

# Gedling Borough Council Constitution

## Section 22 – Contracts and Procurement Rules

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## Transitional arrangements

These Rules take effect from 24<sup>th</sup> February 2025. Procurement commenced before 24<sup>th</sup> February 2025 must be procured in accordance with the Contract and Procurement Rules approved by Full Council on 26<sup>th</sup> January 2022. A Procurement Process commences upon issue of a request for quotations, invitation to submit tenders or participate in a further competition under a Framework Agreement. Management of contracts awarded as a result of a Procurement Process which commenced prior to 24<sup>th</sup> February 2025 must be in accordance with these Rules.

## 1 Purpose

- 1.1 The purpose of these Contracts and Procurement Rules (**Rules**) are to:
- a) Deliver value for money by achieving the optimum combination of whole life costs and quality of outcome;
  - b) Maximising public benefit through our procurement approach;
  - c) Sharing information for the purpose of allowing suppliers and others to understand the Council's procurement activities;
  - d) ensure fairness, transparency and the highest standards of integrity in awarding public contracts;
  - e) comply with legal requirements;
  - f) ensure that non-commercial considerations do not influence any contracting decision; and
  - g) prevent fraud and corruption.
- 1.2 These Rules safeguard the interests of the Council, its members and employees and taxpayers and sets clear procedural rules to ensure a system of transparency, fairness, integrity and accountability.

## 2 Compliance

- 2.1 Every relevant contract made by or on behalf of the Council shall comply with:
- a) any relevant EU Treaties and Directives of the EU at the time in force in the United Kingdom or such replacement domestic legislation;
  - b) any relevant UK legislation; and
  - c) the Council's Constitution including, but not limited to, these Contracts and Procurement Rules, the Council's Financial Regulations and relevant Council policies.
- 2.2 A waiver from any of the following provisions of these Contracts and Procurement Rules may only be made by direction of the Council where it is satisfied that the exemption is justified in special circumstances. A waiver cannot be given where the contract value exceeds the statutory thresholds set out pursuant to the Procurement Act 2023 and replacement regulations. A record of such waiver shall be made in the minutes of the Council meeting.
- 2.3 Where the Council acts as agent for another organisation or authority then if that principal shall so require, the contractual and tendering procedures of the principal shall be used in substitution, in whole or in part, for these Rules.

## 3 Relevant Contracts

- 3.1 All relevant contracts must comply with these Rules.
- 3.2 A relevant contract is any arrangement by or on behalf of the Council to procure the carrying out of works or provision of supplies or services. This includes arrangements for:
- a) purchasing goods, supplies or materials;
  - b) the hiring, renting or leasing of goods or equipment;
  - c) executing works, including building or engineering works;
  - d) purchasing of any services, including consultancy services; and
  - e) concession contracts (e.g. operating commercial ventures at the Council's premises such as vending machines).
- 3.3 Relevant contracts do not include:
- a) contracts of employment with individual employees;
  - b) land and property transactions (sales, purchases, leases, licenses etc.). These are governed by the Rules for Dealings with Land and Buildings;
  - c) the payment of grants to third parties. However, contracts with voluntary organisations for supplies, services or works are covered by these Rules;
  - d) vertical arrangements involving contracts between the Council and a company solely or jointly controlled by the Council;
  - e) horizontal arrangements involving contracts between contracting authorities; and
  - f) Treasury management deals for borrowing or investment which will be dealt with in accordance with the approved Treasury Strategy.
- 3.4 Relevant contracts that must be referred to Legal regardless of the value of the contract:
- a) Contracts that involve a contractor/supplier handling, gathering, processing or using personal data for and on behalf of the Council.
  - b) Contracts that involve the transfer of Council data of any form between the supplier and the Council
  - c) Contracts that are for goods or services in relation to ICT hardware or software. These contracts must first be reviewed by the Council's Business and Technical Design Authority (BTDA).

