

# Chapter 4.9 - Contract Procedure Rules

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## 1. INTRODUCTION

- 1.1 These Contract Procedure Rules (Rules) form part of the [Council's Constitution](#). The Rules and the [Procurement Code](#). The [Provider Selection Regime Code](#) (PSR Code) and the [Light Touch Services Code](#) **MUST** be applied together to ensure value for money, protect the public purse and ensure compliance with applicable Procurement Legislation, protecting the Council from potential risks.
- 1.2 Schools must refer to the [Schools Procurement Code](#) in conjunction with these Rules.
- 1.3 Procurement Legislation relates to the award, entry into and management of Public Contracts. This means that the legislation regulates public procurements from inception through to award and throughout the duration of the Contract from the point at which the Council is considering how and what to procure, through the process of procurement and Contract award, up to the point at which the resulting Contract ends. Together with the [Procurement Code](#) and relevant Council policies, the Rules provide directives, regulations, policies, and guidance relating to the procurement and award of Goods, Services and Works Contracts for the Council.
- 1.4 From 24<sup>th</sup> February 2025 there will be three forms of Procurement Legislation that relate to Contracting Activity which these Rules cover:
  - (i) [Procurement Act 2023](#) (PA 23) that covers all Contracting Activity started on or after 24<sup>th</sup> February 2025 including Procurement Regulations and subsequent guidance.
  - (ii) [Public Contract Regulations 2015](#) (PCR 2015) and Concession Contracts Regulations 2016 that cover all Contracting Activity started before 24<sup>th</sup> February 2025, Contracts let before such date and Call off Contracts under Framework Agreements set up under the PCR 2015 until their natural end.
  - (iii) [The Provider Selection Regime](#) (PSR) that covers all Contracts that come under the definition of Health Services Contracts let under the Public Contracts Regulations 2015 or PSR.
- 1.5 These Rules have been approved by Senior Leadership and Members and following these Rules protects the Council and Council officers from risk of challenge and ensures compliance with the relevant Procurement Legislation and the Council's Constitution.
- 1.6 Service Departments must follow the Rules and Procurement Legislation for all Contracting Activity. This means Service Departments must:
  - (i) Have regard to the importance of:
    - a) Delivering Value for Money (VFM)
    - b) Maximising public benefit

- c) Sharing information for the purpose of allowing Suppliers and others to understand the Council's procurement policies and decisions.
  - d) Acting and being seen to act with integrity.
  - e) Having regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a Contract and considering whether such barriers can be removed or reduced.
  - f) Considering the National Procurement Policy Statement.
  - g) Considering treaty state Suppliers (See [Procurement Code](#)).
- (ii) Treat Suppliers the same. Where a difference between Suppliers justifies different treatments, the Service Department must take all reasonable steps to ensure that a Supplier is not put at an unfair advantage or disadvantage.
  - (iii) Ensure that at evaluation Suppliers are checked to ensure they are not an Excluded, [Debarred](#) or Excludable Supplier (See Rule 26).
  - (iv) Ensure that Contracts are entered in a compliant manner and protect the public purse. Service Departments must demonstrate VFM by:
    - a) Demonstrating the need for the Goods, Services or Works.
    - b) Using existing [Council Contracts](#) in the first instance wherever possible or where the Contract allows (see [Procurement Code](#)).
    - c) Exploring opportunities to work collaboratively across the Council where Contracts are for similar Services.
    - d) Considering alternative methods of delivery and what approach will deliver the best outcomes for the Service Department.
    - e) Reviewing Contracts regularly for efficiencies, savings and performance, specifically at Contract Modification and extensions.
    - f) Taking responsibility for the specification and ensuring that it is neither over nor underspecified, meets the Service Department's needs and is clear and concise.
  - (v) Carry out a form of competitive process relevant to the estimated value of the Contract. Where procuring Regulated Below Threshold Contracts, ensure that the minimum number of quotes are sought and comply with the local Supplier requirements (see Rule 20).
  - (vi) Ensure authority to carry out Contracting Activity has been given by the appropriate officer and written confirmation of budget in accordance with the Financial Regulations has been obtained prior to any commitment to obtain formal bids/quotations or starting work.

- 1.7 All Contracting Activity above Procurement Legislation Thresholds or covered under the Provider Selection Regime (PSR) must be overseen by [Procurement Code](#), (unless agreed by Procurement Services) to ensure:
- (i) Strict compliance with the relevant legislation,
  - (ii) The adoption of best practices, and
  - (iii) The achievement of VFM.
- 1.8 Procurement Legislation requires Transparency from Local Authorities. Therefore, when following these Rules, it is important to ensure that all Transparency requirements are met. Notifications must be published at all stages of the Contracting Activity process as set out in the Procurement Legislation. Please refer to the [Procurement Code](#) and Rule 23 for information on complying with Notifications.
- 1.9 Main Notifications:
- (i) Planned Procurement Notice
  - (ii) Preliminary Market Engagement Notice
  - (iii) Tender Notice
  - (iv) Tender Notice (amended)
  - (v) Dynamic Market Notice(s)
  - (vi) Transparency Notice (Direct Award)
  - (vii) Contract Award Notice
  - (viii) Contract Details Notice
  - (ix) Copies of Contracts (redacted)
  - (x) Procurement Termination Notice
  - (xi) Payments Compliance Notice
  - (xii) Contract Performance Notice(s)
  - (xiii) Contract Change Notice
  - (xiv) Contract Termination Notice
  - (xv) Below Threshold Procurement Tender Notices
  - (xvi) Below Threshold Award notice
  - (xvii) Pipeline Notice
  - (xviii) PSR Notifications
- 1.10 For the purpose of these Rules **ALL Contract values are inclusive of VAT** except for budget and governance purposes.
- 1.11 Procurement Services reserves the right to manage any Contracting Activity due to either risk to the Council (including reputational risk) or complexity.
- 1.12 The Council's [Procurement System](#) must be used for all Contracting Activity £30k or above. All communications with bidders/providers must be carried out through the [Procurement System](#) to ensure there is a clear audit trail and compliance with retention policies. All governance documentation, reports and an executed (signed) copy of the awarded Contract **MUST** be uploaded to the [Procurement System](#). Use of any other procurement systems/portals must be approved by Procurement Services. The [Procurement System](#) reference number is needed to create a new supplier, and non-use of the System will be recorded as non-compliance.

- 1.13 Any Contract entered by the Council must be in accordance with these Rules and Procurement Legislation as set out in Rule 1.4.
- 1.14 The [Procurement System](#) is recognised as the [Council's Corporate Contract Register](#). It is the responsibility of Service Departments/ Contract Managers to ensure that all departmental Contracts are maintained within the [Procurement System](#). This ensures that the Council is compliant with obligations under Procurement Legislation regarding publications of Contracts, Pipelines, record keeping and retention obligations.
- 1.15 In all cases where there is uncertainty regarding these Rules, contact Procurement Services (and Legal Services where required) for clarification.

## 2. PURPOSE

- 2.1 The Rules apply to all Contracting Activity relating to Goods, Services and Works (including Light Touch Services) and Health Services Contracts covered by the PSR unless stated in Rule 21 and Rule 22. Refer to the [PSR Code](#) or [Light Touch Services Code](#) for further information. This includes Contracts that are directly awarded or where there may be little or no monetary value to the Contract or there is income or profit sharing. These Rules may also apply to agreements that are entered via other mechanisms, such as but not limited to:
- (i) Partnerships
  - (ii) Shared working / Services
  - (iii) Consortiums of Councils
  - (iv) Section 75 arrangements
  - (v) Commercial Contracts funded by grant funding.
  - (vi) Joint Ventures
  - (vii) Contracts via other councils
  - (viii) Concession Contracts
  - (ix) Direct Awards
  - (x) Contracts let via the Provider Selection Regime
  - (xi) Framework Call off Contracts (with or without competition)
  - (xii) PSR (Health Services Contracts)
- 2.2 Legal and Procurement advice must be sought in all circumstances where these apply.
- 2.3 To achieve the Council's objectives, these Rules and the Operational Procurement Processes in the [Procurement Code](#), [PSR Code](#) and [Light Touch Services Code](#) must be followed for all relevant Contracting Activity. These Rules are made under section 135 of the Local Government Act 1972. Failure to comply with these Rules may lead to a disciplinary action. Council employees have a duty to report breaches of these Rules to an appropriate senior manager and the Director of Law and Governance under the [Council's Whistle-Blowing Policy](#).

### 3. EXEMPTED CONTRACTS

3.1 The following types of Contracts do not fall within the scope of these Rules, but Service Departments must still ensure VFM in these areas:

- (i) Contracts of direct employment
- (ii) Land Contracts (including leases, licenses, and transfers), which are subject to the Property Procedure Rules. However, some property transactions may fall within the scope of these Rules where Works, Goods or Services relate to the property transaction. Contact Procurement Services and Legal Services for advice.
- (iii) A Contract for the provision of arbitration, mediation, or conciliation Services, or of any other similar Services for the Council.
- (iv) Legal representation or the giving of legal advice by a lawyer in judicial proceedings or other dispute resolution proceedings.
- (v) Financial Contracts for the lending of money or currency, investment Services or activity, or of an ancillary Service, in relation to a financial instrument by an investment firm or a qualified credit institution.
- (vi) Grants of money, where there is no Service provision, measurement of outcomes or performance measures in place.
- (vii) Vertical and Horizontal Arrangements
  - a) Where Contracts are either to be awarded between the Council and a controlled entity under the applicable 'Teckal Company' exemption, or via the 'Hamburg' conditions which establish or implement co-operation exclusively between the Council and other Council(s). In these circumstances, the Service Department must seek advice from Legal Services as to the application of the proposed Direct Award. These Contracts must follow appropriate Council governance and the procurement assurance process via the [Direct Award and Waiver Form](#) prior to entering the proposed Contract.

3.2 Please refer to [Procurement Code](#) or Procurement Legislation for a full list of Exempted Contracts.

3.3 User Choice Contracts are not exempt but are covered by Direct Award in Special Cases (Rule 9). Please refer to [Procurement Code](#).

3.4 If there is doubt as to whether Contracting Activity is exempt, please check with Legal Services or Procurement Services.

## 4. ROLES AND RESPONSIBILITIES

4.1 Executive Directors, Directors, and Heads of Service are responsible for ensuring:

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

Council's retention policy and which may be needed for audit or investigation purposes.

