

APPENDIX 1

CONTRACT PROCEDURE RULES

Introduction

These Contract Procedure Rules (CPRs) are intended to promote good procurement practice, public accountability and to deter corruption. The ~~CPR's~~**CPRs** are mandatory for all Officers. Following them is the best defence against allegations that a purchase has been made unfairly, incorrectly or fraudulently. Officers responsible for purchasing must comply with these CPRs. They lay down minimum requirements. These ~~Contract Procedure Rules~~**CPRs** have been written to allow social value, community wealth-building and environmental benefits to be included in procurement decisions.

Social Value for the purpose of these ~~contract procedure rules~~**CPRs** is taken to include Community Wealth-Building, Environmental and Economic benefits.

At the time of formal adoption of these CPRs the implementation of the Procurement Act 2023 (PA 2023) is expected to commence on 24 February 2025 and apply to new procurement processes commenced from that date and therefore the CPRs have been drafted on the basis of the PA 2023.

Further advice on the CPRs can be sort by contacting procurement in the first instance. You may also need to contact ~~Legal Services~~**the procurement team**

All procurement approaches, whether established and traditional or modern and innovative must comply with all elements of these ~~CPR's~~**CPRs**.

All values referred to in these ~~CPR's~~**CPRs are exclusive of VAT. However all procurement Thresholds published by Government to trigger compliance with the PA 2023 are inclusive of VAT.**

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Section 1: Scope of the Contract Procedure Rules

DEFINITION OF TERMS

In the CPRs, unless the context otherwise demands, the following terms have the meaning assigned to them:

"Basic Principles"- Rule 1 of the Contract Procedure Rules;

"Non-Covered Council Contract" are those Council Contracts to which Procurement Legislation do not apply to and include:

- Contracts of employment which make an individual a direct employee of the Council
- Grants – see Rule 3
- Fines, Payment of taxes and other financial services
- Agreements regarding the acquisition, disposal, or transfer of land or property (for which Financial Regulations shall apply)
- Delivery of works and services by an in-house provider (the Council or other public authority exercises majority control and there is no private investment),
- Contracts between the Council and other contracting authorities
- Contracts for the provision of any product or service that has been manufactured or delivered by an illegal means
- Instruction of the procurement team such as with legal counsels/barristers
- Any other exempted contracts as listed in Schedule 2 of the PA 2023.

Non-Covered Council Contracts to be interpreted accordingly;

"Procurement Legislation"- (i) the Public Contracts Regulations 2015 as amended (PCR 2015) until such date that it is repealed and superseded by the Procurement Act 2023 (PA 2023) ii) The Procurement Regulations 2024 and any regulations made pursuant to the PA 2023 (by a Minister of the Crown) when they come into effect; iii) insofar that it may apply to the relevant public contract, the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR), and the relevant statutory guidance issued in relation to it; (iv) the Public Services (Social Value) Act 2012 and (v) relevant procurement regulations and any subsequent amendments to, or replacements of, them in relation to UK procurement legislation;

"Relevant Contract" – a public contract which must follow the relevant rules under the Contract Standing Order Rules and is not a Non-Covered Council Contract:

- (a) Relevant Above-Threshold Contract, and
- (b) Relevant Below-Threshold Contract

"Relevant Above-Threshold Contract" is a public contract for which a procurement process is being undertaken within the scope of the PA 2023 and its regulations, for arrangements which are over the relevant Threshold and cover (including but not limited to):
The supply of goods

- (i) The delivery of services or works
- (ii) The hire, rental or lease of goods or equipment

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- (iii) [Concession contracts for the supply of services and works](#)
 - (iv) [Contracts or agreements where the provider is employed on a no win/no fee basis;](#)
 - (v) [Light-touch services](#)
 - (vi) [Framework agreements or dynamic markets](#)
- [and is not a Non-Covered Council Contract](#)

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"Relevant Below-Threshold Contract" - [Any other Council contract which is](#)

- [Below-Threshold that is subject to partial application of Procurement Legislation](#)
- [above £30,000 \(inclusive of VAT\) for a tender notice and](#)
- [is not a Non-Covered Council Contract, an exempted, a concession or utilities contract.](#)

"Threshold"- [the applicable procurement public contract financial value at which a public contract becomes subject to the relevant Procurement Legislation.](#)

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1.0 Basic Principles

1.1 All purchasing procedures [in scope of the PA 2023](#) must:

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- ~~Comply with the Treaty of Rome principles of equality, transparency, non-discrimination, Equal Treatment, Mutual Recognition and proportionality~~
- ~~Achieve~~ [have regard to the following procurement objectives:](#)
 - ~~Delivering value for money for all,~~
 - ~~Maximising public money spent benefit,~~
 - ~~Be consistent~~ [Transparency, and](#)
 - ~~Acting, and being seen to act, with the highest standards of integrity.~~
- ~~Ensure fairness and transparency in allocating public contracts~~
- [Comply with UK & EU law](#) [Procurement Legislation](#) and all [UK procurement](#) legal requirements
- [Have regard to the National Procurement Policy Statement when it is published and as updated](#)
- [Ensure that non-commercial considerations \(except those allowed for in the Social Value Act\) do not influence any contracting decision except to the extent that the Council considers it necessary or expedient to do so to enable or facilitate compliance with the relevant duty, or where Procurement Legislation expressly indicates otherwise.](#)
- [Comply with the Council's various](#) Codes of Practice and the Council's aims and policies
- [Seek to incorporate and ensure the delivery of](#) social value, community wealth-building and environmental benefits-
- [Identify and manage conflicts of interest throughout the process](#)
- [Have appropriate performance management measures in all Relevant Above-Threshold Contracts.](#)
- [Treat suppliers the same unless different treatment is justified \(and where different treatment is justified, the reasoning for this must be documented\).](#)
- [Have regard to small and medium sized enterprises, the barriers they may face and how to reduce those barriers.](#)

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2.0 Officer Responsibilities