## 4 Officer Responsibilities

- 4.1 Every Council officer responsible for procuring and managing relevant contracts on behalf of the Council must comply with these Rules, the Council's Financial Regulations, Officers' Code of Conduct, all relevant legal requirements or guidance and any relevant policies of the Council. It is the responsibility of officers to ensure that they are aware of and fully understand the requirements under these Rules. Any Council officer who fails to comply with these rules may be subject to disciplinary action.
- 4.2 Prior to commencing any procurement process the lead officer for the procurement (the **Contract Officer**) must:
- a) Conduct preliminary market engagement compliantly (see Rule 6)
  - b) ensure there is sufficient time to complete the procurement process, including contract completion and mobilisation, and establish a procurement timetable;
  - c) ensure there is a sufficient budget established or approval has been obtained from the Chief Financial Officer in accordance with Rule 5);
  - d) consider what procurement method in accordance with these Rules is most likely to achieve the purchasing objectives;
  - e) obtain Director approval for the procurement including the procurement method;
  - f) prepare a robust specification of requirements;
  - g) if the contract will be procured competitively, prepare a written evaluation criteria;
  - h) consider whether a written contract is required by these Rules and, if one is required, the form of contract that is appropriate for the particular procurement and seek appropriate advice from Legal Services prior to seeking quotations/tenders;
  - i) consider contract management arrangements including nomination of a suitable officer to manage the contract once it has been completed; and
  - j) for contracts for services which are valued in excess of the statutory threshold, consider how the procurement may improve the economic, social and environmental well-being of the borough in order to demonstrate compliance with the Public Services (Social Value) Act 2012.
  - k) Provide a minimum of three KPI's for the appropriate management of the contract with regular reviews.
- 4.3 The Contract Officer is responsible for ensuring that an appropriate audit trail, through written and/or electronic records, is made to evidence that the procurement process has been carried out in accordance with these Rules, including decisions relating to the method of procurement, evaluation of tenders and contract award.
- 4.4 All records must be retained by the Contract Officer in accordance with the [Council's Records Retention & Disposal Policy](#).
- 4.5 All completed contracts must be passed to Legal Services for retention in accordance with the Council's Records Retention & Disposal Policy.

## 5 Funding

In accordance with the Council's Financial Regulations, an order must not be placed or a formal process for letting a contract commenced unless expenditure has been included in approved capital or revenue budgets or the prior approval of the Chief Financial Officer has been obtained.

## 6 Preliminary Market Engagement

- 6.1 Potential suppliers may be consulted prior to the issue of a request for quotation or invitation to tender in general terms about the nature, level, standard and packaging of the supplies, services or works and other relevant matters so as to best ensure competition and value for money, provided that this does not distort competition or prejudice any potential supplier.
- 6.2 When carrying out preliminary market engagement, it must be made clear to potential suppliers that they will not receive preferential treatment in the quotation or tender process and that there is no guarantee that any procurement exercise will take place.
- 6.3 Preliminary market engagement does not negate the need to undertake a formal procurement process such as a request for quotations or tender.
- 6.4 Where the estimated contract value is equal to or exceeds the relevant statutory threshold (but is not a framework call-off) and preliminary market engagement has been carried out:
- a) a Preliminary Market Engagement Notice must be published on the Government's online central digital platform prior to the publication of a Tender Notice
  - b) an explanation must be given in the Tender Notice why a Preliminary Market Engagement Notice was not published. Reasons for not publishing should be limited (e.g. where there are extenuating circumstances such as a high risk of critical service failure if the procurement doesn't progress quickly).
- 6.5 Publication of the Preliminary Market Engagement Notice will be arranged by Procurement Services.

## 7 Procurement Requirements

- 7.1 If an Officer wishes to alert the market to an upcoming contract with a value equal to or exceeding the relevant statutory threshold prior to inviting tenders. Procurement Services will advise and publish a Planned Procurement Notice in accordance with the Procurement Act if considered appropriate.

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- 7.2 Where the Council considers that it will pay more than £100 million under any contract for the supply of goods, services or works (other than exempt contracts) in the coming financial year, it must publish a pipeline notice within 56 days of the start of the new financial year. A pipeline notice sets out prescribed information about any contract with an estimated value of more than £2 million in respect of which the Council intends to publish a Tender Notice or Transparency Notice during the period of 18 months beginning with the first day of the new financial year.
- 7.3 The nature of the procurement process to be undertaken will depend on the estimated total value of the contract.
- 7.4 When establishing the total value of the contract, the whole life costs and any possible extension periods which may be awarded must be included along with VAT. Contracts must not be artificially under or over-estimated or divided into separate contracts to avoid the application of the Procurement Act or these rules.
- 7.5 Consideration should also be given to contracts held with the same supplier elsewhere within the Council and contracts that run consecutively with the same supplier when calculating the contract value. Rewarding a contract to the same supplier will require the contract value to be calculated on a cumulative basis, including both the contract due to expire and the proposed new contract in order to establish the whole contract value.
- 7.6 Where the estimated total value of the proposed contract is within the values in the second column of the table below, the procurement process in the third column and the requirements set out in the fourth column must be followed unless a waiver under [Rule 2](#) has been granted or an exception under [Rule 35](#) applies.
- 7.5 All procurements using the [Open Procedure](#), the [Competitive Flexible Procedure](#) or the [Multi-Staged Procedure](#) must seek to achieve wider financial and non-financial outcomes, including improving wellbeing of individuals and communities and the environment by making Social Value a decision-making criterion when awarding contracts as required by the Public Services (Social Value) Act 2012. Please see the Procurement Strategy for more detail on decision-making criterion to be used.