- (xii) When working with Procurement Services, information and resources are provided to support Contracting Activity to ensure that project deadlines are met, and a successful compliant process is carried out.
  - (xiii) Delivery of VFM throughout the lifecycle of the Contract through effective Contract Management, Contract reviews and performance monitoring in line with the Council's [Contract Management Framework](#) and relevant Procurement Legislation. This Includes adherence to these Rules regarding [Contract Modifications](#), Terminations, Novations and Performance Monitoring.
  - (xiv) Contract budgets are monitored and managed in line with Financial Regulations, ensuring all costs are managed (including internal and external costs), and any additional costs or overspends are approved by Finance Team, via the relevant Council governance report template where necessary.
  - (xv) All Direct Awards are carefully considered and follow these Rules in all cases. The [Direct Award and Waiver Form](#) **must** be used to record the Contract and the Contract must be managed in the same way as all Contracts.
  - (xvi) Commissioning officers use the [standard templates provided](#) on the intranet by Procurement Services for Contracting Activity to ensure a robust and compliant process, including [Contract Templates](#) provided by Legal Services as appropriate.
- 4.2 No Contracting Activity is started or awarded unless there is sufficient budget available for the Goods, Services or Works being Contracted and approved by the Finance Team and budget holder and recorded on the [Procurement System](#).
- 4.3 Service Departments must instruct Procurement Services via the [Procurement Instruction Form](#) to support all Contracting Activity over the Procurement Legislation Threshold or where the PSR Legislation is to be used. For Regulated Below Threshold Contracts refer to the [Procurement Code](#) for support offer. For post award Contract Management support complete the relevant Pro-Forma.
- 4.4 References to Council officers or posts in these Rules include their authorised deputies or delegates, in accordance with the [Council's Constitution](#) and Service Departments scheme of delegation.
- 4.5 For the purposes of the Rules, the term "Contract" refers to both paper/hard copy (including their replication by electronic media) and electronic documents and processes. Only e-tendering portals approved by Procurement Services may be used.
- 4.6 All Contracts **MUST** be awarded in accordance with these Rules, the Financial Regulations, and other relevant Council policies/governance.

## 5. PROCUREMENT GOVERNANCE AND ASSURANCE

- 5.1 The Procurement Assurance Group (PAG) is set up to ensure regulatory compliance, promote procurement best practice, provide assurance on procurement delivery and VFM for awarded Contracts. It covers all Contracting Activity, including Light Touch Services and PSR.
- 5.2 All Contracting Activity over Procurement Threshold (including PSR) must come to PAG. For Regulated Below Threshold Contracts (including Works Contracts) refer to the values set out in the [Procurement Code](#). Where covered, Contracting Activity must be endorsed by PAG at each stage of the [Gateway Process](#) as set out in the [Procurement Code](#).
- 5.3 PAG has the right to call any Contracting Activity for review by the group.
- 5.4 Where Contracting Activity is covered by PAG and is not managed by Procurement Services, then the Service Department or 3<sup>rd</sup> party must complete the PAG gateway reports and present at PAG. Gateway report templates are available on request.
- 5.5 All [Contract Modifications](#), Terminations and Novations at the value set in the [Procurement Code](#) must be endorsed by PAG, to ensure compliance with Procurement Legislation and these Rules.
- 5.6 For Public Contracts over £5m where performance reports are required (see Rule 30), the performance reports must be approved by the relevant Director and be endorsed by PAG prior to publication.
- 5.7 All Contracting Activity covered by the [Direct Award and Waiver Form](#) £30k or above or [PSR Direct Award Form](#) of any value must come to PAG.
- 5.8 Service Departments must engage with PAG where their Contracting Activity is covered by the procurement assurance process. Where there has been no engagement with PAG then procurement implications will state this.
- 5.9 Please refer to the [Procurement Code](#) for guidance on Thresholds.

## 6. ANNUAL PROCUREMENT PLAN AND PIPELINE NOTIFICATION PLANNING

- 6.1 The Annual Procurement Plan will be compiled by Procurement Services for the start of the financial year. This supports:
  - (i) Procurement resource planning
  - (ii) Compliance with the Pipeline Publication Notification.
- 6.2 The Annual Procurement Plan will set out all Contracting Activity for that financial year where Procurement Services will support delivery. Projects submitted after the approval of the Annual Procurement Plan will risk Procurement Services having insufficient resources to support the project.

- 6.3 To comply with the Procurement Act 2023, the Council must publish a procurement pipeline of Contracts over £2m. Services will be required to engage with the creation of the annual plan by ensuring all Contracts above £2m for which procurements are planned in the next 12 – 18 months are notified to Procurement Services. This includes Call off Contracts from Frameworks.

## **7. RISK ASSESSMENT**

- 7.1 The Service Department must ensure that the risks associated with any Contracting Activity is assessed in line with the Council's Risk Strategy using the [Council's Corporate Risk assessment template](#) or other appropriate risk assessment template and must be documented on file.
- 7.2 Appropriate actions must be taken to ensure that the Council's potential and actual exposure is managed or minimised, this includes Supplier's liability within the Contract and risks associated with the [Economic Crime and Corporate Transparency Act \(ECCTA\) 2023](#). S199 ECCTA 2023 stipulates that if the Council fails to prevent fraud committed by someone working for or on behalf of the Council and it was intended that the Council would benefit, the Council can face unlimited fines. Any risks must be set out in any reports where appropriate. Where there is a high risk, financial checks must be carried out and appropriate procedures followed. See [Procurement Code](#).
- 7.3 For construction Contracting Activity refer to the [Construction Procurement Guide](#) for all risks and compliance with the buildings regulations and other construction compliance, and the [Procurement Health & Safety Policy](#) when selecting and managing contractors.

## **8. INSURANCE**

- 8.1 Service Departments must ensure that each Contract includes adequate insurance requirements, seeking advice from the Council's Insurance Team and undertaking a risk assessment to ensure the levels of insurance are adequate.
- 8.2 Service Departments must carry out a [risk assessment](#) to determine risks associated with the Contract and insurance requirements to cover the identified risks associated with the Contracting Activity and Contract. The Council's recommended minimum insurance requirements are set out in the [Procurement Code](#). These are only recommendations and must be assessed proportionately with the risk of the Contract.
- 8.3 Where Service Departments wish to deviate from these standard recommendations, then the revised insurance requirements and their supporting justification must be endorsed by PAG using the [Direct Award and Waiver Form](#) or appropriate gateway report.
- 8.4 Where there is direct advice and/or design Services provided by a Supplier, such as consultancy, design or advice, the relevant Contracts must include a requirement for professional indemnity insurance. See [Procurement Code](#).

- 8.5 Where Purchase Order terms are used, the Service Department must assess whether these adequately cover risk, and where necessary must specify insurance levels in the specification or use a [Contract Template](#) from Legal Services where the risk is not adequately covered by the Purchase Order.

## 9. DIRECT AWARD IN SPECIAL CASES

- 9.1 Carrying out a competitive contracting process is the best way to ensure value for money. **Direct Award is only permitted in the special cases set out in this Rule.** Legal and Procurement Services advice must be sought. Please refer to the PSR Rule 21 for Direct Award procedures under PSR. For Frameworks see Rule 17.

### 9.2 Direct Award in Special Cases - User Choice Services Contracts

A User Choice Contract<sup>1</sup> which may be directly awarded must be one that meets **all** the criteria set out in the Procurement Legislation.

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

- 9.3 Where the contract does not meet these criteria then Procurement Rules may apply, speak to Procurement Services. Refer to the [Procurement Code](#) for recording these Contracts.

### Direct Award in Special Cases (Except User Choice)

- 9.4 Any Direct Award in Special Cases (except user choice) set out in sections 9.10 to 9.14 below (including the additional cases set out in the [Procurement Code](#)) can only be approved if it meets the relevant requirements of Procurement Legislation and/or these Rules. The Direct Award in the special case must be endorsed by PAG using the [Direct Award and Waiver Form](#) prior to any form of commitment being given to a Supplier. Public Contracts requests must come to PAG with the relevant Gateway Report. The Service Department must justify why they are unable to go through a competitive process and that the use of this Rule meets Council needs.

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<sup>1</sup> User Choice is where the service user, carer or representative chooses the Supplier.

- 9.5 Contracts let under Direct Award in Special Cases, Notifications and standstill periods must be adhered to (except User Choice Contracts).
- 9.6 The award will be subject to the usual Council governance and there must be a written Contract and specification.
- 9.7 All [Direct Award and Waiver Forms](#) for a Direct Award under this rule must be signed by the Head of Service or for Public Contracts by relevant Service Director and accompanied by:
- (i) Evidence of Council governance being followed regarding Contract award (see Rule 14).
  - (ii) Copy of the specification and indication of what Contract form to be used.
  - (iii) Written confirmation of budget and its approval from the Finance Team.
  - (iv) Financial Due Diligence in line with Rule 11.
  - (v) Completed [Contract Tiering Tool](#) (Rule 30).
  - (vi) Evidence of Conflict of Interest assessed (Rule 18).
  - (vii) Evidence that the Supplier is not [Excludable or Excluded](#) and is not on the [Debarred list](#) (Rule 26).
- 9.8 Where accompanying documentation is not ready at the time of submission, these must be provided to Procurement Services prior to any award to comply with Notifications requirements.
- 9.9 All Direct Awards are reported at the Council's General Purposes Committee on an annual basis by Procurement Services, and quarterly to the Chief Finance Officer.

## **Direct Award in Special Cases justifications**

### **9.10 Direct Award to protect life:**

- (i) Can only be used where there are secondary regulations in place authorising the Direct Award for the protection of life or public safety or order. Refer to [Procurement Code](#) for more details on this Rule.

### **9.11 Switching to Direct Award criteria.**

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

### **9.12 Single Supplier criteria:**

- (i) The proposed Contract concerns the creation or acquisition of a unique work of art or artistic performance.

- (ii) Due to the Supplier having intellectual property rights or other exclusive rights, only that Supplier can supply the requirements, and there are no reasonable alternatives.
- (iii) Due to an absence of competition due to technical reasons, only a particular Supplier can supply the requirements, and there are no reasonable alternatives to those requirements.

#### 9.13 **Additional or repeat Goods, Services or Works criteria.**

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

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

#### 9.14 **Urgency.**

- (i) Where the Goods, Services or Works to be supplied under a Public Contract are strictly necessary for reasons of extreme and unavoidable urgency, and
- (ii) as a result, the Public Contract cannot be awarded via a competitive tendering procedure.

- (iii) (ii) Urgency is unavoidable if:
  - a. It is not attributable to any act or omission of the Council and
  - b. Could not have been foreseen by the Council.