2.1 Officers responsible for purchasing must comply with these ~~Contract Procedure Rules CPRs~~, the Council's Financial Regulations, the Staff Code of Conduct, the Council's Anti-Bribery policy, arrangements for declaring conflicts of interest and Council's Scheme of Delegation and with ~~all UK and European Union binding legal requirements~~. Procurement Legislation. Officers must ensure that any agents, employees, consultants and contractual partners acting on their behalf also comply. ~~Officers must: and they may be required to enter into a signed agreement to that effect.~~

2.2. Officers must:

- Plan, define, procure and manage the procurement process in line with updated UK guidance published for Procurement Legislation
- ~~Have proper regard for all necessary legal, financial, technical and professional advice~~
- ~~Declare any personal financial interest in a contract to ensure that contracts are legally, financially and technically capable. Corruption is a criminal offence~~
- ~~Report any offers of bribes or inducements~~
- delivery to the Council Conduct any relevant value for money review
- Ensure that there is adequate budget provision for the procurement being undertaken (including any extensions and options)
- Take into account all relevant procurement notices which must be published for a procurement process and current contract (in accordance with the applicable Procurement Legislation) and seek advice from the Council's procurement team for any procurement concerns
- Undertake due diligence before any procurement process or contract commences, and once a contract commences yearly checks must be undertaken including for updated insurances, and review of the debarment list for current suppliers (and any of their associated persons) published under Procurement Legislation
- Ensure the Basic Principles are complied with for all Relevant Contracts.
- Declare all conflicts of interest including any personal financial interest in relation to any current procurement process which they may be directly involved with and take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement processes and manage those conflicts of interest throughout the procurement process from the planning stage to the end of the relevant contract's term (see Rule 23)
- Not engage in any fraud, bribery or corruption. Corruption is a criminal offence
- Report any offers of bribes or inducements (see Rule 22)
- Check whether there is an existing contract that can be used before undergoing a competitive process subject to procurement implications
- Undertake all due diligence including reviewing the debarment lists before undertaking market engagement with suppliers and after submission of bids for suppliers, and if applicable their parent company and associated companies (or connected persons) and their proposed sub-contractors.
- Allow sufficient time for the submission of bids
- ~~Allow sufficient time for the submission of bids~~
- Keep all supplier bids secure and confidential
- ~~Keep written~~ records of all dealings with bidders/suppliers
- The project manager should ensure the safe keeping of contract documentation in line with the Council's document retention policy.
- Obtain all required approvals and complete a written contract (and sealed, as required) before placing an order or raising a purchase order for any supplies, services or works

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- ~~Where appropriate, not~~ award a contract until the standstill period is over (where applicable)
- Enter all purchase order information onto the Oracle financial system
 - Based on the Scheme of Delegation, identify a senior manager who is the designated contract owner responsible for the relationship with the supplier. In addition, a contract manager with responsibility for day to day issues and ensuring the contract delivers as intended may also be appointed
 - ~~Ensure that contracts are legally, financially and technically capable of delivery to the Council~~

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2.2 When any employee either of the Council or of a service provider/supplier which may be affected by any transfer arrangement in relation to a change of provider following a procurement process, Officers must ensure that the Transfer of Undertaking (Protection of Employment - TUPE) issues are considered.

2.3 Unless otherwise delegated, Chief Officers should:

- Keep records of all purchases and contracts valued below £100,000
- Ensure that all signed and sealed contracts valued at £100,000 and greater are scanned and entered onto the Contract Register
- Ensure that all Waivers are recorded under Rule ~~47~~-17.0

3.0 Grants

3.1 For the purposes of these ~~Contract Procedure Rules~~CPRs, a grant refers to grant-in-aid and is the provision of funding to cover, in whole or, more likely, in part, the running costs of an organisation whose work complements that of the Council. The recipient will have discretion over the spending of that funding within the general framework of controls agreed between the Council and the recipient of the grant.

3.2 The terms of a grant are likely to require the other organisation to use the money only for a particular project or service and might require the recipient to pay back the grant, or part of it, in some circumstances. The Council would still, of course, monitor the achievement of the proposed outcomes and any giving of a grant should be subject of a formal contract.

3.3 The Council should determine on a case by case basis whether funding is to be considered as a grant or a Relevant Contract by reference to the decision making tool published by the National Audit Office at <http://www.nao.org.uk/decision-support-toolkit/>. A Relevant Contract is any arrangement made by, or on behalf of the Council the carrying out of works or for the supply of goods, materials or services.

4.0 Collaboration

4.1 In order to secure value for money, the Council may enter into a procurement arrangement with a Central Purchasing Body (CPB). The terms and conditions of the CPB must be fully complied with, including any requirement to undertake competition between providers. In order to secure value for money, the Council may enter into collaborative procurement arrangements with another local authority, government department, ~~primary~~integrated care ~~trust~~board, statutory undertaker or other contracting authority.

4.2 In some areas, the Council may enter into a collaborative service delivery arrangement with one or more other 'partner' organisations (whether local authorities, other public bodies or private sector organisations). In such circumstances, the council may wish to take advantage of a partner's procurement arrangements, expertise and agreements (e.g. frameworks).

5.0 Relevant Contracts

~~5.1 All Relevant Contracts must comply with these CPRs. Procurement Legislation and these CPRs do not apply to Non-Covered Council Contracts. Please see Definitions section (at the end of the Constitution/beginning of the CPRs) for the description of Non-Covered Council Contract Procedure Rules. These include arrangements made.~~

~~5.2 Relevant Below-Threshold Contracts require certain notices to be published:~~

~~a) below threshold tender notice (s87 (1) PA 2023)~~

~~b) below threshold contract details notice – (s87 (3) PA 2023)~~

~~5.3 Officers procuring Relevant Below-Threshold Contracts have a duty to consider small and medium-sized enterprises~~

~~5.4 Officers cannot restrict Relevant Below-Threshold Contracts by or on behalf of the Council for the carrying out of requiring an assessment of a supplier's suitability to perform it (as in a pre-selection stage) unless it is in relation to a works or the supply of goods, materials or services, for:~~

~~• The supply of goods, services and works~~

~~• The hire, rental or lease of goods or equipment~~

~~• Concession contracts for the supply of services and works~~

~~• Contracts or agreements where the provider is employed on a no-win/no-fee basis.~~