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	<b>Total aggregate contract value</b> <b>(whole life cost including extension periods)</b>	<b>Procurement Route</b>  LTRFQ - Light Touch Request For Quotation RFQ – Request for Quotation DMS – Dynamic Purchasing System	<b>Other essential requirements</b>
<b>A</b>	Up to £9,999.99 (inc VAT)	<b>No specific procurement route</b>	Must deliver value for money seeking to maximise public benefit.  No written contract required <b>unless</b> ICT or involves the processing or sharing of personal data then move to row B.
<b>B</b>	£10,000 to £29,999.99 (inc VAT)	<b>LTRFQ</b>  - three written quotations in accordance with <a href="#">Rule 8</a> (unless using framework or DMS in accordance with <a href="#">Rule 12</a> )	<ul style="list-style-type: none"> <li>▪ <a href="#">Legal Services</a> must be instructed</li> <li>▪ Quotes must be confirmed in writing or email using the LTRFQ form.</li> <li>▪ The contract must be concluded formally in writing before the works, supplies or services are delivered, see <a href="#">Rule 21.2</a></li> <li>▪ The price/quotation must meet the purpose of procurement as detailed at <a href="#">Rule 1.1</a>.</li> <li>▪ The contract must be signed by Director or officer authorised by the Director in writing.</li> <li>▪ A formal RFQ as per row C can be used where there is a more specialist/unique service/product required (as per <a href="#">rule 3.4</a>).</li> </ul>
<b>C</b>	£30,000 to £74,999.99 (inc VAT)	<b>RFQ</b>  - three written quotations - advertisement of the contract  In accordance with <a href="#">Rule 8</a> (unless using framework or DMS in accordance with <a href="#">Rule 12</a> )	<ul style="list-style-type: none"> <li>▪ <a href="#">Procurement &amp; Legal Services</a> must be instructed</li> <li>▪ The Council's eTendering system must be used.</li> <li>▪ The contract must be concluded formally in writing before the works, supplies or services are delivered, see <a href="#">Rule 21.2</a></li> <li>▪ The contract must be signed by Director or officer authorised by the Director in writing</li> <li>▪ Unless a framework or DMS is used, the contract opportunity must be advertised on the Government's <a href="#">Contracts Finder</a> website</li> </ul>
<b>D</b>	£75,000 to below statutory threshold* (inc VAT)	<b>Tender</b> in accordance with <a href="#">Rules 9, 10 &amp; 11</a> <b>OR</b> Framework or DMS in accordance with <a href="#">Rule 12</a> <b>OR</b> e-Auction in accordance with <a href="#">Rule 12</a>	<ul style="list-style-type: none"> <li>▪ <a href="#">Procurement &amp; Legal Services</a> must be instructed</li> <li>▪ The Council's eTendering system must be used.</li> <li>▪ The contract must be concluded formally in writing before the works, supplies or services are delivered, see <a href="#">Rule 21.2</a></li> <li>▪ The contract opportunity must be advertised on the Government's <a href="#">Contracts Finder</a> website, and an advertisement must be placed on SourceNottinghamshire and SourceDerbyshire websites (unless using framework or DMS in accordance with <a href="#">Rule 12</a>).</li> <li>▪ The contract must be executed under seal, see <a href="#">Rule 21.1</a></li> </ul>
<b>E</b>	Greater than statutory threshold*	All statutory procurement rules must be followed, contact Procurement and Legal Services.	<ul style="list-style-type: none"> <li>▪ <a href="#">Procurement &amp; Legal Services</a> must be instructed</li> <li>▪ All statutory procurement rules must be followed</li> <li>▪ The Council's eTendering system must be used.</li> <li>▪ The contract must be concluded formally in writing before the works, supplies or services are delivered, see <a href="#">Rule 21.2</a>. The contract opportunity must be advertised on the Government's <a href="#">Contracts Finder</a> website, and an advertisement must be placed on SourceNottinghamshire and SourceDerbyshire websites (unless using framework or DMS in accordance with <a href="#">Rule 12</a>).</li> <li>▪ The contract must be executed under seal, see <a href="#">Rule 21.1</a></li> </ul>