9.15 Please refer to the [Procurement Code](#) for a full list of justifications for Direct Award in Special Cases.

## 10. APPLICATION AND WAIVER OF THE RULES

- 10.1 These Rules apply to all Contracts for Goods, Services or Works entered by the Council, except where a Waiver of all or part of the Rules is approved. Waivers should only be sought in **exceptional circumstances**. Members have requested that Waivers be kept to a minimum.
- 10.2 Application of a Waiver must be made via the [Direct Award and Waiver Form](#). The form must be endorsed by PAG prior to any form of commitment being given to a Supplier. Public Contracts requests must come to PAG with the relevant Gateway Report. The Service Department must justify why they are unable to go through a competitive process and what the exceptional circumstances are.
- 10.3 All forms must be signed by the Head of Service or for Public Contracts by relevant Service Director and accompanied by:
- (i) Evidence of Council governance being followed regarding Contract award (see Rule 14).
  - (ii) Copy of the specification and indication of what Contract form to be used.
  - (iii) Written confirmation of budget and its approval from the Finance Team.
  - (iv) Financial Due Diligence in line with Rule 11.
  - (v) Completed [Contract Tiering Tool](#) (Rule 30).
  - (vi) Evidence of Conflict of Interest assessed (Rule 18).
  - (vii) Evidence that the Supplier is not [Excludable or Excluded](#) and is not on the [Debarred list](#) (Rule 26).
- 10.4 Waivers will be endorsed by the Head of Procurement or their deputy. The Head of Procurement reserves the right to escalate any Waiver to the Chief Finance Officer.
- 10.5 Contracts let following a Waiver must have documentation held on the [Procurement System](#) to create a record on the [Corporate Contract Register](#). The record will be created by Procurement Services.
- 10.6 Contracts created by a Waiver will only be issued for a period of up to 12 months, unless agreed otherwise by Procurement Services or the Head of Procurement.

- 10.7 All Waivers are reported at the Council's General Purposes Committee on an annual basis by Procurement Services, and quarterly to the Chief Finance Officer.

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

- 11.1 An Economic and Financial Standing Test must be carried out by the Council's Finance Team for all Public Contracts and PSR Contracts as set out in the [Procurement Code](#) in accordance with this Rule. For Regulated Below Threshold Contracts the tests must be proportionate and must not be used as a separate stage for pre-selection as set out in the [Procurement Code](#) in accordance with this Rule and Rule 26.9 and 26.10.
- 11.2 An Economic and Financial Standing Test will assess Suppliers' financial capacity to perform the Contract and whether appropriate risk mitigations can be put in place to address any identified issues with Suppliers' financial capacity.
- 11.3 In addition to the Economic and Financial Standing Test, it is the responsibility of the Service Department to carry out a risk assessment using the [Council's Corporate Risk](#) assessment template or other form of assessment to determine the risk of the Contract, specifically in regard to Supplier failure. The risk assessment and Economic and Financial Standing Test will determine if any security is required. The Economic and Financial Standing Test, [Contract Tiering Tool](#) and [Supplier Resilience Tool](#) will assist in determining any associated risks.
- 11.4 Where it is assessed that a form of security is required, the Service Department MUST ensure that it considers VFM in deciding the type of security. Please refer to the [Procurement Code](#) for more guidance regarding the different forms of security.
- 11.5 Security should only be considered in circumstances where:
- (i) a Supplier fails to meet the minimum requirements of an Economic and Financial Standing Test and/or is determined as high-risk.
  - (ii) a Contract is tiered as Platinum or Gold
  - (iii) the Contract is for Works or
  - (iv) a Special Purpose Vehicle has / is being proposed to be set up.
- 11.6 If a form of security is sought, then the relevant Gateway report shall detail this and be presented to PAG for review and endorsement. For Regulated Below Threshold Contracts contact Procurement Services.
- 11.7 Where it has been determined that a form of security is required but the Supplier cannot provide security, and the Council has no acceptable alternative Supplier or has decided to accept the level of risk, then the [Direct Award and Waiver Form](#) must be used to justify the recommendation and be presented to PAG for endorsement. Procurement Services will seek approval from the relevant Director of Finance prior to any award and work commencing.

- 11.8 The risk and implications for this recommendation must be set out in the relevant authority to award report, providing the reasons why the proposed Contract should be awarded despite the absence of security and what measures are to be taken to manage the risks.
- 11.9 Any indexation in the Contract must be in line with the Procurement Principles set out in the [Procurement Code](#). Deviation from these must be via the [Direct Award and Waiver Form](#).

## 12. BUSINESS CONTINUITY

- 12.1 To minimise risk and improve Service delivery resilience the Council has committed to implementing the [London Resilience Standards](#). This means that Suppliers must meet the Council's resilience requirements:
- (i) Commissioning of public Services must include a requirement that organisations bidding for Contracts meet the Council's resilience requirements and that those providers share information and data on the impact of disruptions such as severe weather or industrial action; and
  - (ii) Projects, Contracts, initiatives and other organisational changes and developments always account for resilience to ensure that these enhance and do not weaken the capability of the Supplier.
- 12.2 In line with the Council's Business Continuity Policy; during the risk assessment, Supplier failure or failure to deliver/perform must be assessed. Where delivery of the Services is assessed as critical, or there would be major reputational damage in the event of a Supplier failure to supply then business continuity plans must be requested as part of the Contract and the Service Department must build in contingency plans.
- 12.3 These Suppliers must be identified in the Service Department's Business Impact Analysis Form (BIA) and provided to the Emergency Planning Team. This must also be considered where the Supplier supports the Council in the event of an Emergency/Disaster Recovery. The BIA must include contact numbers in case of Supplier failure.
- 12.4 In line with the [Contract Management Framework](#), all Contracts designated as 'Platinum or Gold' must be listed on the Service Departments BIA, must have a continuity plan, and this must be regularly discussed and tested at Contract Management reviews. There must be a nominated Contract Manager in the Councils [Procurement System](#).
- 12.5 All new Contracts £100k or above and all Gold and Platinum must have a [Supplier Resilience Tool](#) test carried out. The score of this test will determine how regularly the test needs to be carried out. Where the risk score is high, then this must also be reported to the Emergency Planning Team.

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

- 13.1 It is a legal requirement that the Council remains compliant with UK GDPR legislation and adopts an approach of data protection by design and default in all its procurement activities, meaning that protection of data and personal information is integral to procurement decisions.
- 13.2 Potential Suppliers must be assessed to ensure that they meet UK GDPR requirements and comply with the Council's cyber security and data sharing agreements specifically, regarding data storage and data handling.
- 13.3 It is the responsibility of the Service Departments to ensure any potential Supplier is compliant with the UK GDPR, the Council's cyber security and data sharing policy at the sourcing stage. Refer to the [Procurement Code](#) for details of the requirements around completion of a [Data Protection Impact Assessment \(DPIA\)](#) and Digital Services requirements.
- 13.4 To ensure data privacy and cybersecurity risks are addressed in Contracting Activity, all Supplier Contracts and procurement of goods and services must follow the Digital Services Non-Functional requirement specifications. This ensures compliance with data protection and cybersecurity standards, helping Service Departments identify and mitigate cyber and data privacy risks. Additional information and guidance are available on the Council's Digital Services intranet site.
- 13.5 Advice on data sharing agreements and [DPIA](#) can be obtained from the Data Protection Officer [enfield.data.protection@enfield.gov.uk](mailto:enfield.data.protection@enfield.gov.uk).
- 13.6 Refer to the [Procurement Code](#) for further information.

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

- 14.1 Service Departments must follow Council governance and seek authority to start Contracting Activity, to award a Contract and to enter into a Contract. Even when there is no competitive Tendering, evidence of approval must be uploaded onto the [Procurement System](#).
- 14.2 Governance applies to all Contracting Activity including, Contract Modification (Extensions, Variations, Terminations and Novations) and must follow the same scheme of delegation.
- 14.3 It is the responsibility of the Service Department's lead officer to obtain the necessary authority/approvals, via the relevant Council report template and where required seek advice from [Governance Team](#) on the Council's governance process to be followed.
- 14.4 For governance purposes the **total value of the project** needs to be used when assessing which process to follow and which report template to use. The value must include all Contracts and costs to deliver the project and is exclusive of VAT.

- 14.5 Where the total project value is over the Key Decision threshold as defined in Part 2: Chapter 2.1 Paragraph 3.1 of the Constitution (currently £500k) then the [Standard Corporate Report Template](#) must be used and the project entered onto the Council's [forward plan](#). For projects £500k or above where authority to award is to be delegated, then the [forward plan](#) **and** Key Decision report must set out the procurement strategy, (must include all costs for the project including Contracts, professional fees, surveys and all optional Extensions etc), route to market, evaluation/ award criteria and Contract Management strategy and values of the awards.
- 14.6 Contract Modifications are a separate decision and need authority. A Key Decision is required if the value of a Contract Modification is £500k or more or takes the value of the Contract over £500k.
- 14.7 Officers are advised to place projects on the [forward plan](#) as soon as possible.

## 14.8 Governance Table

Level of Authorisation and Acceptance.	Estimated Total Decision Value	
	Below £500,000 (Excluding VAT)	£500,000 or above (Excluding VAT) (i.e. Key Decisions as defined in Part 2: Chapter 2.1 Paragraph 3.1 of the Constitution)
<p><b>Starting Contracting Activity.</b></p> <p>Authority to Procure</p>	<p>All Contracting Activity needs approval including Direct Awards.</p> <p>For Contracting Activity £25k<sup>2</sup> or above officers must gain written approval to start Contracting Activity. This is either via an email or a <a href="#">Non-Key Officer Decision Report</a> to be signed at the appropriate level within their Service area prior to starting activity.</p> <p>Decisions of £100k or above must have a <a href="#">Non-Key Officer Decision Report</a>, and must be sent to the Executive Directors office for recording on the SharePoint central recording Decision Log.</p>	<p>The Key Decision process must be followed, and the procurement project put on Council's <a href="#">forward plan</a> for all Contracting Activity including Direct Awards.</p> <p>The <a href="#">Standard Corporate Report Template</a> must be used and the <a href="#">forward plan</a> description must state that the Key Decision is for <b>Procurement and Award</b>, to enable the same <a href="#">forward plan</a> Key Decision reference number to be used for the authority to award report.</p> <p>The authority to procure report must set out the estimated total decision / Contract value (including all optional Extensions and must include all costs for the project including Contracts, professional fees, surveys etc), procurement strategy, route to market, evaluation / award criteria and Contract Management strategy.</p> <p>All Reports must have procurement implications and have engaged with PAG as per these Rules. To instruct Procurement Services please complete a <a href="#">Procurement Instruction Form</a>.</p>
<p><b>Authority to Award (including direct award)</b></p>	<p>For Contracts £25k<sup>2</sup> or above the procuring officer must gain written approval to award a Contract. This is either via an email or a <a href="#">Non-Key Officer Decision Report</a> to be signed at the appropriate level within their Service area.</p>	<p>A <a href="#">Standard Corporate Report Template</a> must be used when seeking authority to award.</p> <p>Where the authority to procure report followed the Key Decision process including the call-in period and:</p>

<sup>2</sup> Contracting Activity of £30k net of VAT.

