules should be obtained from the P&C Hub and/or Legal Services.

- 19.2 Guidance on these Rules and procurement is set out in the [Council's CPR's Guidance](#) and [Community Benefits Toolkit](#).

## 20. Contract management

- 20.1 All contracts over £100,000 must have a nominated contract manager recorded on the [E-Tendering Portal](#).
- 20.2 Contracts over £250,000 per annum must have regular reviews and be measured against KPI's set out in the contract. These reviews must be recorded and all information held in the [E-Tendering Portal](#) .
- 20.3 Contracts must be managed within the Contract management guidelines in the Procurement [Code of Conduct](#) of Conduct. This must also include where applicable:
- 20.3.1 keeping a record of all valuations, payments, claims, monitoring, changes and certificates under the contract;
  - 20.3.2 managing the transition between the ending of one contract and the beginning of another;
  - 20.3.3 ensuring that suppliers maintain the insurance policies required by the contract and any other evidence that is needed to manage risk (e.g. DBS checks);
  - 20.3.4 ensuring that the supplier is compliant with the Council's policies; e.g. equal opportunities, whistle-blowing and any changes in legislation including Data Protection Act, Health & Safety and Safeguarding.
  - 20.3.5 That any Business Continuity Plans are reviewed and where necessary tested.
- 20.4 Where a contract needs to be terminated prematurely or for poor performance the P&C Hub must be consulted. The final decision will reflect the financial and legal implications arising from the termination.

[Click here for further information on this section.](#)

## 21. IR35 Rules

- 21.1 The intermediaries' legislation, known as IR35 Rules is designed to make sure contractors pay the required tax and National Insurance on earnings. From 6th April 2017, the responsibility for deciding the employment status of contractors to the public sector will shift from the contractor to the client. Should it be found that IR35 applies, then back tax could be recovered from the Council for a period of up to 6 years. Please refer to the [HRMC site](#) to follow the online Employment Status Service test assessment process. This employment check must be uploaded into the [E-](#)

[Tendering Portal](#) as evidence where a consultant/individual has been procured.

[Click here for further information on this section.](#)

## **22. Consultation**

22.1 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 contractors for inclusion on a tender list for specific, below EU Threshold, 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.

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

[Click here for further information on this section.](#)

## 23. Glossary of Terms

### ASSUMPTIONS

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

Aggregation	Is the requirement to add together the estimated value of separate contracts for meeting a single requirement. EU procurement expressly prohibits the splitting of requirements into smaller units or orders in an attempt to avoid the application of EU procurement.
Best Value	Means the optimum combination of price and quality identified through the Most Economically Advantageous Tender (MEAT).
Capital Works Programme	Agreed plan of work to be undertaken by the Council in relation to expenditure of the Capital Budget.
Concessions	A type of contractual arrangement under which, rather than paying the contractor to deliver a work or service, the Council grants the contractor the right to exploit an opportunity and receive some or all of its income from third parties (e.g. the public), retaining the profit. Defined under the Concessions Regulations 2016
<a href="#">Constructionline</a>	Government run scheme that keeps Health & Safety accreditation information on suppliers to avoid duplication for the supplier.
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.
Contract Procedure Rules Guidance Document	Documents that support this document and provides more detailed information and links to supporting information to ensure compliance these rules.
<a href="#">Council's Constitution</a>	Documents (s) that sets out how the Council is governed.
DAR/ <a href="#">Authority Report</a>	Delegated Authority Report required by governance to record decision making and record approval from delegated authority.
Directors	Means Directors and Executive Directors of Enfield Council
DPS	Dynamic Purchasing System
Due Diligence	Reasonable steps taken by a person to avoid committing a tort or offence. a comprehensive appraisal of a business undertaken by a prospective buyer, especially to establish its assets and liabilities and evaluate its commercial potential
E-Auctions/Reverse Auctions	The use of electronic media to conduct a tendering or bidding exercise where suppliers are able to bid, in secure, controlled conditions, for a contract.

E-Procurement	The electronic system used in the Council to electronically raise requisitions, purchase orders, supplies receipts and invoice payments.
E-Tendering	The carrying out of the tendering process using electronic means, such as the internet and specialist e-tendering software applications. It includes undertaking the tasks of advertising the requirements for supplies and services, registering suppliers, and issuing and receiving tender documents via the internet, as well as automating the evaluation of responses to a tender. Systems also incorporate contract management functionality.
E Tendering Portal	The E-procurement portal to be used to meet e procurement regulations.
EU	European Union.
EU Procurement	Procurement conducted in accordance with the relevant EU Directives and the corresponding UK legislation including in particular the Public Contracts Regulations 2015 as amended or replaced from time to time.
EU Threshold	Threshold set by the EU over which procurements must follow EU directives processes.
Exception	a procurement that is excluded from some part of the rules
Exemption	A procurement that is excluded from the <a href="#">Public Contract Regulations 2015</a>
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 EU Procurement
Forward Plan	Is the list of Key Decisions published by the Council
Goods	Tangible products that can be consumable or non-consumable.
HUB	Team or group that provide centralised support for the Council
IR35	HRMC regulations regarding working regulations and TAX for agency workers and consultants.
Key Decision(s)	A 'key decision' within the constitution of the London Borough of Enfield is defined as a proposal: <p style="margin-left: 40px;">(a) which involves expenditure/savings of <b>£250,000</b> or above – this includes proposals phased over more than one year and match/grant aided funding, with a total of <b>£250,000</b> or above; or</p> <p style="margin-left: 40px;">1. (b) which has significant impact on the local community in one or more wards</p>
Light Touch Regime	This is the procurement process set out in the Public Contract Regulations that cover areas in Schedule 3; namely Adult social care and other areas listed in schedule 3.

London Tenders Portal (LTP)	<a href="#">E-Tendering Portal</a> used by the council to manage all procurement activity and contract register.
OJEU	Means the Official Journal of the European Union
Performance Bond	A bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor.
Procurement and Commissioning Review Board	This board meets regularly and has representatives from the council to hear business cases to proceed with procurement projects.
<a href="#">Public Contract Regulations 2105</a>	Means all relevant external procurement rules and regulations applying in England.
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.
Services	Services such as maintenance of equipment, transportation, consultancy, technical services. etc. as defined by the current Public Contract Regulations.
Supplies	Can be tangible object delivered in relation to a contract. See also goods.
Scheme of Delegation	Documents setting out the delegated authority of Council officers.
Strategic Delivery board	Board to manage strategic Delivery of transformation and ICT transformation.
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
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