\*Statutory thresholds at 28<sup>th</sup> October 2024 (thresholds reviewed bi-annually and published by the Cabinet Office):  
Supplies and services - £213,477 (inc VAT); Works - £5,336,937 (inc VAT); Concessions - £5,336,937 (inc VAT)



## 8 Quotations

- 8.1 When seeking quotations through the Light Touch Request for Quotation route (LTRFQ) Director must ensure that:
- a) A minimum of three written quotations should be obtained and the documentation retained by the client department.
  - b) The selection process used to determine which suppliers will be invited to quote is fair and equitable having consideration to the purpose of procurement contained at [paragraph 1](#);
  - c) The LTRFQ specifies the supplies, services or works to be procured;
  - d) The LTRFQ states that the Council is not bound to accept any quotation;
  - e) All suppliers invited to quote are issued with the same information and subject to the same conditions. Any supplementary information shall be given on the same basis;
  - f) All suppliers invited to quote are given an adequate period of time to prepare and submit a proper quotation;
  - g) All quotations must be considered at the same time; and
  - h) A written record of the reasons is made on file if the lowest price is not accepted.
- 8.2 When seeking quotations through the Request for Quotation route the Director must ensure that:
- a) The Councils e-tendering system must be used
  - b) The selection process used to determine which suppliers will be invited to quote is fair and equitable having consideration to the purpose of procurement contained at [paragraph 1.1](#);
  - c) The Request for Quotation specifies the supplies, services or works to be procured;
  - d) The Request for Quotation states that the Council is not bound to accept any quotation;
  - e) All suppliers invited to quote are issued with the same information at the same time and subject to the same conditions. Any supplementary information shall be given on the same basis;
  - f) All suppliers invited to quote are given an adequate period of time to prepare and submit a proper quotation;
  - g) All quotations are opened together after the specified return date; and
  - h) A written record of the reasons is made on file if the lowest price is not accepted.
- 8.3 If the Council has not tested the market by a competitive process or cannot evidence that the price paid does not exceed the market value, then officers must follow the Subsidy Control Process.

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- 8.4 For Contracts below the value of £30,000.00 where it is not possible to obtain three written quotations, due to lack of suitable firms prepared to quote or for some other valid reason, the quotation to be accepted can be approved by the Director, in consultation with the Chief Financial Officer and Monitoring Officer. Such approval is to be recorded in writing on a contract waiver form approved by the Chief Financial Officer and Monitoring Officer and must be kept on the file.
- 8.5 For contracts in excess of £30,000.00 but below threshold, where the market has not been tested through a competitive procurement exercise as detailed in the table at [Rule 7](#), a waiver form can be submitted provided one of the exemptions detailed at Rule 35.3 apply.
- 8.6 There is no requirement to consult Chief Financial Officer and Monitoring Officer and formally record the reasons under [Rule 8.4](#) above where:
- a) the quotation proposed to be accepted has been obtained through a framework or DMS (Dynamic Market System); or
  - b) the Request for Quotation was openly advertised in accordance with [Rule 8.2](#) and less than three suppliers submitted written quotations.
- 8.7 In cases where an LTRFQ or RFQ is the method adopted or procurement, the Open Procedure at [Rule 9](#) can be used for an in-depth procurement regardless of the value of the contract.

### 9 Open Procedure

- 9.1 The open procedure can be authorised by the Director. This is a one stage procedure where the contract is advertised openly and anyone interested can submit a tender.
- 9.2 The Council's eTendering system must be used. Notice of the contract opportunity shall be advertised in accordance with the Procurement Act on the Government's [Contracts Finder](#) website, on SourceNottinghamshire and SourceDerbyshire websites and, where the Director considers it appropriate to generate additional interest in the contract, in such newspaper, journal or website as they see fit.
- 9.3 The notice/advert shall:
- a) specify details of the contract into which the Council wishes to enter;
  - b) invite tenders for the contract;
  - c) state how the tenderers should respond;
  - d) state the date and time (being not less than 14 calendar days from the date of the publication of the notice or such longer period where required by the Procurement Act) when tenders must be received by the Council.

## **10 Competitive Flexible Procedure**

- 10.1 This procedure can only be used when authorised by the Director with the approval of the Monitoring Officer where the nature of the contract is such that the Council wishes to design its own procurement procedure with one or more stages. This may include restricted forms of procurement, negotiated or competitive dialogue forms of procurement. This procedure may be appropriate for complex technical IT contracts, for example.
- 10.2 The procedure rules as set out in the Procurement Act must be complied with and advice from Procurement and Legal Services must be sought.