	<p>Decisions £100k or above must have a <a href="#">Non-Key Officer Decision Report</a>, and must be sent to the Executive Directors office for recording on the SharePoint central recording Decision Log.</p> <p>Where the Contract is over the Procurement Threshold Legal advice must be sought to ensure compliance with Procurement Legislation.</p> <p>All awards over the threshold set out in this <a href="#">Procurement Code</a> must come to PAG.</p>	<ul style="list-style-type: none"> <li>• The Council's <a href="#">forward plan</a> description clearly stated <b>Procurement and Award</b>, and,</li> <li>• The authority to procure report detailed the estimated total decision / Contract value (including all optional Extensions), procurement strategy, route to market, evaluation / award criteria and Contract Management strategy, and</li> <li>• The report delegated the award decision to the decision maker,</li> </ul> <p>Then a <a href="#">Standard Corporate Report Template</a> must be completed and the Key Decision shall be approved by relevant decision taker and the department must maintain a record. A call-in period, at the award stage will not be required in this scenario.</p> <p>Where there has been significant change from the original authority to procure report and authority to award report, then a new Key Decision report is needed and published in the normal way. A call-in period, at the award stage will be required in this scenario.</p> <p>Where there was no Key Decision report for the procurement, the authority to award was not delegated or the <a href="#">forward plan</a> did not include award in the description under the original Key Decision report then a new Key Decision report for the proposed award and entry on the <a href="#">forward plan</a> is required, therefore observing a call-in period before implementing the decision.</p> <p>Reports must detail the procurement process, optional Extensions, whole life cost of the Contract, and Contract Management strategy.</p> <p>All Reports must have procurement implications and have engaged with PAG as per these Rules.</p>
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<p><b>Contract Modification</b></p> <p>Authority is required to:</p> <ul style="list-style-type: none"> <li>• Vary a Contract</li> <li>• Extend a Contract</li> <li>• Invoke optional Extension within a Contract.</li> </ul>	<p>For Contract Modifications £25k<sup>3</sup> or above (including where a modification takes the Contract value above £25k) the procuring officer must gain written approval via an email or a <a href="#">Non-Key Officer Decision Report</a> to be signed at the appropriate level within their Service area to carry out the Contract Modification.</p> <p>Decisions £100k or above must have a <a href="#">Non-Key Officer Decision Report</a>, and must be sent to the Executive Directors office for recording on the SharePoint central recording Decision Log.</p> <p>Where the Contract is over the Procurement Threshold (including where the modification takes the Contract value over the Procurement Threshold) Legal advice must be sought to ensure compliance with Procurement Legislation and Notification.</p> <p>All Contract Modifications £100k or above must come to PAG using the <a href="#">Contract Modification Pro-forma</a>.</p>	<p>Key Decision process must be followed, and project put on Council's <a href="#">forward plan</a>.</p> <p>The <a href="#">Standard Corporate Report Template</a> must be used and the <a href="#">forward plan</a> description must state type of Contract Modification and Key Decision process must be followed for all Contract Modifications £500k or above.</p> <p>Where the value of a Contract Modification is £500k or more or takes the Contract over £500k, then <a href="#">Standard Corporate Report Template</a> must be used <a href="#">forward plan</a> description of Contract Modification and Key Decision process must be followed.</p> <p>Where the Contract is over the Procurement Threshold (including where the modification takes the Contract value over the Procurement Threshold) Legal advice must be sought to ensure compliance with Procurement Legislation.</p> <p>All Contract Modifications £100k or above must come to PAG using the <a href="#">Contract Modification Pro-forma</a></p>
<p><b>Authority To Novate</b></p>	<p>For Contracts £25k<sup>3</sup> or above the procuring officer must gain written approval to <a href="#">Novate</a> the Contract. This is either via an email or a <a href="#">Non-Key Officer Decision Report</a> to be signed at the appropriate level within their Service area.</p> <p>Decisions £100k or above must have a <a href="#">Non-Key Officer Decision Report</a>, and must be sent to the Executive Directors office for recording on the SharePoint central recording Decision Log.</p>	<p>Key Decision process must be followed, and project put on Council's forward plan.</p> <p>Authority to enter into a new Contract £500k or above must follow the Key Decision process using the <a href="#">Standard Corporate Report Template</a> and entry placed on the Councils <a href="#">forward plan</a>.</p> <p>Services must ensure that Financial Due Diligence checks are carried out on the new provider to ensure financial standing.</p>

<sup>3</sup> Contracting Activity of £30k net of VAT.

	<p>Legal advice must be sought to ensure compliance with Procurement Legislation and Notifications.</p> <p><a href="#">Novation</a> of Contracts £100k or above must come to PAG as set out in this Procurement Code.</p>	<p><a href="#">Novations</a> Contracts £100k or above must come to PAG as set out in this Procurement Code.</p>
<p><b>Authority to Terminate</b></p>	<p>Decisions £100k or above must have a <a href="#">Non-Key Officer Decision Report</a>, and must be sent to the Executive Directors office for recording on the SharePoint central recording Decision Log.</p> <p>Where the Contract is over the Procurement Threshold Legal advice must be sought to ensure compliance with Procurement Legislation.</p> <p>All Terminations £100k or above must follow <a href="#">Termination Pro-Forma</a> and come to PAG as set out in this Procurement Code.</p>	<p><a href="#">Standard Corporate Report Template</a> and Key Decision process may be needed if the implications of Terminating a Contract incur expenditure/ savings of £500k or above, or impact on two or more wards.</p> <p>Where the Termination makes no difference to the value of the Contract, then this is an operational decision to be taken at Director level, using the <a href="#">Standard Corporate Report Template</a>.</p> <p>Report must detail reasons for Termination and what future strategy is being put in place.</p> <p>All Terminations £100k or above must follow <a href="#">Termination Pro-Forma</a> and come to PAG as set out in this Procurement Code.</p>

- 14.9 Procurement Services will not support any Contracting Activity/project that cannot demonstrate approval for the relevant Contracting Activity or budget approval including the capital governance framework.
- 14.10 Where Tenders are returned above the estimated total value / budget approved, then the additional budget must be approved by the Finance Team, prior to Contract award.
- 14.11 For Transparency and ease of decision making all reports seeking authority to award should confirm engagement with PAG. Where there was no engagement then procurement implications will state there has been no engagement.

## **15. SPECIALIST PROCUREMENT**

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

## **16. ESTIMATING THE VALUE OF A CONTRACT**

- 16.1 Service Departments must estimate the value of a Contract as the **maximum amount** it could expect to pay under the Contract during its term including, where applicable, amounts already paid.

- 16.2 When calculating the estimated total value of a Contract, the following must be considered:
- (i) the value of any Goods, Services or Works provided by the Council under the Contract other than for payment.
  - (ii) amounts that would be payable if an option in the Contract to supply additional Goods, Services or Works were exercised.
  - (iii) amounts that would be payable if an option in the Contract to extend or renew the term of the Contract were exercised.
  - (iv) amounts representing premiums, fees, commissions or interest that could be payable under the Contract.
  - (v) amounts representing prizes or payments that could be payable to participants in the procurement.
  - (vi) That estimated values **must include VAT**.
- 16.3 If the Service Department is **unable to estimate the total value of a Contract** in accordance with this Rule (for example because the duration of the Contract is unknown), then the Contracting Activity must be carried out as if the Contract value is above the Procurement Threshold.
- 16.4 It is a breach of these Rules to deliberately divide up Contracts to evade the need to follow a more complex/lengthy Contracting Activity route or evade the requirements of Procurement Legislation. Seek advice from Procurement Services.
- 16.5 The PA23 requires the Council to aggregate requirements for estimation of Contract value where the requirements could reasonably be supplied under a single Contract, unless there are good reasons for not doing so.
- 16.6 Before publishing a Tender Notification, the Service Department must consider whether the requirement could be broken into Lots and the requirement supplied under more than one Contract. There is a requirement to put a justification in the Tender Notification if not dividing the Contract into lots for Public Contracts. See [Procurement Code](#).
- 16.7 Where the Contract value may change, due to uncertainty of the project or slippage, then this must be factored into the overall costs to ensure sufficient budget is approved for the project. Identify the risks and ensure that it is documented in the Procurement documents and Notification.
- 16.8 Where a Contract is for several organisations and the Council is the lead authority, then the value of the Contract shall be the total value of the Contract for all the participating organisations. If the Council is not the lead authority, then the value of the Contract for the purposes of these Rules shall be the value of just this Council's proportion of the Contract.
- 16.9 If the value of the Contracting Activity is 10% or less below the Procurement Legislation Thresholds, then officers must procure in accordance with the PA23 process for a Public Contract.

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

- (i) Concession Contracts
- (ii) Frameworks

## **17. FRAMEWORKS, DYNAMIC MARKETS and DPS**

17.1 The use of Frameworks and Dynamic Markets is not exempt from these Rules. The rules of the Framework must be followed to ensure compliance.

17.2 All Frameworks used must be legally compliant and legally accessible to the Council. Financial Due Diligence by Finance may be required, and [Due Diligence](#) on compliance and legality must be carried out (see [Procurement Code](#)) for ALL Frameworks either by:

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

17.3 Notifications are required when creating a Framework/Dynamic Market and for Call off Contracts from Frameworks under PA23. Where self-serving this is the responsibility of the Service Department

17.4 Assessment summaries are not mandated under PA23, but for Public Contracts (above threshold) Call off Contracts with competition assessment summaries and observation of the standstill period should be carried out. See [Procurement Code](#).

17.5 A Call off Contract from a Framework of £30k or above must be undertaken via the Council's [Procurement System](#) otherwise the [Direct Award and Waiver Form](#) must be used to create the record in the [Procurement System](#), and non-compliance will be recorded.

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

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

## **18. CONFLICTS OF INTEREST**

18.1 It is a PA23 requirement to identify and mitigate any conflicts of interest or potential conflicts of interest by carrying out a [conflict-of-interest assessment](#) prior to publishing a notice relating to any Contracting Activity for Public Contracts. This must take place before any Contracting Activity has taken place, again after any market engagement, and finally prior to any award or

prior to publication of a Contract details notice or a Contract change notice. The integrity of the Contracting Activity may be compromised if it is influenced by an external or private interests. The [conflict-of-interest assessment](#) has replaced the declaration of interest form, and will be used for both PA23 and PCR 2015 procurements.

- 18.2 Throughout the Contracting Activity conflicts of interest and potential conflicts of interest assessments must be kept under review and revised/updated at each stage of Contracting Activity, including [Contract Modification](#).
- 18.3 Conflict of interest occurs when a person:
- (i) Acting for or on behalf of the Council has the ability to influence a decision to award a Contract under Contracting Activity, and
  - (ii) They have a personal, professional, or financial interest (directly or indirectly) in the outcome of the procurement.
- 18.4 For Public Contracts it is mandatory to exclude a Supplier from the Contracting Activity where a conflict of interest puts the Supplier at an unfair advantage if steps cannot be taken to avoid that advantage or the Supplier refuses to take any steps.
- 18.5 For Regulated Below Threshold Procurement, whilst the PA23 does not apply, the underlying principles apply, and therefore conflict of interest should still be assessed and managed via the [conflict-of-interest assessment](#).
- 18.6 Refer to the [Procurement Code](#) for guidance on how to manage and mitigate conflicts of interest.