~~5.2 Relevant Contracts do not include:~~

~~• Contracts of employment which make an individual a direct employee of the Council~~

~~• Grants – see rule 3~~

~~• Fines~~

~~• Payment of taxes~~

~~• Agreements regarding the acquisition, disposal, or transfer of land (for which Financial Regulations shall apply)~~

~~• Delivery of works and services by an in-house provider, including for example: construction, engineering, maintenance, professional services, etc~~

~~• Contracts for the provision of any product or service that has been manufactured or delivered by an illegal means.~~

~~contract over £213,477 (inclusive of VAT).~~

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Section 2: Common Requirements

6.0 Steps Prior to Purchase

- 6.1 Officers should take the following steps before beginning a procurement exercise:
- a. ~~Determine~~Review all Relevant Contracts to determine when a procurement should be undertaken. If there is contract then determine the service, product or works output taking into account the requirements from any relevant value for money review and the Council's commissioning outcomes
 - b. Appraise the need for the expenditure and its priority for the Council including whether the value crosses the Threshold
 - c. Define the objectives of the purchase
 - d. Assess the risks associated with the purchase and how to manage them
 - e. Review the Council's process and procedures on pre-market engagement to determine if this is required.
 - ~~e.f.~~ Officers involved in ~~the any part of the design of the procurement, decisions in respect of the procurement and~~ evaluation of tenders must complete the declarations of interest form prior to ~~the evaluation criteria being developed and agreed~~their involvement and prior to the start of the evaluation process
 - g. Determine the terms and conditions of contract and ensure there will be provision for determining contract performance

- 6.2 Officers should also consider what procurement method is most likely to achieve the purchasing objectives, including packaging strategies, internal or external sourcing, shared services, concession arrangements, partnering arrangements and collaborative procurement arrangements with other local authorities and government departments. Officers should also consider working with NHS Lancashire and South Cumbria, Integrated Care Board, statutory undertakers and Central Purchasing Bodies.

- 6.3 Officers should ensure that all procurements including method, contract standards and performance and user satisfaction monitoring and including any collaborative arrangements, are carried out using the Council's principles of co-production and co-delivery. Officers should also use the Council's standard terms and conditions of contract where possible.

- 6.4 The officer must confirm that they have the authority to spend, have obtained the required approval(s) for the expenditure and the purchase accords with the Scheme of Delegation. If the purchase is valued at £250,000 and greater, an entry onto the Council's List of Forthcoming Key Decisions has been made. If the purchase is valued at £50,000 and greater, the relevant Cabinet Member has been consulted.

7.0 Procurement Records

- 7.1 Where the total value is less than £100,000, the relevant officer must ensure that the following records are kept:
- Invitations to quote and quotations or whether invited particular or pre-selected suppliers
 - A record of any waivers to the procurement process and the reasons for them
 - Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced
 - Copies of the quotes received must be appended to the relevant requisition
- 6.2 Where the total value exceeds £100,000, the relevant Chief Officer must ensure that the following records are kept:
- The method for obtaining bids
 - The calculation of the estimated value

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- ~~The reason for entering into a contract~~
- The reason/reasons which sufficiently explain/explains any material decisions relating to the award of a public contract (including reasons for not using lots) such as excluding suppliers, assessment of tenders and decisions to award
 - Any waiver under Rule 17 together with the reasons for it
 - The award criteria in descending order of importance
 - Tender documents sent to and received from tenderers
 - Pre-tender research, benchmarking and consultation information
 - All tender evaluation documentation. To include the scoring assessment sheet for each of the tender evaluators. Any post-tender clarification information, to include minutes of meetings
 - The contract documents
 - Contract due diligence checks, implementation and evaluation plan and any monitoring and management information
 - Communications with all tenderers throughout the tendering exercise and with the successful supplier(s) throughout the period of the contract
 - Record of Social Value offering that is to be measured and delivered ~~through-out~~ throughout the contract- and
- Any other records which may be required by the National Procurement Policy Statement

7.3 All contracts must be entered onto the Council's Contract Register held on the supplier portal. The manager responsible for procuring the contract should ensure the safe keeping of contract documentation in line with ~~Lancaster's~~ the Council's document retention policy.

7.4 All records for public contracts (Relevant Contracts) where a "material decision" was made, must be kept for a minimum of 3 years from when the contract was entered into by the Council and the supplier.

Section 3: Purchasing Rules

8.0 Competition Requirements for Purchases, Partnership Arrangements Frameworks and Concession contracts and Light- touch contracts

- ~~8.1~~ Officers must calculate the total aggregate value of any contract or purchase. If in doubt, Officers should seek the advice of their procurement team.
- ~~8.1~~ Subject to Rule 8.2, 8.3, 8.4, 8.5 and 8.16, Officers must estimate the value of a contract as the maximum amount the Council could expect to pay under the contract including, where applicable, amounts already paid. Values are to include the estimated costs of the contract including additional options if selected, extensions if exercised as well as premiums, commissions or interest which could become payable at any point of the contract. Where there are lots in a procurement which could reasonably all fall under one contract (for instance with supplier delivering all lots), these must be aggregated together for the estimated value of the procurement (unless there is some justifiable and defensible reason not to do so). All estimated values must include VAT. If in doubt, Officers should seek the advice of their procurement team.
- ~~8.2~~ For concession contracts, the estimated value is the amount a supplier might expect to receive as a result of the public contract.
- ~~8.3~~ Where Officers are unable to properly estimate the value of a contract, the assumption is that the value is above the Threshold. Officers should use their best valuation processes to arrive to an estimate and avoid this conclusion.
- ~~8.4~~ Where Officers are undertaking a procurement for a mixed contract (for instance goods and works are to be provided by a supplier) such that different Thresholds apply, if the elements are not separable then determine which aspect is the main purpose of the contract and that Threshold would apply. If the elements are separable then they can either be treated separately in relation to their applicable threshold or procured as a mixed contract (applying the lower Threshold).
- ~~8.5~~ Relevant Contracts must not be artificially divided into two or more contracts to avoid the application of these CPRs or Procurement Legislation. The Council is required to aggregate their requirements which can be reasonably aggregated unless there is a reason not to. Officers have discretion not to aggregate when they have cause not to. For instance where the goods, services or works to be supplied under two or more contracts would be under threshold but due to the nature of them, they could reasonably be supplied under a single contract and there is no reason not to do so then the contract should be combined and procured together. A good reason for not aggregating may include where not aggregating would lead to better outcomes or where a business unit has a delegated budget within the Council and procures only for the purpose of that business unit or where not aggregating would lead to better value outcomes (such as procuring printers from a particular supplier does not mean that the Council should necessarily buy all of their toner, paper and servicing from that same supplier if Officers believe they can get a better deal elsewhere or if two separate departments require toners for different types of printers unless one supplier can provide both).
- ~~8.6~~ Officers are to have regard to the fact that small and medium-sized enterprises may face particular barriers to participation and consider whether such barriers can be removed or reduced. In relation to frameworks and concession contracts, please contact the procurement team. Concession contracts are valued differently than standard contracts for goods, services and/or works.
- ~~8.2~~ ~~8.7~~ The following table shows the procedures and approval process for the Council's tendering activities:

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Lancaster City Council
CONSTITUTION

No.	Total Aggregate Value	Procedure	Internal Approval	Other Essential Requirements
A	£0.00 up to & including £10,000	One Written Quote	RSO	<ul style="list-style-type: none"> The quote must represent value for money
B	Greater than £10,000 & up to £100,000*	One of: <ul style="list-style-type: none"> A framework or dynamic purchasing system (DPS) Three Written Quotes 	RSO	<ul style="list-style-type: none"> Unless a framework is used, 3 written quotes to be secured under sealed bid, of which, at least one quote from a local Lancaster supplier*. opportunities valued at or greater than £25,000 which are being openly advertised must, in addition to the supplier portal be advertised first publish a 'below-threshold tender notice' on the Contracts Finder central digital platform before being published elsewhere (this will be done via the Council's eSourcing platform) (the Chest) Above £50,000 relevant cabinet member to be consulted- A 'below-threshold tender notice' does not need to be published if the Council advertises only for the purpose of inviting tenders from particular or pre-selected suppliers <p><u>Please see advertising requirements under Rule 10.</u></p> <p>*it should be noted that for procurements below EU Thresholds a restricted process can be permitted with all suppliers from the local area, subject to a waiver under Rule 17.</p>

Lancaster City Council
CONSTITUTION

C	£100,000* & up to and including £150,000*	Formal Tendering through one of the following: <ul style="list-style-type: none"> • A Framework or DPS • Tender including advertisement on Lancaster's supplier portal, Contracts Finder, • Relevant cabinet member to be consulted. 	Chief Officer	<ul style="list-style-type: none"> • Pre-qualification Questionnaires may not be used to restrict providers below Public Services Contract Threshold. However, Suitability questions are permitted. • <u>There is no longer a requirement to use a selection questionnaire, as under the PCR 2015 when procuring under PA 2023. However, templates can be used such as for works industry pre-qualification questionnaires provided that the templates meet the requirements of the PA 2023</u> • Details on Contract Register • <u>Contract placed under seal if advised by Legal</u> • <u>Please see advertising requirements under CPR 10.</u>
D	Greater than £150,000 and up to and including £200,000	<ul style="list-style-type: none"> • Formal tendering • Refer to <u>EUUK</u> rules and requirements. 	Chief Executive	<ul style="list-style-type: none"> • As C, above; • Above EU threshold pre-qualification allowed.
E	Greater than £200,000	<ul style="list-style-type: none"> • Formal tendering 	Chief Executive with delegated authority from Cabinet	<ul style="list-style-type: none"> • As D, above • Above £250,000 published on the Council's List of Forthcoming Key Decisions?

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~~8.3~~
a. ~~Where a contract is valued between public services contract threshold and any higher applicable public contract threshold, it is possible to use a restricted tendering (two stage) process.~~

8.8

~~b-a.~~ Where a contract is valued between the Council's tendering threshold and ~~the public services contract threshold~~ Procurement Legislation's Threshold, a single stage process shall be used.

b. Flexible Competitive tendering process for Relevant Above-Threshold Contracts – an open procedure (a single-stage tendering procedure) or competitive procedure (multi-staged procedure which could restrict participants and include 'negotiation' or 'dialogue' stages) may be chosen.

c. **Framework Contracts** – An agreement between one or more contracting authorities and one or more economic operators. The term of a framework shall, save duly, justified and exceptional circumstances not exceed 4 years. Frameworks cannot be used in an improper manner that may hinder, restrict or distort competition. All terms and conditions of contract must set out how call-offs from the framework will be made and must be followed. Open Frameworks, under the PA 2023, will be an intermediary between a traditional framework and DPS (see below). If the Officer would like to set up new frameworks under the PA 2023, additional publishing requirements will apply.

d. **Dynamic Purchasing System (DPS)** – A completely electronic system used to purchase commonly used goods, services or works. Unlike a traditional framework the process shall be open throughout the contract term allowing new suppliers to join at any time. A DPS must follow the rules of restricted procedure. No new DPS will commence under the PA 2023, instead there will be Dynamic Markets which can be used for all procurements (and are currently being reviewed before the PA 2023 comes into force). Only the competitive flexible procedure can be used for Dynamic Markets. Officers must comply with the processes for Dynamic Markets in the PA 2023 to commence or procure contracts under them. Below-Threshold contracts cannot be awarded under a Dynamic Market arrangement (currently under review by the Cabinet Office).

e. **Concession Contracts (special regime contracts)** – To grant to the provider the sole and exclusive right to deliver the contract and to make money from the ~~contract~~ contract. A Concession contract must follow the requirement of the Concession ~~Contract Regulation~~ Contracts Regulations 2016 and can follow a single or restricted procedure. – until the PA 2023 comes into effect.

f. **Convertible contracts-** these are contracts that become a public contract where modification would take the value above Threshold. Once the modification occurs then the contract will be subject to the full application of the Procurement Legislation. A Contract change notice would need to be published.

g. **Clinical/healthcare contracts-** these will always be subject to PSR no matter the value. Officers should discuss their requirements with the procurement team to determine if these regulations are applicable.