## **11 Multi-Staged Procedure**

- 11.1 This procedure can only be used where authorised by the Director with the approval of the Monitoring Officer where the Council is unable to define the design, technical, financial or legal elements of the project. It is intended for complex procurement projects. The multi-staged procedure is a two-stage procedure where firstly the contract is advertised and anyone who expressed an interest must complete a pre-qualification questionnaire. These are then evaluated, and a number of potential suppliers are shortlisted and invited to enter into a dialogue with the Council.
- 11.2 The procedure rules as set out in the Procurement Act must be complied with and advice from Procurement and Legal Services must be sought.

## **12 Framework Agreements and Dynamic Market System (DMS)**

- 12.1 A Framework Agreement is a general term for an agreement with appointed suppliers that sets out terms and conditions under which a contract can be awarded or specific purchases (call-offs) can be made throughout the term of the agreement without the need to enter into a separate full procurement process. A DMS is similar to an electronic framework however new suppliers can join at any time and the procedure must be run as a completely electronic process.
- 12.2 Framework agreements and DMSs procured by other local authorities, public bodies or purchasing consortiums may only be used where the Council is either a named participant or where the Council is considered a recognisable class of contracting authority under the terms of the framework agreement or DMS.

- 12.3 Contracts based on framework agreements and DMSs may only be awarded by either:
- a) applying the terms laid down in the framework agreement or DMS (where such terms are sufficiently precise to cover the particular call-off); or
  - b) where the terms laid down in the framework agreement or DMS are not sufficiently precise for the particular call off, by holding a Competitive Selection Process in accordance with the procedure set out in the framework agreement or DMS.

### **13 e-Auction**

- 13.1 An e-Auction (an electronic auction) may be used where authorised by the Director with the approval of the Chief Financial Officer and Monitoring Officer. This is a procurement tool where potential suppliers can complete online in real time to give prices for supplies or services under auction.
- 13.2 Advice must be sought from Procurement and Legal Services.

### **14 Specifications and Standards**

- 14.1 All tenders and LTRFQ and RFQ shall, except to the extent that the Council in a particular case or specified categories of contract otherwise decides, be based on a definite specification that describes the Council's requirements in sufficient detail to enable the submission of competitive bids and objective evaluation.
- 14.2 Where an appropriate British Standard Specification or British Standards Code of Practice is current at the date of the tender or LTRFQ and RFQ, every contract shall require that all goods and materials used or supplied, and all the workmanship shall be at least of the standard required by the appropriate British Standards Specification or Code of Practice.
- 14.3 Specifications should not include product names and can only reference trade names and marks where it is necessary to adequately specify the Council's requirements and equivalent products must be accepted.

### **15 Evaluation Criteria**

- 15.1 The evaluation criteria must be defined and clearly set out in a request for quotation or invitation to tender. Such criteria must be that which is best suited to the procurement exercise and designed to secure value for money for the Council.

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- 15.2 The following criteria are available:
- a) lowest price where payment is made by the Council;
  - b) highest price where payment is to be received by the Council (e.g. in respect of concession contracts); or
  - c) most advantageous tender (**MAT**) where considerations other than price apply.
- 15.3 The request for quotation or invitation to tender must clearly outline the criteria which will be used to evaluate tenders received and, in the case of MAT, the overall weightings to be attached to each element.
- 15.4 In the latter case, the Council will use criteria linked to the subject matter of the contract to determine that an offer is the most advantageous for the Council. Such criteria may include: price, service, quality, technical merit, aesthetic and functional characteristics, accessibility, environmental characteristics, running costs, cost effectiveness, safety, organisational qualification and experience of staff assigned to perform the contract, after- sales service, technical assistance, delivery process, delivery date, delivery period and period of completion.
- 15.5 Issues that are important to the Council in terms of meeting corporate objectives can be used to evaluate bids. The criteria can include for example: sustainability considerations and support for the local economy and social value. All criteria must relate to the subject matter of the contract and must be objectively quantifiable and non-discriminatory. The criteria must not include non-commercial considerations, matters which discriminate against suppliers or matters which are anti-competitive.

### **16 Submission of Quotations and Tenders**

- 16.1 The entire RFQ and tender process for contracts over £30,000.00 shall be conducted electronically through an e-Tendering system approved by the Council for this purpose. Quotations and tenders must be submitted via the approved system and in accordance with instructions given in the request for quotation or invitation to tenders.
- 16.2 No quotation or tender received after the time and date specified in the invitation to tender shall be accepted or considered. Any late quotation or tender must be notified promptly to the bidder (if applicable).
- 16.3 Quotations and tenders shall not be opened until the time and date specified for their opening.