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

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

- 19.4 All Contracting Activity must be in accordance with the Council's [Sustainable & Ethical Procurement Policy](#) as well as other Council agreed polices including but not limited to:
- (i) Modern Slavery Charter
  - (ii) Construction Industry Charter
  - (iii) Health and Wellbeing Strategy
  - (iv) Climate Action
  - (v) Fairer Enfield
  - (vi) Fair Tax declaration

## 20. PROCUREMENT THRESHOLDS

- 20.1 All Contracting Activity covered by PA23 (excluding Contracting Activity for Healthcare Services that fall under the PSR) must be in line with PA23 and this Rule. All Contracting Activity for Healthcare Services that falls under PSR must comply with Rule 21 and the PSR Code.
- 20.2 All Regulated Below Threshold Contracts must follow the requirements in this Rule regarding the number of Quotations set out in the table below, according to the estimated total value of the Contract. The requirements below are minimum requirements.
- 20.3 **Service Departments must ensure that Notifications are published where required.** See [Procurement Code](#).
- 20.4 Service Departments must consider Preliminary-Market Engagement prior to inviting Suppliers to bid and inviting more than the minimum number to cover for bidders withdrawing from the process.
- 20.5 Please refer to Rule 16 on estimating the value of the Contract. The estimated Contract value is the total value over the whole term of the Contract including any potential Extensions and **inclusive of VAT**.
- 20.6 It is against the Rules to deliberately disaggregate the value of a Contract and split the value up to reduce the number of quotes to be obtained or carry out multiple procurements to avoid the Rules.
- 20.7 All Contracting Activity of £30k or above must be carried out via the Council's [Procurement System](#). For quotations under this threshold, written evidence of the requirement and quotation must be maintained within a central repository within the Service Department. It is recommended to use the [Procurement System](#) for all competitive processes regardless of value, to protect against challenge.
- 20.8 When seeking quotes on a regular basis officers must ensure that they offer opportunities to new suppliers as much as possible. Where the same Suppliers are used on a regular basis then the Service Department must consider market development or setting up a Framework. Officers need to be mindful of

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

- 20.9 Officers must consider seeking 'best and final offer,' for Regulated Below Threshold Contracts to ensure best value.
- 20.10 When carrying out Contracting Activity for Regulated Below Threshold Contracts, and quotations are returned higher than the Procurement Threshold then the Contracting Activity is non-compliant and must be carried out again as an above Threshold activity. See Rule 16.3 and [Procurement Code](#).
- 20.11 For Call off Contracts from a Framework Rule 20.12 (in regard to number of quotes) does not apply, but Framework rules must be followed. Rule 20.12 on method of issuing Contract still applies to Call off Contracts.

20.12 Procurement Thresholds.

<i>Estimated Total Contract Value including VAT &amp; possible Extensions.</i>	<i>Minimum No. of Quotations &amp; Local Quotations</i>	<i>Evaluation &amp; Supplier Selection</i>	<i>Additional Requirements (if applicable)</i>	<i>Method of Issuing a Contract</i>	<i>Advertising or Notification</i>	<i>Responsibility for Procurement Process</i>
<b>Regulated Below Threshold Contracts Process</b>						
Up to £5,000.	1 quote.  Must seek local Supplier in the first instance.  Must seek 'best and final offer'.	Check if Supplier is on <a href="#">Debarred list</a> .	Must seek best and final offer to ensure VFM.  Consider potential barriers to small and medium-sized enterprises and how these can be removed.	<ul style="list-style-type: none"> <li>Use of Purchase Order for <b>Goods and Services, and limited Works Contracts only</b> (see <a href="#">Procurement Code</a> for works) or</li> </ul>	Advertising not required.	Self-service in line with Rules and Procurement Legislation.
Contracts from £5,001 to £100,000 for Goods and Services. Or  £5,001 to £500,000 for Works  <a href="#">Procurement System</a> must be used for £30,000 or above.	3 quotes.  2 local Suppliers in the first instance.  Where VFM is better met by going to the open market then this must be the first option.	For over £30,000 contracts:  Ensure Suppliers meet conditions of participation and evaluation criteria. See Rule 26  Check that Suppliers are not on <a href="#">Debarred list</a> or should be <a href="#">Excluded or</a>	If less than three quotes are <b>received</b> the Service must seek the relevant level of approval within their Service to award and must ensure that VFM has been demonstrated. The decision must be recorded in writing (NKOD report, KD Report etc) and the decision retained in the <a href="#">Procurement System</a> .  Once selected winning bidder must ask for best and final offer to obtain VFM.  Refer to the <a href="#">Construction Procurement Guide</a> for Works Contracts.	<ul style="list-style-type: none"> <li>Use of Purchase Order for <b>Goods and Services. For construction (Works and Services) see <a href="#">Procurement Code</a></b>. Or</li> <li><a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) for more complex requirements, where there is sharing of personal data or where the level of risk needs to be addressed or Works Contracts.</li> </ul> <p>Please also refer to Rule 31 for requirements for sealing.</p>	Advertising not required where quotations are by invitation only from particular or pre-selected Suppliers.  Where open competition takes place then a Below Threshold Tender Notice must be published. See <a href="#">Procurement Code</a> . <b>In all cases</b> Service Departments must publish a Regulated Contract Details Notice.	Self-service via the <a href="#">Procurement System</a> and in line with the Rules and <a href="#">Procurement Code</a> . Must be visible on the <a href="#">Council's Corporate Contract Register</a> to meet Transparency code. Must publish a Regulated Contracts Details Notice on the Find a Tender Service via the <a href="#">Procurement System</a> for award.

		<p><a href="#">are Excludable.</a></p> <p><a href="#">Ensure conflict of interest is assessed.</a></p>	Consider potential barriers to small and medium-sized enterprises and how these can be removed.	Refer to Rule 14.8 if contract is a Key Decision and needs to be added to the <a href="#">forward plan</a> .		
<p>Contracts above £100,001 to PA23 Threshold<sup>4</sup> for Goods and Services Or £500,001 to PA23 Threshold for Works: Or £100,000 to Light Touch Threshold for Light Touch Services</p>	<p>5 quotes.  2 Local Suppliers where possible.  Where VFM is better met by going to the open market then this must be the first option.</p>		<p>If less than five quotes are <b>received</b> the Service must seek the relevant level of approval within their Service to award and must ensure that VFM has been demonstrated. The decision must be recorded in writing (NKOD report, KD Report etc) and the decision retained in the <a href="#">Procurement System</a>.</p> <p>Once selected winning bidder must ask for best and final offer to obtain VFM.</p>	<p>Up to £500,000:</p> <ul style="list-style-type: none"> <li>Signature on <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) or sealed by Legal Services if required</li> </ul> <p>Over £500,000:</p> <ul style="list-style-type: none"> <li><a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) sealed by Legal Services</li> </ul> <p>Please refer Rule 31 (requirements for sealing) Refer to Rule 14.8 if contract is a Key Decision and needs to be added to the <a href="#">forward plan</a>.</p>	<p>Advertising not required where quotations are by invitation only from particular or pre-selected Suppliers.</p> <p>Where open competition takes place then a Below Threshold Tender Notice must be published.</p> <p><b>In all cases</b> Service Departments must publish a</p>	<p>Self-service via the <a href="#">Procurement System</a> and in line with the Procurement Legislation. Must be visible on the Contract register to meet Transparency regulations.</p> <p>Must publish a Regulated Contract Details Notice on the Find a Tender Service via the <a href="#">Procurement System</a> for award.</p>

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

			<p>Refer to the <a href="#">Construction Procurement Guide</a> for Works Contracts.</p> <p>Consider potential barriers to small and medium-sized enterprises and how these can be removed.</p>		Regulated Contract Details Notice.	
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### Public Contracts Process

<p>Above PA23 Threshold<sup>5</sup> for Goods, Services and Works and Light Touch Services.</p>	<p>Follow Procurement Legislation processes.</p> <p>Consider how to develop local market within the procurement and social value.</p>	<p>Ensure Suppliers meet conditions of participation and evaluation criteria.</p> <p>Check that Suppliers are not on <a href="#">Debarred list</a> or should be <a href="#">Excluded or are Excludable</a>. <a href="#">Ensure conflict of interest is assessed</a>.</p>	<p>A fully compliant process must be carried out in accordance with the processes set out in the PA23 for Public Contracts. Possible routes to market:</p> <ul style="list-style-type: none"> <li>• Open Procedure</li> <li>• Competitive Flexible Procedure</li> <li>• Framework</li> <li>• Dynamic Markets</li> <li>• Light Touch</li> </ul> <p>Consider potential barriers to small and medium-sized enterprises and how these can be removed.</p>	<p>Up to £500,000:</p> <ul style="list-style-type: none"> <li>• Signature on <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) or Sealed by Legal Services if required</li> </ul> <p>Over £500,000:</p> <ul style="list-style-type: none"> <li>• <a href="#">Contract Template</a> (or other form of Contract approved by Legal Services) sealed by Legal Services</li> </ul> <p>Please refer to Rule 31.</p> <p>Refer to Rule 14.8 if contract is a Key Decision and needs to be added to the <a href="#">forward plan</a>.</p>	<p>Notifications must be published by Procurement Services in line with the PA23 and the <a href="#">Procurement Code</a>.</p> <p>For Light Touch Notifications see <a href="#">Light Touch Code</a>.</p> <p>Notifications apply if Procurement Process is Terminated.</p> <p>Standstill periods must be followed.</p>	<p>Project managed by Procurement Services with engagement from Legal Services as appropriate.</p> <p>All procurements over the PA23 Threshold must follow processes set out in the PA23 and the <a href="#">Procurement Code</a>.</p> <p>Service Departments are responsible for:</p> <ul style="list-style-type: none"> <li>• Specification</li> <li>• Governance &amp; authority</li> <li>• Evaluation</li> </ul>
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<sup>5</sup> \*The Procurement Legislation thresholds change regularly, so please refer to the [Procurement Code](#) or intranet pages for current thresholds.

## 21. PROVIDER SELECTION REGIME (PSR)

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

## 22. LIGHT TOUCH SERVICES

- 22.1 For more in depth details of Contracting Activity covered by Light Touch Services process please refer to the [Light Touch Services Code](#) and follow guidance there for the approved routes to market, and necessary Transparency notices that must be published.