8.9 Where a two-stage process is allowed, the tender advertisement must show the number of suitably qualified tenderers who will be invited to submit bids.

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8.4 8.10 An Officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these ~~contract procedure rules~~ CPRs or to avoid the requirements of the ~~EU~~ Procurement Legislation.

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8.5 8.11 Where extensions of time or variations in price (or both together) are made to an existing contract, Officers must adhere to the extension and/or variation provisions in the terms and conditions. Officers must compute the amount of the variation and seek approval in accordance with the Council's Scheme of Delegation.

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8.6 8.12 Where a contract is to be terminated before its contracted termination date, this must be approved by the relevant Chief Officer.

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8.7 Legal Services8.13 The procurement team must be consulted where contracts to work for organisations other than the Council are contemplated.

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8.14 Light-touch (special regime contracts) – these contracts are wholly or mainly supply of services that have specific Common Procurement Vocabulary (CPV) and include health and social services (unless those healthcare services are covered by the PSR), benefit services, administrative social, educational and cultural services and other services to the community. Procurements for these contracts may be flexible and not all the requirements of the Procurement Legislation will apply (including contract change notices and other transparency requirements). Please discuss your requirements with the procurement team.

8.15 Light Touch contracts can account for user choice and has greater flexibility.

8.16 When considering or calculating the value of a contract for a regulated procurement, Officers should be aware that the thresholds in the PA 2023 are inclusive of VAT.

Health-related contracts subject to PSR

8.17 All other healthcare services will need to be procured in accordance with the PSR unless the procurement is for a mixed contract. Officers must ensure that healthcare services are procured correctly with reference to the appropriate contract terms and conditions.

8.18 Officers should discuss their requirements with the procurement team to confirm CPV codes to ensure that the Council follows the applicable Procurement Legislation and procurement process for their contract. There is no value threshold for PSR therefore all relevant healthcare services will be caught under PSR

8.19 The PSR importantly requires the Council to:

- act with a view to securing the needs of the people who use the services, improving the quality of the services, and improving the efficiency of in the provision of the services
- ensure decisions about which organisations provide healthcare services are robust and defensible, with conflicts of interest appropriately managed and
- adopt a transparent, fair, and proportionate process when following the PSR.

8.20 The PSR is quite prescriptive and Officers making decisions about healthcare services must understand the market of providers and the requirements of each award process. Two of the Direct Award Processes (A and B) must be used should the circumstances apply. Officers must determine which award procedure fits with their circumstances and follow the steps in that process:

I. Direct award process A

This must be used when:

- There is an existing provider for the healthcare services in question.
- The Council believes that only the existing provider (or group) can deliver these services due to their nature.
- The Council is not seeking to establish a framework agreement.

Lancaster City Council
CONSTITUTION

II. Direct award process B:

This must be used when:

- Patients have a choice of providers for the healthcare services.
- The Council does not limit the number of providers.
- The Council will offer contracts to all providers meeting the service requirements.
- Providers can express interest in offering the services.
- The Council is not seeking to establish a framework agreement.

III. Direct award process C

This may be used when:

- The Council is not bound by Direct Award Processes A or B.
- An existing contract is due to expire and the Council proposes a new contract with no significant changes.
- The Council believes the existing provider (or group) is meeting the current contract standards and will likely meet the proposed contract standards.
- It cannot be used to establish a framework agreement.

IV. The Most Suitable Provider process

This is about awarding a contract without competition because the Council can identify the most suitable provider. This process may be used when:

- The Council is not bound by Direct Award Processes A or B.
- The Council cannot or chooses not to follow Direct Award Process C.
- The Council believes it can identify the best provider based on available information, without needing a competitive process.
- This process, called the "most suitable provider process," cannot be used to establish a framework agreement.

V. The Competitive Process

This is about conducting a competitive process to award a contract. This process may be used when:

- The Council is not bound by Direct Award Processes A or B.
- The Council cannot or chooses not to follow Direct Award Process C and also cannot or chooses not to follow the most suitable provider process.
- If the Council wants to establish a framework agreement, it must use the competitive process.

Key criteria

When using Direct Award Process C, the most suitable provider process, or the competitive process,

Officers must consider five main criteria:

1. Quality and innovation

Value

2. Pre-Tender Stage
3. Integration, collaboration, and service sustainability
4. Improving access, reducing health inequalities, and facilitating choice
5. Social value.

8.21 Procurement notices are required to be published under the PSR which differ to that in the PCR 2015 and/or PA 2023 (and its secondary legislation).

Table 1: Procurement notices that require publication under PSR processes

	<u>Direct award process A</u>	<u>Direct award process B</u>	<u>Direct award process C</u>	<u>Most suitable provider process</u>	<u>Competitive process</u>
<u>Clear intentions:</u> <u>Publish the intended approach in advance</u>	-	-	-	<u>Yes</u>	-
<u>Clear intentions:</u> <u>Publish a notice for a competitive tender</u>	-	-	-	-	<u>Yes</u>
<u>Communicating decisions:</u> <u>Publish the intention to award notice</u>	-	-	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>Confirming decisions:</u> <u>Publish a confirmation of award notice</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>Contract modification:</u> <u>Publish a</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>

<u>notice for contract modifications</u>					
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9.0 Preliminary-Market Engagement

9.1 The Officer responsible for the purchase may consult potential suppliers prior to the issue of the invitation to tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential candidate. Or give an unfair advantage to a potential candidate. Officers are strongly advised to engage with suppliers during the tender process. Officers must bear in mind that a Preliminary Market Engagement Notice must be published if preliminary market engagement is undertaken. If for any reason this is not published, and pre market engagement is carried out, reasons for not publishing a Preliminary Market Engagement Notice must be given in the tender notice.