### **17 Opening of Tender**

- 17.1 Tenders received shall be opened one at a time by a representative of the Monitoring Officer in the presence of a representative of the Director who invited the tenders.

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- 17.2 The relevant Cabinet Member, Chair of the Overview and Scrutiny Committee, the Chief Financial Officer and the Monitoring Officer must be notified of the time and place appointed for the opening and be afforded the opportunity to attend the tender opening. Any Member of the Council who wishes may be present at the opening of tenders.
- 17.3 All tenders received shall be recorded by the representative of the Monitoring Officer and a record of the tender shall be signed by all persons present.

### **18 Clarification of Bids**

- 18.1 Where examination of quotations or tenders reveals errors or discrepancies which would affect the price in an otherwise successful bid, the bidder is to be given details of such errors and discrepancies and accorded an opportunity of confirming or withdrawing their offer. The bidder cannot amend their quotation or tender. If the bidder withdraws, the Council may award the contract to the next quotation or tender in competitive order.
- 18.2 Seeking clarification of a quotation or tender during the evaluation period is permitted but must be conducted in a manner which does not distort competition. The bidder cannot amend or alter their bid.
- 18.3 Where clarification results in a fundamental change to the specification or contract terms, the contract must not be awarded and contract opportunity must be re-tendered.
- 18.4 Except when following a specific procedure under the Procurement Act, negotiation with bidders is not permitted. Discussions with bidders after submission of a quotation or tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content, must not be carried out in a way which distorts competition, particularly with regard to price.

### **19 Evaluation and Acceptance**

- 19.1 Quotations and tenders shall be promptly examined for adequacy, completeness and accuracy.
- 19.2 Quotations and tenders must be evaluated and contracts awarded in accordance with the evaluation criteria set out and published in the request for quotation or invitation to tender. Where the criteria is other than the lowest or highest price, a written record must be kept of the evaluation with scores given for each bidder on each of the stated evaluation criteria.
- 19.3 Where a quotation or tender is within the budgetary provision previously approved by the Council, the Director may accept the lowest quotation / tender if payment is to be made by the Council or the highest quotation / tender if payment is to be made to the Council or the most economically advantageous quotation / tender.

- 19.4 Quotations or tenders not within the budgetary provision shall be referred to Cabinet and Council (if necessary) for approval in accordance with the Financial Regulations.
- 19.5 Bidders shall be notified promptly of the result of the procurement exercise in accordance with relevant legislation.

### **20 Nominated Sub-Contractors and Suppliers**

- 20.1 Where a sub-contractor or supplier is to be nominated to a main-contractor, the following provisions shall have effect:
- a) Where the estimated value of the sub-contract or the estimated value of the goods to be supplied by the nominated sub-contractor does not exceed £75,000 then, unless the appropriate Director is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders, quotations shall be invited for the nomination in accordance with [Rule 8](#).
  - b) Where the estimated value of the sub-contract or the estimated value of the goods to be supplied by the nominated sub-contractor exceeds £75,000 but is less than the statutory threshold then, unless the Director determines in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders, tenders shall be invited for the nomination in accordance with these Rules unless a framework or DMS is utilised.
  - c) Where the estimated value of the sub-contract or the estimated value of the goods to be supplied by the nominated sub-contractor exceeds the statutory threshold, tenders shall be invited for the nomination in accordance with these Rules unless a framework or DMS is utilised.
  - d) The provisions of Rules 15 to 20 shall apply to tenders received under this Rule.

### **21 Contracts to be in writing**

- 21.1 Every contract that involves processing, sharing or the transfer of personal data must be in writing regardless of the value of that contract. A Data Protection Impact Assessment (DPIA) must be completed prior to entering into the contract.
- 21.2 Every contract for goods or services in relation to ICT hardware or software must be in writing regardless of the value of the contract.

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- 21.3 Every contract which exceeds £10,000 in value or amount shall:
- a) be in writing;
  - b) be executed in accordance with Section 17 of the Constitution. For contracts valued £75,000 and over, the contract shall be executed under seal, and
  - c) specify the supplies or services to be provided or the work to be carried out; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties.
- 21.4 All contracts exceeding £10,000 in value or amount must be concluded formally in writing before the supplies, services or works are delivered or commenced except in exceptional circumstances and then only with the written consent of the Monitoring Officer.
- 21.5 All contracts exceeding £10,000.00 in value or amount should have a minimum of 3 KPI's included and these should be regularly reviewed and managed by the relevant officer.