- 22.2 The Light Touch process can only be used where the Contracting Activity is covered by the relevant [CPV](#) codes set out in Schedule 1 (Light Touch Services) of the PA23.
- 22.3 All Contracting Activity must follow the PA23 regarding notices and timescales for Light Touch Services (see the [Light Touch Code](#)).

## 23. NOTIFICATIONS

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

## 24. PRELIMINARY MARKET ENGAGEMENT

- 24.1 Prior to any preliminary-market engagement for Contracting Activity for Public Contracts, a Pre-Market Engagement Notice should be published. Where no Pre-Market Engagement Notice has been issued then reasons for not doing so must be included in the Tender notice. See [Procurement Code](#).
- 24.2 Working with Procurement Services, the Service Department can review and engage the market to inform its forthcoming Contracting strategy. This may include consultations with Suppliers and other forms of market research, but must not:
- (i) Use this phase to shortlist or pre-qualify Suppliers, it is an exploratory phase.
  - (ii) Base any specification on one Supplier's capability or offering such as to distort competition.
  - (iii) Make any indication or commitment to Suppliers that their capability or offering may be preferred by the Council.
  - (iv) Suggest any procurement route which is not consistent with these Rules.
  - (v) Enter into negotiations about any form of delivery or price where a

competitive procurement process has yet to take place.

- 24.3 Any preliminary market engagement or research undertaken, including discussions with the market must meet the principles of equal treatment and Transparency and be fully documented on file and relevant information shared as appropriate.
- 24.4 Service Departments must take steps to ensure that Suppliers participating in the preliminary market engagement are not put at an unfair advantage in relation to the award of the Contract which could have been avoided.

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

- 25.1 Permission from Procurement Services must be obtained where the [Procurement System](#) is not used or to carry out a postal Tender. All paperwork will be managed by Procurement Services, unless agreed otherwise. This includes submissions by post or where documentation/additional information in relation to the Tender is sent via post and not the [Procurement System](#).
- 25.2 By default, all Contracting Activity must be carried out electronically. Tender closing times must be within working hours, and the commissioning officer must be available to deal with last minute clarifications and issues.

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

- 26.1 The award of all Contracts shall be based on disclosed pre-determined award criteria, and/or conditions of participation and in accordance with Procurement Legislation and these Rules.
- 26.2 For Contracting Activity covered by the PSR, please refer to the [PSR Code](#) for further information on evaluation.
- 26.3 The Price/Quality ratio must be in line with Procurement Principles set out in the [Procurement Code](#), any request to change these must be made via a [Direct Award and Waiver Form](#) and presented at PAG.
- 26.4 In setting award criteria, the Service Department must be satisfied that they:
- (i) relate to the subject-matter of the Contract,
  - (ii) are sufficiently clear, measurable, and specific,
  - (iii) do not break the rules on technical specifications in section 56 of PA23, and
  - (iv) are a proportionate means of assessing Tenders/quotation, having regard to the nature, complexity, and cost of the Contract.

- 26.5 The Service Department must describe how Tenders/quotation are to be assessed in the Contracting Activity documentation, and the assessment (evaluation) must be properly moderated, and full and complete contemporaneous written records of the evaluation process must be maintained by the Service Department and uploaded onto the [Procurement System](#). These will be needed to provide the assessment summary at award stage. Award criteria, scoring mechanisms and any weightings must be clearly set out in the Tender Documents to ensure Transparency.
- 26.6 The PA23 requires that for Public Contracts Suppliers are checked to see whether:
- (i) they are on [Debarred list](#).
  - (ii) any Mandatory [Exclusion ground applies](#) to the Supplier, including subcontractors, or Connected Persons.
  - (iii) any Discretionary [Exclusion ground applies](#) to the Supplier, including subcontractors, or Connected Persons.
- 26.7 Please refer to the [Procurement Code](#) for information on how to assess Mandatory and Discretionary Grounds for Exclusion throughout the Contracting Activity. Service Departments must contact Procurement Services before proceeding further if a Supplier is on the [Debarred list](#) or meets any of the Mandatory or Discretionary grounds for exclusion.
- 26.8 For Regulated Below Threshold Contracts £30k or above, Service Departments must check the [Debarred list](#) of Suppliers before selecting Suppliers. Contact Procurement Services if a Supplier is on the [Debarred list](#).
- 26.9 For Regulated Below Threshold Contracts assessment of Supplier suitability to perform the Contract must not be carried out as a separate stage from the RFQ/ITT stage. This includes:
- (i) Legal and financial capacity
  - (ii) Technical ability
- 26.10 Rule 26.9 does not apply in relation to Works Contracts over the Services Contract Threshold (see [Procurement Code](#)), or Contracts awarded in accordance with a Framework.

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

- 27.1 All Contract awards must follow Council governance and levels of authorisations and approvals as set out in Rule 14.
- 27.2 Contracts £100k up to £499k must have a [Non-Key Officer Decision Report](#) seeking approval to award. Contracts £500k or above must be awarded in

accordance with the [Council's Constitution](#) and follow the [Key Decisions](#) approval process.

- 27.3 Prior to entering a Public Contract, the Council must publish a Contract Award Notice, which sets out the Council's intention to award a Contract, provide assessment summaries to each Supplier that submitted an assessed Tender, and comply with any Standstill periods. See [Procurement Code](#).
- 27.4 The Council must publish a Contract Details Notice upon entering into a Public Contract or a Regulated Below Threshold Contract and this must be done within the timescales set out in the PA23 and [Procurement Code](#).
- 27.5 Prior to any award being made in the [Procurement System](#), all approvals must be in place, any Council governance must have been followed, and then the relevant notices can be published. See the [Procurement Code](#).
- 27.6 Contracts can only be awarded by officers as set out in their departmental scheme of delegation and must have followed the Council's governance process set out in Rule 14.
- 27.7 All Contracts must be awarded based on the advertised award criteria and conditions of participation included in the Tender documents, and cannot be changed after the receipt of submissions, unless in line with Procurement Legislation and after advice from Procurement Services and Legal Services.
- 27.8 All Contracts awarded must be recorded on the [Council's Corporate Contracts Register](#) within the [Procurement System](#), and relevant Notifications published.
- 27.9 Contracts £5m or above must be published within set timescales see Rule 30.7.

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

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

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

- 29.1 Extension milestones are an opportunity to review the scope of the Contract and look for savings if needed. It is the responsibility of the Service Department to ensure that Contracts are reviewed in good time and to identify if the Contract:
  - (i) Demonstrates good performance.

- (ii) Continues to meet the needs of the council.
- (iii) Is within budget.
- (iv) Continues to deliver VFM.
- (v) Is in the interests of the Council to be extended or varied.

29.2 Public Contracts (except Light Touch) can only be modified where permitted under the Procurement Legislation as set out in this Rule. See [Procurement Code](#) for details on Notifications and timescales.

29.3 All [Contract Modifications](#) must have written authority and be recorded in the [Procurement System](#). See Rule 14.

29.4 Conflicts of Interest must be assessed as part of the decision making under this section and such assessments will be needed for any Contract Change Notification. See Rule 18.

29.5 All [Contract Modifications](#) for Contracts £100k or over (including where the modification takes the Contract value above £100k) must follow Council Governance (see Rule 14). The relevant [Contract Modification Pro-Forma](#) or [Novation Pro Forma](#), and be presented at PAG for compliance and ensure that Notifications are published if required.

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

- (i) Schedule 8 Modifications (Rule 29.7).
- (ii) Non-Substantial Modifications (Rule 29.8).
- (iii) 'Below Threshold modification' (Rule 29.9).
- (iv) Relates to a Light Touch Services Contract.

<b>29.7 Schedule 8 Modifications:</b>	
(i) Provided for in the Contract.	<p>Modification is permitted on this ground if the possibility of the modification is unambiguously provided in:</p> <ul style="list-style-type: none"> <li>• the Contract as awarded; and</li> <li>• the Tender or Transparency Notice for the award of that Contract; and</li> <li>• the modification would not change the overall nature of the Contract.</li> </ul>
(ii) Urgency and the protection of life	<p>Modification is permitted on this ground if its purpose:</p> <ul style="list-style-type: none"> <li>• could, alternatively, be achieved by directly awarding a Contract under Rule 9.11(Direct Award in special cases); and</li> <li>• such Direct Award could be made by reference to either extreme and unavoidable urgency (under PA23</li> </ul>

	Schedule 5, paragraph 13) or regulations made under Rule 9.10 (Direct Award to protect life, etc).
(iii) Unforeseeable circumstances	<p>Modification is permitted on this ground if:</p> <ul style="list-style-type: none"> <li>the circumstances giving rise to the modification could not reasonably have been foreseen by the Council before the award of the Contract; and</li> <li>it does not change the overall nature of the Contract; and</li> <li>it does not increase the estimated value of the Contract by more than 50%.</li> </ul>
(iv) Materialisation of a known risk	<p>Modification is permitted on this ground if:</p> <ul style="list-style-type: none"> <li>a 'known risk' (as defined in Definitions) has materialised which was not caused by any act or omission of the Council or Supplier and as a result the Contract cannot be delivered to the Council's satisfaction; and</li> <li>it is in the public interest in the circumstances to amend the Contract rather than award a new Contract; and</li> <li>it does not increase the estimated value of the Contract by more than 50% and</li> <li>it was set out in the Tender Notice or Transparency Notice for award of the Contract that the Contract may require amendment due to the identified risk; and</li> <li>goes no further than necessary to address the known risk.</li> </ul> <p>When considering the public interest in relation to this type of modification, the Council:</p> <ul style="list-style-type: none"> <li>must consider whether a new Contract (rather than a modification) could provide more value for money; and</li> <li>may consider technical and operational matters.</li> </ul>
(v) Additional Goods, Services or Works	<p>Modification is permitted on this ground if:</p> <ul style="list-style-type: none"> <li>it is for Goods, Service or Works that are additional to (which would include a repetition of) Goods, Services or Works already provided for in the Contract; and</li> <li>using a different Supplier would result in the supply of Goods, Services or Works that are different from, or incompatible with, those already provided for in the Contract; and</li> <li>the Council considers that the difference or incompatibility would result in: <ul style="list-style-type: none"> <li>disproportionate technical differences in operation or maintenance or other significant inconvenience; and</li> <li>substantial duplication of costs for the Council; and</li> </ul> </li> <li>the modification would not increase the estimated value of the Contract by more than 50%.</li> </ul>
(vi) Transfer on corporate	(i) The <a href="#">Novation</a> or assignment of a Public Contract to another Supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance.

restructuring (Novation)	(ii) PA23 Section 74(9) prohibits the Council from modifying a Contract to change a Supplier except where this ground applies. The new Supplier must not be an Excluded Supplier.
<b>29.8 Non-substantial</b>	
(i) Non-Substantial	Modification is permitted on this ground if it is not a 'substantial' modification as defined in PA23 section 74(3), i.e. if it does not: <ul style="list-style-type: none"> <li>• increase or decrease the term of the Contract by more than 10% of the maximum term provided for on award; or</li> <li>• materially change the scope of the Contract; or</li> <li>• materially change the economic balance of the Contract in favour of the supplier.</li> </ul>
<b>29.9 Below Threshold Modifications</b>	
(i) Below Threshold	Modification is permitted on this ground if: <ul style="list-style-type: none"> <li>• It does not increase or decrease the estimated value of Goods or Services Contract by more than 10%, or a Works Contract by more than 15%</li> <li>• the aggregated value of the changes made on this ground must be less than the threshold applicable to that type of Contract</li> <li>• it does not materially change the scope of the Contract; and</li> <li>• it cannot be made on the grounds set out in Schedule 8 (Rule 29.7 (i) – (vi)) or is not a substantial modification (as set out in Rule 29.8 (i)).</li> </ul>

29.10 Consult with Procurement Services for Modifications to Frameworks, Call off Contracts, Dynamic Markets and DPS.

29.11 Regulated Below Threshold Contracts that are modified and as a result become a Convertible Contract (Public Contract), must come to PAG to ensure proper recording via the [Contract Modification Pro-Forma](#); and ensure any [Notifications are published and](#) must going forward follow the PA23 rules for Contract Management, further Modifications and Notifications.