9.2 The responsible officer must consider ~~Responsible Procurement~~the Basic Principles (Rule 1) and Officer Responsibilities (Rule 2) at this stage. Contracts tendered must not only achieve value for money on a whole life costing basis for the organisation but also for society, the economy and the environment. Steps must be taken to incorporate social value, community wealth-building and environmental benefits. The Officers must also check the debarment list for excluded and excludable entities, as well as those organisations who have performance notices published about them.

9.3 Officers must also consider and take steps to mitigate any supplier advantage by taking part in the market engagement process. If the unfair advantage cannot be avoided then Officers must treat that supplier as excluded from the procurement process.

9.4 For Contracts or orders over £50,000 Officers are required to engage with their Cabinet Member before the approval of tender has been given. Discussions should include the contract's outcomes and outputs and opportunities for social value, community wealth-building and environmental benefits.

9.5 Preliminary market engagement notices are not required to be published for Relevant Below-Threshold Contracts. There is also no-requirement to explain non-publication of this notice for Below-Threshold tender notices.

10.0 Advertising and Prequalification

10.1 Officers should ensure that, ~~where~~ proposed contracts, irrespective of their total aggregate value, ~~might be of interest to potential suppliers located in other member states of the EU, are published in~~ a sufficiently accessible advertisement ~~is published for all potential suppliers to view.~~ Generally, the greater the interest of the contract to potential bidders ~~from other member states,~~ the wider the coverage of the advertisement should be. Advertisements for tenders should be placed as below:

- a. For procurements valued between £0.00 and up to £100,000, ~~officers (excluding VAT),~~ Officers are not obliged to formally advertise (under Procurement Legislation) the purchase but may do so using the Council's supplier portal.
- b. For contracts above £25,000 ~~and (excluding VAT)~~ that are being openly procured, Officers must advertise the opportunity on Contracts Finder until the PA 2023 comes into effect then all procurement information and notices are to be published on the central digital platform.

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Lancaster City Council
CONSTITUTION

- c. Where the value exceeds the ~~current EU thresholds~~ relevant Thresholds for supply, service and works contracts, (concession contracts as well), tender advertisement rules must be followed in accordance with the current ~~EU Public~~ Procurement Directive Legislation.
- d. For procurement activity of any value ~~officers~~ Officers may use additional advertisements in national official journals, specialist trade papers or websites, if relevant and if affordable.

10.2 Officers must review the estimated value of all contracts against current Thresholds to determine what legal and Council process requirements are to be followed.

Notices

10.3 Officers need to be aware of the requirements to publish notices, the contents within them and when they need to be published when the PA 2023 comes into effect:

- a. If preliminary market engagement is to be undertaken and there are no reasons for not doing so then a notice must be published with the relevant information
- b. If Officers estimate that the total annual spend of a contract for goods, services, or works contracts (above and below Threshold) would be over £100 million then a pipeline notice must be published within the first 56 days of the beginning of that financial year (no later than 26 May each year if financial year starts on 1 April). In this notice, the Council needs to publish specified information on all upcoming contracts valued at £2 million or more expecting to be advertised in a tender notice or other procurement notice in the next 18 months following the first day of the financial year
- c. If Officers wish to inform the market of a procurement and/or to reduce tendering periods then a planned procurement notice may be published at least 40 days before but no more than 12 months before the day the tender notice is to be published.
- d. Officers need to publish tender notices with all relevant information (including KPIs) in order to commence the procurement process.
- e. Before awarding a contract, in order to start standstill, a Contract Award notice must be published.
- f. If Officers have satisfied conditions for a direct award, then a Transparency Notice must be published and before the direct award is entered into.
- g. A contract details notice is to be published when a Relevant Above-Threshold Contract is entered into and must be published within 30 days of entering into a public contract (or 120 days for light touch contracts but this does not apply to user choice contracts); and as soon as reasonably practicable after entering into a Relevant Below-Threshold Contract.

10.4 Officers need to be aware that during the lifetime of the Relevant Above-Threshold Contract, the following notices are still required to be published:

- a. Payment compliance notices - a biannual requirement to publish prescribed information (set out in regulations) about payments made or due to suppliers under public contracts in the preceding six month period.
- b. Information about Payments— which provides specified information about any individual payment they make under a public contract which is over £30,000 (inclusive of VAT). This is a quarterly requirement, with the publication within 30 days of the end of the quarter.
- c. Contract Performance Information— for those contracts worth more than £5 million (inclusive of VAT) where at least 3 KPIs have been set, Officers must, at least once a year, review the supplier's performance against the KPIs and publish information relating to that assessment. In addition, where there has been a breach of contract that has led to termination, damages or a settlement agreement (or the supplier fails to perform), Officers must publish information relating to the breach or failure within 30 days of it arising.
- d. Contract Change Notice— to indicate that a change will be entered into (this is published before the modification is carried out) and Officers must also publish a copy of the contract as modified for all contracts with an estimated value of more than £5 million (inclusive of VAT) within 90 days of the modification.
- e. Contract Termination Notice— other than in limited circumstances, the Council must publish a contract termination notice within 30 days of the date of expiry or termination of the contract.

Lancaster City Council
CONSTITUTION

10.5 Officers need to also bear in mind that the Council must publish below-Threshold notices if the estimated value of the public contract is £30,000 or more (inclusive of VAT) unless the Council intends to only invite quotes from particular or pre-chosen suppliers.

10.6 In the contract details notices (over £5 million), a description of the KPIs (or any reasons why not applicable) must be included, specifically at least the 3 most material to the performance of the contract. Officers must therefore take their time and develop the KPIs before publishing.

10.7 Please see table of notices below which describes the various notices under PCR 2015 and PA 2023. Those highlighted are mandatory in those particular circumstances.