## **22 Prevention of Bribery**

- 22.1 Except in exceptional circumstances and then only with the prior written consent of the Monitoring Officer, there shall be inserted in every written contract, a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation:
- a) if the contractor shall have offered, promised or given a financial or other advantage to another person; and either the contractor intends the advantage to induce a person to perform improperly, or reward a person for the improper performance of a relevant function or activity in relation to obtaining or execution of the contract or any other contract with the Council; or the contractor knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the contract or any other contract with the Council; or
  - b) if the like acts shall have been done by any person associated with the contractor or acting on his/her behalf (whether with or without the knowledge of the contractor); or
  - c) if in relation to any contract with the Council the contractor or any person associated with him/her or acting on his/her behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.



## **23 Assignments and Novation**

- 23.1 Every contract which is estimated to exceed £10,000 in value or amount must contain a clause prohibiting the contractor from transferring, novating, assigning or sub-letting the contract without the written permission of the Council.
- 23.2 A contract shall only be transferred, novated, assigned or sub-let with the prior written permission of the Director.

## **24 Payments**

- 24.1 Every contract which is estimated to exceed £30,000 in value or amount must contain a clause requiring payment of undisputed invoices within 30 days.

## **25 Liquidated damages**

- 25.1 Every works contract which is estimated to exceed £50,000 in value or amount and provides for completion by a particular date or series of dates shall provide for liquidated damages of an amount to be determined in each case by the Director where he is able to arrive at a realistic estimate of the loss likely to be incurred in the event of the non-performance of the contract in the time specified.

## **26 Performance Bonds or Parent Company Guarantees**

- 26.1 Where a contract is estimated to exceed £100,000 in value or amount and is for the execution of works or for the provision of supplies or services, the Director concerned shall consider whether the Council should require security for its due performance of the contract and shall in consultation with the Monitoring Officer and the Chief Financial Officer either specify in the invitation to tender the nature and amount of the security to be given or certify that no such security is necessary. In the former event, the Council shall require and take a bond, parent company guarantee or other sufficient security for the due performance of the contract. As a minimum this should usually be for at least 10% of the total value of the contract.
- 26.2 The form of the bond, guarantee or security shall be in a form approved by the Chief Financial Officer.

## **27 Data Protection**

- 27.1 Where a contract requires the processing or sharing of personal data, any requirements under the data protection legislation relevant to the handling of personal data, its use, storage and destruction under the contract, including data processing clauses, must be included in the written contract.

## **28 Contract Clauses**

28.1 Where relevant, all written contracts should also include the following additional contract requirements:

- a) any insurance requirements;
- b) health and safety requirements;
- c) audit requirements;
- d) FOI requirements;
- e) safeguarding requirements;
- f) IR35;
- g) tax;
- h) outsourcing and transferring services (TUPE);
- i) any carbon reduction requirements;
- j) compliance with equality and diversity legislation;
- k) compliance with Modern Slavery legislation;
- l) business continuity arrangements; and
- m) contract management and KPIs.

## **29 Engagement of Consultants**

29.1 It shall be a condition of the engagement of the services of any architect or of any engineer, surveyor or other professional consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to the contract they shall:

- a) comply with these Rules as though they were a Director subject to the modification that the procedure to be followed in inviting and opening tenders shall be approved in advance by the appropriate Director;
- b) at any time during the carrying out of the contract, produce to the appropriate Director or their representative on request all the records maintained by them in relation to the contract; and
- c) on completion of the contract, transmit all such records to the appropriate Director.

## **30 Small and Medium sized enterprise (SMEs) participation and excluded suppliers**

30.1 To facilitate SME participation in awards of contracts, consideration should be given to dividing contracts into smaller lots where appropriate. Where a decision is taken not to divide a contract into lots then the responsible officer must maintain a written summary of the reasoning underlying that decision.

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- 30.2 The Council will not enter into a contract with an Excluded Supplier. An excluded supplier is a supplier or associated person who the contracting authority considers is subject to:
- a) a discretionary exclusion ground (listed in Schedule 7 of the Act) which is ongoing or likely to occur again. For example, certain labour market or environmental misconduct findings, bankruptcy or insolvency proceedings, professional misconduct findings, competition infringements and poor performance amongst others (listed in the Act).
  - b) A mandatory exclusion ground (listed in Schedule 6 of the Act) which is ongoing or likely to occur again; and/or is on the Debarment List for a mandatory exclusion ground.

### **31 Publication contract award**

- 31.1 Where a contract which exceeds £30,000 in value or amount is awarded, information about the contract must be published in accordance with the Procurement Act 2023.