29.12 Contracts let under the PCR 2015 or Concession Contracts Regulations 2016 will still be subject to that legislation until the Contracts natural end date and must follow the provisions of those Regulations for Extensions and [Contract Modifications](#).

29.13 New PSR Contracts and Health Services Contracts let under the Public Contracts Regulations 2015 that are now covered by the PSR must follow PSR Legislation regarding Contract Modifications. See [PSR Code](#).

29.14 Where Public Contracts covered by the PA23 £5m or above are modified, a copy of the modified Contract must be published (with redactions if needed), as well as any modified KPIs. See [Procurement Code](#).

29.15 Where Public Contracts (except for User Choice Contracts) are terminated, either early or at the natural end of the Contract, the Service Department must publish a Termination Notification. For Contracts £100k or above the [Termination Pro-Forma](#) must be completed and presented at PAG for assurance and publication of Notifications if applicable under PA23.

## **30. CONTRACT MANAGEMENT**

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

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

30.3 Contract spend must be managed and monitored, and any additional budget or overspend must go through Council governance, and [Contract Modification](#) as set out in Rule 29.

30.4 All Contracts £30k or above must be classified using the [Contract Tiering Tool](#) to ensure the right level of Contract Management is carried out, including performance management, monitoring of budget and costs, strategic delivery and supply chain risk.

30.5 Contract Managers must ensure that supply chain risk is monitored through the use of the [Supply Chain Resilience Tool](#). These must be shared with Procurement Services and uploaded into the [Procurement System](#).

30.6 Contracts of £100k or above (whole life cost) must have a Contract Manager nominated in the [Procurement System](#). For Contracts classified as Gold and Platinum, the Contract Manager must use the Procurement System to track and document all Contract Management and SRM activity, including KPIs. For all Public Contracts of £5m or above, performance against all KPIs must be recorded in the [Procurement System](#) to meet Procurement Legislation. See [Procurement Code](#).

30.7 Public Contracts let under the PA23 with a value £5m or above (with the exception of Light Touch Services Contracts, Concession Contracts and Frameworks) must have a minimum of 3 KPIs. All KPIs for these Contract must be published with the three material KPIs identified, and regularly monitored and recorded in the [Procurement System](#).

30.8 For Public Contracts of £5m or above the Service Department must, once in every 12 months, assess the performance of the Supplier against the published

3 material KPIs using the scoring mechanism set out in the PA23 and [Procurement Code](#). Draft performance reports must be agreed by the relevant Director and then presented at PAG for assurance, prior to publication of the Contract Performance Notification.

- 30.9 For a Public Contract of £5m or above, Service Departments must immediately contact Procurement Services where the Supplier has breached its Contract which may result in:
- (i) Termination
  - (ii) Award of damages, or
  - (iii) A settlement agreement between the supplier and the Council
- 30.10 For a Public Contract £5m or above Service Departments must inform Procurement Services where it considers that the Supplier:
- (i) Is not performing to the Service Department's Satisfaction
  - (ii) Has been given opportunity to improve performance and
  - (iii) Has failed to do so.
- 30.11 Public Contracts covered by the PA23 of £5m or above, must be published (with redactions if needed) in line with Procurement Legislation. Where such contracts are modified, the modified Contract must also be published (with redactions if needed). This also applies to Convertible Contracts. See [Procurement Code](#).
- 30.12 Please refer to the [Procurement Code](#) for a full list of Contract management requirements under the Procurement Legislation. Refer to Rule 29 for Contract Modifications and Terminations.

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

- 31.1 It is Council policy to use the [Contract Templates](#) maintained by Legal Services. In the limited circumstances where they are not appropriate (for example, Call off Contracts from Frameworks, or construction Contracts) then Legal advice must be sought to ensure the Contract is in a suitable form.
- 31.2 It is the responsibility of the Service Department to ensure that all risks associated with the Contract are assessed and that the Contract supports the mitigation of risk, and performance management of the delivery of the Contract. See Rule 7.
- 31.3 A risk assessment must be carried out to ascertain what level of liability is required within the Contract. Market research and engagement will help to understand the market.
- 31.4 For Public Contracts let under PA23, £5m or above as set out in Rule 30.11 a copy of the Contract must be published (with redactions if needed) within the timescales defined in the Notification Rule 23 (see [Procurement Code](#)).

- 31.5 The Council does not allow for Contracts that have no defined end date (for example rolling Contracts). Where the estimated Contract value is unknown then an above Threshold process must be followed (see Rule 16.3).
- 31.6 Refer to the Procurement Principles in the [Procurement Code](#) for guidance on uplifts.
- 31.7 All Contracts must be signed and uploaded to the [Procurement System](#) for record keeping. A Contract must be sealed where:
- (i) The Contract is £500,000 or above in value (except for Contract Extensions, where the Contract provides for Extension by notice in writing).
  - (ii) The Council wishes to enforce the Contract for a period of more than 6 years.
  - (iii) The price paid or received under the Contract is a nominal price that does not reflect the value of the Goods or Services.
  - (iv) It is required by the parties.
- 31.8 Legal Services are responsible for the process of sealing Contracts. The affixing of the Common Seal of the London Borough of Enfield is attested by an authorised officer from Legal Services, whose signature will be seen as executing the Contract on behalf of the Council. The Supplier must validly execute the Contract, and Legal Services should be consulted as to the appropriate execution clause.

## **32. RECORD KEEPING**

- 32.1 Procurement Legislation requires that proper records are maintained. To ensure that there is a full audit trail of Contracting Activity, compliance with Procurement Legislation, Transparency regulations and Council retention policies, Service Departments must refer to the [Procurement Code](#) to ensure compliance with Council Policy.
- 32.2 Service Departments must ensure that all Contracting Activity £30k or above is on the [Procurement System](#) and properly maintained to ensure that they are in the [Council's Corporate Contract Register](#). This ensures that the Council is compliant with Transparency regulations. Suppliers spend that cannot be linked to a Contract and is not exempt may result in the Supplier being blocked.
- 32.3 All Direct Awards, Single Supplier Frameworks, Call off Contracts from Frameworks with no competition and Waivers must be made using the [Direct Award and Waiver Form](#) and emailed to Procurement Support and presented at PAG for endorsement and then recorded in the [Procurement System](#) prior to any award being made.

- 32.4 For PSR an annual report is required to record all Contracts let under the process and the decision making relating to the Contract. Refer to the [PSR Code](#).
- 32.5 Service Departments must have in place a full auditable trail with authorisation and decision making using the correct Council governance report template or email and must ensure that decisions are authorised at the correct level of authority, and this is uploaded into the [Procurement System](#) for record keeping.
- 32.6 Signed copies of the Contract must be uploaded to the [Procurement System](#) in all cases.
- 32.7 Contract Management activity must be recorded in the [Procurement System](#), specifically for Public Contracts £5m or above.

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

- 33.1 All Contracting Activity must be carried out in an open and transparent way. Officers must act with integrity and always follow the [Councils Code of Conduct](#).
- 33.2 Officers must ensure that they are not influenced by Suppliers during Contracting Activity which may prejudice the process see Rule 26.
- 33.3 In all Contracting Activity officers must follow the processes for Conflict of Interest in Rule 18. See [Procurement Code](#).

### **34. GRANT FUNDING**

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

### **35. IR35 RULES**

- 35.1 The Council has a policy of ensuring that all temporary staff are engaged through the Council's Temporary Agency Contract unless agreed with Head of HR or Director of HR and OD. Permanent staff must be engaged via employment process.

- 35.2 Any agency staff engaged outside of the Temporary Agency Contract, must follow these Rules to create a Contract for supply. Procurement must only be used to procure Services and not to provide individual staff members. Officers must refer to the Principles of Managing Agency Workers and IR35 HR guidance before proceeding to procurement where IR35 may apply.
- 35.3 The intermediaries' legislation, known as [IR35 Rules](#) is designed to make sure Suppliers pay the required tax and National Insurance on earnings. It is the responsibility of the Council for deciding the employment status of Suppliers. For provision of Services or consultancy the procuring officer must ascertain whether the provision falls within the IR35 Rules. Refer to the [HRMC site](#) to follow the online Employment Status Service test assessment process.
- 35.4 If a Supplier is Contracted and it is later found that IR35 applied but was not considered, then back tax could be recovered from the Council for a period of up to 6 years. The employment check must be uploaded into the [Procurement System](#) as evidence where a consultant/individual has been procured. This is particularly important where the Supplier is a Personal Service Company.

## **36. CONSULTATION**

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

## 37. GLOSSARY OF DEFINED TERMS

Advertising	Where Request for Quotations and Tenders are advertised to the open market for opportunity.
Aggregation	Is the requirement to add together the estimated value of separate Contracts for meeting a single requirement. Procurement Legislation expressly prohibits the splitting of requirements into smaller units or orders to avoid the process relating to Public Contracts.
Annual Procurement Plan	Procurement plan for the financial year that sets out Contracting Activity, including Extensions & terminations.
<a href="#">Business Impact Analysis Form/ BIA</a>	Business Continuity Form for Emergency Planning.
<a href="#">Call off Contract</a>	Contracts awarded under a Framework are referred to as Call off Contracts.
<a href="#">Code of Conduct</a>	The Councils code of Conduct and how officers must carry out their duties in terms of conduct.
Concessions	A type of contractual arrangement under which, rather than paying the Supplier to deliver a work or service, the Council grants the Supplier the right to exploit an opportunity and receive some or all of its income from third parties (e.g. the public), retaining the profit.
<a href="#">Connected Person</a>	A person with significant control over the supplier (as recorded at Companies House). A director or shadow director, a parent undertaking or a subsidiary. See PA23 Schedule 6 for full description.
Consultation	A formal process to consult or discuss
Contract	An agreement between the Council and any other organisation, including another public authority, made by formal agreement or by issue of a letter of acceptance or official purchase order for Works, Goods or Services.
Contracting Activity	Any action, process of decision making that relates to the creation of a Contract for the supply of Goods, Services or Works. Including all elements of the sourcing cycle from market research, engagement, Tendering, evaluation, award, and Contract Management to the end of the Contract term including Termination.
Contract Management	The management and monitoring of a Contract to ensure delivery and performance; including commercial elements and payments.
Contract Manager	Person responsible for the management of Council Contract to ensure delivery of performance and outcomes.