<u>Notice</u>	<u>PCR 2015 (applies to existing contracts)</u>	<u>PA 2023 (when it comes in force and applies to contracts procured under it)</u>
<u>Pipeline Notice</u>	n/a	<p><u>The pipeline notice should list all planned procurements starting from the first day of that financial year for the whole financial year and the first half of the next financial year where the estimated contract value exceeds £2 million.</u></p> <p><u>The Council will be required to publish their first annual pipeline notice by May 26th 2025. This must contain the title of the procurement and estimated date when the tender notice or Transparency Notice (for direct awards) would be published.</u></p> <p><u>Mandatory for organisations where procurement spend is over £100 million.</u></p>
<u>Planned Procurement Notice</u>	n/a	<u>An optional notice type that the Council can use in the pre-procurement stage to provide advanced notice of an upcoming procurement (similar to a PIN). This may be published anytime between 40 days and 1 year before the publication of an official tender notice.</u>
<u>PIN</u>	<u>Optional and does not apply to 'light-touch' services contracts. Publishing this will not amount to commencement of a procurement process unless it is published as a call for competition.</u>	n/a
<u>Preliminary Market Engagement Notice</u>	n/a	<u>If preliminary market engagement is to be undertaken and there are no reasons for not doing so then a notice must be published with the relevant information. If the Council does not start preliminary market engagement by publishing a notice, it must explain</u>

Lancaster City Council
CONSTITUTION

		<u>why it did not publish this notice when it publishes its tender notice or Transparency Notice (for direct awards).</u>
<u>Contract Notice</u>	<u>Required for beginning a competitive procurement process (except for call-offs from frameworks or direct awards)</u>	<u>n/a</u>
<u>Below-Threshold Notice</u>	<u>Publication elsewhere first, with the notice required to be published on Contracts Finder within 24 hours of it appearing elsewhere.</u>	<p><u>For Relevant Below-Threshold Contracts Officers must first publish a 'below-threshold tender notice' on the central digital platform before being published elsewhere via the Council's eSourcing platform (the Chest).</u></p> <p><u>There is no requirement to publish a below-threshold tender notice where the Council invites quotes, proposals or tenders from a closed group of pre-selected suppliers, (i.e. suppliers on a framework) or from one or more targeted individual suppliers, provided it does not advertise the procurement in any other way (for example in a newspaper or on a local website or portal).</u></p>
<u>Tender Notice</u>	<u>n/a</u>	<p><u>The Council must publish tender notices with all relevant information (including KPIs and evaluation methodology) in order to commence the procurement process (similar to a Contract Notice under the PCR 2015 which starts the procurement process).</u></p> <p><u>This is be published when undertaking an open or competitive flexible procedure (including to establish a framework agreement and procuring using a dynamic market) or procuring a regulated below-threshold contract.</u></p>
<u>Contract Award Notice</u>	<u>Must be published within 30 days after contract award.</u>	<u>Must be published to communicate the outcome of the procurement and to commence the standstill period prior to awarding a contract under the open or competitive flexible procedure (and voluntary standstill periods for direct awards). This must contain information about the 'assessed tenders' and where the contract is over £5 million it must state the</u>

Lancaster City Council
CONSTITUTION

		<u>unsuccessful suppliers who submitted tenders. Note that although this is also called a "contract award notice", it is a different notice to that published under the PCR 2015.</u>
<u>Procurement Termination Notice</u>	n/a	<u>Must be published where, after publishing a Tender Notice or Transparency Notice, the process is terminated without awarding a contract.</u>
<u>Contract Details Notice</u>	n/a	<u>This notice informs the market that the contract has been entered into, as well as details of the procurement process used, the successful bidder and the awarded contract (including the contract, for public contracts £5m+), including regulated below-threshold contracts above a certain value and those procured by direct award. This must be published within 30 days for Relevant Above-Threshold Contracts; and as soon as reasonably practicable after entering into a Relevant Below-Threshold Contract.</u>
<u>Modification Notice</u>	<u>Required in some instances where modifications exceed PCR 2015 thresholds</u>	<u>(similar to Contract Change Notice).</u>
<u>Contract Change Notice</u>	n/a	<u>Must be published to provide details of most modifications (save for lower value modifications) that have been made to the contract during its term. This must be published before the change is made and the Council may apply a voluntary standstill period. For contracts with a value of over £5m, the Council must publish a copy of the whole modified contract or the modification itself.</u>
<u>Transparency Notice</u>	n/a	<u>Must be published prior to award when undertaking a direct award (note this is not a direct award under a framework agreement – this is a direct award permitted by the PA 2023 where the Council is not required to compete the contract).</u>
<u>Voluntary Ex Ante Transparency ("VEAT") Notice</u>	<u>Published in limited circumstances to justify a direct award without competition before a contract is entered into.</u>	n/a
<u>Contract Termination Notice</u>	n/a	<u>The Council is required to issue a notice publicising that a contract has come to an end, regardless of how the</u>

Lancaster City Council
CONSTITUTION

		<u>contract concluded (such as expiry, termination, discharge, court order, rescinded). The Council will at the same time need to provide details around the reason for the termination.</u>
<u>Contract Performance Notice</u>	n/a	<p><u>The purpose of this notice is to report on the supplier's performance against any KPIs that have been established or where the Council considers that the supplier is not performing to its satisfaction. This notice is also to be used where the supplier breaches a public contract.</u></p> <p><u>Must publish KPI scores for public contracts £5m+ (at least annually). Publish within 30 days of supplier poor performance / breach of contract.</u></p> <p><u>At least once every 12 months (and more frequently, if provided for in the contract and contract details notice), the contracting authority must assess and then publish details of supplier performance against the set KPIs to the central digital platform.</u></p>
<u>Contract Payment Notice</u>	n/a	<u>Must publish details of payments over £30,000 under a public contract (quarterly). Officers will not be responsible for publishing the payment notices and this will be done by procurement and finance.</u>
<u>Payment Compliance Notices</u>	n/a	<u>Must be published detailing the Council's compliance with the PA 2023's requirement to pay invoices within 30 days of receiving such invoices from suppliers and must publish details of performance against 30-day payment terms (twice annually). Officers will not be responsible for publishing the payment notices and this will be done by procurement and finance.</u>

11.0 Standards & Award Criteria

- 11.1 The Officer must ascertain the relevant ~~EU, UK, European or~~ international standards which apply to the subject matter of the ~~contract~~ Relevant Contracts. The Officer must include those standards which are necessary properly to describe the required quality. ~~Legal Services~~ UK Standards may be referred to if it adopts international equivalent standards. If there is neither an international standard nor UK standard with the equivalent international standards, then UK standards may be specified. The procurement team must be consulted if it is proposed to use standards other than ~~European~~ international or UK standards.