### **32 Register of Contracts**

- 32.1 A register of all contracts exceeding £10,000 shall be kept and maintained by the Chief Financial Officer. Such register shall for each contract specify the name of the supplier, the works to be executed or the supplies or services to be provided and the contract value. The register shall be open to inspection by any member of the public and published on the Council's website.

### **33 Declaration of Interests and Avoidance of Corruption**

- 33.1 Any officer who has a conflict of interest or any material interest, financial or otherwise which may affect the procurement process must declare that interest to the Director in writing and shall take no further part in the procurement process unless the Monitoring Officer gives written approval to that officer's continued involvement.
- 33.2 No officer shall accept any gift, fee, hospitality or reward in return for favourable treatment in a procurement exercise.

### **34 Contract Extensions**

- 34.1 Where a contract includes an option to extend the term of a contract, the option to extend may, subject to budget approval, only be exercised by a Director in writing.
- 34.2 The term of a contract may not be extended unless the original contract contains provisions which permits the contract to be extended.

- 34.3 An over threshold contract can only be extended where it complies with the provisions of the Procurement Act and advice should be sought from Legal Services and Procurement teams.

### 35 Exceptions

- 35.1 Where a proposed contract exceeds the statutory thresholds, the procedures set out in the Procurement Act 2023 apply and none of the following exceptions can be relied upon. Where the contract is over threshold, only the exemptions contained within the Procurement Act 2023 can be applied. Legal advice should be sought in relation to such contracts.
- 35.2 Reliance on an exception set out at Rule 35.3 can only be approved by the Director, in consultation with the Chief Financial Officer and Monitoring Officer using a contract waiver form submitted to the relevant Director. The use of a waiver form may trigger a requirement for a Subsidy Assessment under the Subsidy Control Act 2022, this assessment should be provided at the same time as the waiver. Legal advice must be sought on the application of a waiver and on a subsidy assessment.
- 35.3 Nothing in these Contracts and Procurement Rules shall require a request for quotation or tenders to be invited if:
- a) in the case of contracts for supplies:
    - i. the goods or materials are patented, of such special character or are sold only at a fixed price and no reasonably satisfactory alternative is available;
    - ii. the prices of the goods or materials are wholly controlled by trade organisations or Government procedures and no reasonably satisfactory alternative is available;
    - iii. for other reasons, there would be no genuine competition;
  - b) the contract is for the execution of works or the provision of supplies or services where a related contract award was procured via a competitive tender exercise in the last 5 years and the extension does not exceed a maximum of 50% of the value of the original contract, subject to it not exceeding the statutory procurement thresholds. Where a supplier will not maintain the original tender price in respect of such extension, any variation in such price shall only be agreed with the prior approval of the Chief Financial Officer. "Related" shall be defined as having a direct relationship to the original project in the case of works, or, for additional quantities of the services or supplies (or associated components) previously delivered in the case of services and supplies. If the cumulative value of the existing contract including the extension period of a contract exceeds the statutory thresholds this exception cannot be applied.

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- c) the contract is for works, supplies or services that are strictly necessary for reasons of extreme and unavoidable urgency that is not attributable to any act or omission of the Council that could not have been foreseen by the Council;
- d) the contract is funded by time limited grant funding from an external body and the time limitations will not allow a full tender process to be completed;
- e) the contract relates to repairs to or the supply of parts for existing proprietary machinery or plant;
- f) the contract is for a works order placed with a utility company where only one provider can be used (e.g. for the rerouting of cables or pipework);
- g) the supplies are purchased at a public auction;
- h) the execution of works or provision of supplies or services involves specialist or unique knowledge or skills or are only available from one organisation;
- i) the works, supplies or services can be supplied only by a particular supplier because:
  - i. the aim is the creation or acquisition of a unique work of art or artistic performance;
  - ii. there would be no competition for technical reasons; or
  - iii. the supplier has exclusive rights, including intellectual property rights

but only in the case of paragraphs (ii) and (iii) where no reasonable alternative or substitute exists, and the absence of genuine competition is not as a result of an artificial narrowing down of the parameters of the procurement;
- j) tenders or quotations have been invited on behalf of any consortium, collaboration or similar body of which the Council is a member, provided that such tenders or quotations shall have been invited in accordance with the provisions of the Contracts and Procurement Rules of the said body or lead authority;
- k) the contract is to be awarded to an entity controlled by the Council; or
- l) the contract to be awarded is for legal counsel and other legal and financial advisors (excluding consultants). Financial advisors are those engaged in the business of lending money or an investment activity.
- m) The contract for the supply of goods to be awarded is to a supplier undergoing insolvency proceedings and the terms are particularly advantageous to the Council.