<a href="#">Contract Management Framework</a>	The Council's Contract Management framework, that sets out requirements for Service Departments to ensure that Contracts are effectively managed to deliver VFM.
<a href="#">Contract Modifications</a>	Change to a Contract, in either term, value or provision.
<a href="#">Contract Templates</a>	Standardised Contracts to be used by Service Departments and procuring officers that have been drawn up by Legal Services for the Contracting of Goods and Services (for Works, industry standard construction Contracts such as the JCT or NEC suite are generally used).
<a href="#">Construction Procurement Guide</a>	Procurement Guide when procuring works.
<a href="#">Convertible Contract</a>	A Regulated Below Threshold Contract, that after modification has become a Public Contract, and therefore has become a Convertible Contract.
<a href="#">Corporate Contract Register</a>	Corporate Register of Contracts held by Procurement Services within the <a href="#">Procurement System</a> .
<a href="#">Council's Constitution</a>	Document (s) that set(s) out how the Council is governed.
<a href="#">Debarred Supplier</a>	Supplier that is on the Cabinet Office's list of <a href="#">Debarred Suppliers</a> .
Directors	Executive Directors and Directors of Enfield Council.
Direct Award	Entering into a Contract where no competition has taken place. Framework without competition or waiver
<a href="#">Direct Award</a> in Special Cases.	Entering into a Contract where no competition has taken place. Either by using Direct Award in Special Cases
<a href="#">Dynamic Market</a>	A dynamic market under the Procurement Act 2023 is a list of qualified suppliers (i.e. suppliers who have met the 'conditions for membership' of the dynamic market who are eligible to participate in future procurements.
<a href="#">Economic Crime and Corporate Transparency Act (ECCTA) 2023</a>	An Act to make provision about economic crime and corporate transparency; to make further provision about companies, limited partnerships and other kinds of corporate entity; and to make provision about the registration of overseas entities.
<a href="#">Excluded &amp; Excludable Suppliers</a>	Supplier that can be excluded from a procurement in line with the discretionary or mandatory requirements for exclusion.
Exempted Contracts	Contracting Activity that is not covered by the Procurement Act 2023.
Extension	Facility to extend a Contract term.

Financial Regulations	Financial regulations forming part of the <a href="#">Council's Constitution</a> ; that set out financial management regulations for the Council.
Framework Agreement	An agreement with Suppliers which sets out the terms and conditions under which specific purchases can be made throughout the term of the agreement and which, where necessary, has been Tendered in accordance with Procurement Legislation.
<a href="#">Gateway Report</a>	Report used as a 'gateway' in the Procurement Assurance Process at key stages of the procurement cycle.
Goods	Tangible products that can be consumable or non-consumable.
<a href="#">Hamburg</a>	Refers to a Contract entered into between two or more contracting authorities with the aim of achieving common objectives in connection with the exercise of their public function and carried out in the public interest.
Health and Wellbeing Strategy	Council Policy to improve the health and wellbeing of staff and residents of the borough.
Health Services	Contracts that provide Services relating to health care provision but not social care.
<a href="#">Horizontal Arrangement</a>	Contract or arrangement with another authority with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions, solely in the public interest.
<a href="#">IR35 Rules</a>	HRMC regulations regarding working regulations and TAX for agency workers, interims and consultants.
<a href="#">Key Decision</a>	A decision as defined in Part 2: Chapter 2.1 Paragraph 3.1. of the constitution, which must follow the Council's governance process for such decisions
<a href="#">Known Risk</a>	Means a risk that: <ul style="list-style-type: none"> <li>a) could jeopardise the satisfactory performance of the Contract, but</li> <li>b) because of its nature, could not be addressed in the Contract as awarded and</li> <li>c) was identified in the Tender or Transparency notice for award, detailing a description of the risk and possibility of modification</li> </ul>
<a href="#">Light Touch Services</a>	The Services set out in the Procurement Regulations 2024 that cover areas in Schedule 1; namely Adult social care and other areas listed in schedule 1 of the Procurement Regulations 2024.
Local Supplier	Supplier that is based in the London Borough of Enfield as defined by Enfield Post Code.
<a href="#">London Resilience Standards</a>	Resilience Requirements needed by the Council to mitigate risk in emergencies.
<a href="#">Modern Slavery Charter</a>	Charter signed by the Council to support the eradication of Modern Slavery; specifically, within the Council supply chain.

<a href="#">Non-Key Officer Report (NKOD)</a>	Part of the reports process <a href="#">Non-Key Officer Decisions</a> . Used for decisions between £100k and £499k.
<a href="#">Notification</a>	A Notice placed in the public domain to notify the market of Contracting Activity to ensure Transparency. See <a href="#">Procurement Code</a> .
<a href="#">Novation</a>	A Council Contract that is moved from one Supplier to another via corporate restructuring or similar.
<a href="#">Open Framework</a>	A scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.
Performance Bond	A bond issued by an insurance company or a bank to guarantee the obligations of a Supplier.
Platinum or Gold Contract	Contract classified as Platinum or Gold that will be either high value, high risk, complex or all the aforementioned. See <a href="#">Contract Management Framework</a> .
Price Quality Ratio	Award criteria set out in the Procurement Principles on the ratio of Price and Quality within a Tender.
<a href="#">Procurement Act Thresholds</a> <a href="#">Procurement Threshold</a>	Threshold set over which the Procurement Legislation applies.
<a href="#">Procurement Act 2023 (PA23)</a>	Procurement Legislation covering public procurement.
<a href="#">Procurement Assurance Group (PAG)</a>	Procurement Assurance Group, which oversees procurement assurance, and ensures that robust procurement governance is in place.
<a href="#">Procurement Code</a>	Document that forms part of the Rules that supports the CPR's and sets out the operational processes and governance to be followed for all Contracting Activity. Provides more detailed information and links to supporting information to ensure compliance with these Rules.
Procurement Legislation	Procurement Legislation covering Public Contract requirements for England. <ul style="list-style-type: none"> <li>• <a href="#">Procurement Act 2023</a>, Public Procurement Regulations 2024 and all subsidiary legislation issued under the Procurement Act 2023</li> <li>• <a href="#">Provider Selection Regime</a></li> <li>• <a href="#">Public Contract Regulations 2015</a></li> </ul>
Procurement Principles	Set of Principles set out to meet Council requirements and may change from time to time set out in the <a href="#">Procurement Code</a> .
<a href="#">Procurement System</a>	The Councils Procurement system used for e-Tendering, Contract management and <a href="#">Council's Corporate Contract Register</a> , used to meet legislative requirements.
<a href="#">Property Procedure Rules</a>	Rules governing the acquisition, disposal and management of the Council's property assets and which form part of the Constitution.
<a href="#">Provider Selection Regime (PSR)</a>	Procurement Legislation covering Health Services Contracts which came into effect January 2024. A set of rules for procuring

	health care Services set out in the Health Care Services (Provider Selection Regime) Regulations 2023.
<a href="#">Provider Selection Regime Code</a>	Document that supports the CPRs and sets out rules and operational processes in relation to the PSR.
<a href="#">Public Contracts Regulations 2015</a>	Procurement Legislation which came into effect in 2015.
Public Contract	A Contract of a kind specified in Procurement Legislation: A contract with a value of not less than the Procurement Threshold and not an Exempted Contract.
<a href="#">Regulated Below Threshold Contract</a>	Contracts covered by the Procurement Act 2023, but which are below Threshold.
Rules	These Contract Procedure Rules.
Quotation	A formal statement or promise usually submitted by a potential Supplier in response to a request for a quotation to supply specified Goods, Works or Services required by a purchaser at specific prices within a specific time frame. (A quotation should be distinguished from an Estimate, which is not a fixed price). 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.
<a href="#">Schools Code</a>	Code setting out the modified requirements of the Procurement Act 2023 for Schools.
Services	Services such as maintenance of equipment, transportation, consultancy, technical Services. etc. as defined by the Procurement Legislation.
Service Department. The Service	The department or team within the Council commissioning or carrying out Contracting Activity and which defines the requirement and manages the Contract.
SME (Small, Medium Enterprise)	Small and medium sized enterprise supplier as defined in section 123 of the Procurement Act 2023.
Special Service Vehicle	A <b>special purpose vehicle</b> (also referred to as an SPV) is a legal entity created for a limited purpose.
<a href="#">Standard Corporate Report Template</a>	<a href="#">Standard Corporate Report Template</a> to be used for any decision that meets the KD threshold of expenditure/savings of £500k or more and/or has a significant impact on the community in two or more wards. Should also be used for all Portfolio decisions whether they are Key or Non-Key.
Supplier	A person/ company/legal entity that will provide Goods, Service or Works to the Council.

	A bidder within a competitive process.
<a href="#">Supplier Resilience Tool</a>	Tool used to ascertain the risk in the supply chain and the Supplier risk.
<a href="#">Transparency</a>	Local Government Transparency Code relating to what is to be published in the public domain in connection with Contracting Activity
Teckal Company	Is a specific type of entity used by Public Authorities to deliver services without going through a competitive Tender Process. See Vertical & Horizontal arrangements.
Tender	A bid submitted in response to an invitation to Tender,
<a href="#">Termination</a>	Where a Contract or procurement activity is stopped or ends.
The Council	London Borough of Enfield
Threshold	The value at which Contracting Activity must follow Procurement Legislation processes. See Procurement Code
<a href="#">Value for Money (VFM)</a>	Value for Money (VFM) is a balanced judgement about finding the best way to use public resources to deliver policy objectives.
Variation	Any alteration, modification, addition to or deletion of any requirement of the Contract terms or specification.
<a href="#">Vertical Arrangement</a>	A Contract between a contracting authority and a person that is controlled by— <ul style="list-style-type: none"> <li>• the contracting authority,</li> <li>• the contracting authority acting jointly with one or more other contracting authorities,</li> <li>• another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or</li> <li>• another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).</li> </ul>
Waiver	Entering into a Contract where no competition has taken place or waiving of one of the Rules within this document.
<a href="#">Works</a>	The outcome of building or civil engineering as defined under the Procurement Legislation.