- 11.2 The Officer must define award criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the Council. The current basic criteria ~~shall be:~~
- a. "Most Economically Advantageous", where price and quality elements are considered. All elements to be fully identified (including sub-criterion) in the Invitation to Tender (ITT) documentation. Quality elements should include delivery of Social Value ~~or "Highest Price" if payment is to be received for sale or disposal (PCR 2015); otherwise~~
 - ~~b. "Highest Price" if payment is to be received for sale or disposal~~
Award
 - b. When the PA 2023 comes into effect, Relevant Contracts are to be award on the basis of the "Most Advantageous Tender" (MAT) which is the tender that the Council considers best meets its requirements and satisfies the award criteria weightings. Contracts awarded on the basis of MAT may also be determined on the basis of a wide range of factors - this may include price and quality criteria in addition to wider social and environmental issues where that is decided to be relevant for the best solution.
- 11.3 Current award criteria must not include non-commercial considerations except those set out in the Public Services (Social Value) Act 2012, the Procurement Strategy or matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement and must reflect the subject matter of the contract. This is subject to change in relation to regulations created under the PA 2023. This is due to change under the Procurement Act 2023 so that this can be dis-applied to certain public contracts. Current Regulation 17 of the Draft Procurement Act 2023 (Miscellaneous Provisions) Regulations 2024 identify geographic location as a non-commercial matter that can be taken into account for below-threshold contracts.
- 11.4 Social Value outputs will be included in any contract award criteria, where the contract value is above £100,000. For contracts below £100,000 ~~officers~~Officers should still include Social Value output wherever possible.
- 11.5 Officers must consider the Basic Principles (maximising public benefit) and National Procurement Policy Statement when setting Social Value requirements.

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12.0 Invitations to Tender & Quotations

- 12.1 The invitation to tender shall state that no tender will be considered unless it is received by the date and time stipulated in the Invitation to Tender.
- 12.2 All Requests for Quotes or Invitation to Tenders valued at £10,000 and greater must be conducted online through the ~~Supplier Portal~~Council's supplier portal and the designated government procurement portals where greater than £30,000 (inclusive of VAT). Officers and suppliers will be provided with guidance and support on how the system works and where they can get help.
- 12.3 All Invitations to tender to include the following:
- a. The requirement that all Tenders and their responses for contracts valued at £100,000 and greater must be completed online.
 - b. A specification that describes the Council's requirements. Specifications must set out a clear and comprehensive description of the Council's requirements with regard to the supplies, services or works to be procured. The specification must include KPIs (unless below £5m and/or there are justifications not apply them.) A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose). Named products or manufacturers must not be specified unless Officers consider it necessary in order to justify their requirements.

- c. A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion.
 - d. Notification that tenders are submitted to the Council on the basis that they are prepared at the tenderer's expense.
 - e. A description of the award procedure and, a definition of the award criteria in objective terms and if possible, in descending order of importance
 - f. Weighting for award criteria and calculation of the scores
 - f.g. The method by which any arithmetical errors discovered in the submitted tenders is to be dealt with; in particular, whether the overall price prevails over ~~the individual~~ rates when it comes to a bidder's tender's price being considered "abnormally low" in the tender or vice versa
 - h. A statement to the effect that any tender that does not comply with the Council's requirement will be excluded from further consideration
 - i. And any other rules and instructions set out in the Invitation to Tender
- 12.4 All Invitations to tender or quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see ~~Rule 16~~ Rules 18 and 19).
- 12.5 Tenders that are returned without a requested signed Form of Tender will be considered as non-compliant.
- 12.6 All candidates invited to tender, or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

Conditions of Participation (PA 2023)

- 12.7 Suppliers must satisfy the conditions of participation in order to qualify to be awarded a public contract following a competitive tendering procedure. These conditions are that the supplier has
- legal and financial capacity; and/or
 - technical ability
- to perform the contract, and must be proportional having regard to the nature, complexity and value of the contract (Supplier Assessment Conditions). There is no requirement to set conditions under any heading which is not relevant to the procurement therefore Officers can use just one heading.
- 12.8 These Supplier Assessment Conditions may be used to limit the number of suppliers in an initial participation round via a pass/fail mechanism or using objective criteria to score suppliers as set out in the tender notice.
- 12.9 The Supplier Assessment Conditions must be general and allow equivalent qualifications, experience or technical ability but cannot break the rules on technical specifications (as required under Procurement Legislation), require submission of audited accounts or insurances in place before award of the contract.
- 12.10 There is no longer a requirement to use a standardised selection questionnaire under PA 2023 however templates can still be used provided they comply with PA 2023 requirements. The government has published a Procurement Specific Questionnaire template for use under the PSR and while not mandatory for the Council's use, it is recommended that Officers use this template. Please find template at <https://www.procurementpathway.civilservice.gov.uk/documents/template/pa-2023-procurement-specific-questionnaire> or request a copy from the procurement team.
- 12.11 The Supplier Assessment Conditions are different to the award criteria which assesses the tender.

12.12 Conditions of participation only apply to Relevant Above-Threshold Contracts.

13.0 Shortlisting

- 13.1 Any shortlisting must have regard to the financial standing, technical capacity and capability relevant to the contract and the award criteria.
- 13.2 Where the contract value ~~relates to the EU thresholds~~is over Threshold, Officers must adhere to specific shortlisting rules that apply in respect of the ~~EU Directives~~Procurement Legislation.
- 13.3 Under the PA 2023, shortlisting or two stage tendering can be done under the competitive flexible procedure but cannot be used in the open procedure.

14.0 Submission, Receipt & Opening of Tenders & Quotations

- 14.1 Tenders of £100,000 or greater must be returned directly using the Council's supplier portal. Further information on the e-tendering system is available from the procurement team. Tenders must be submitted directly to the portal.
- 14.2 An electronic reverse auction should only be used following discussion with the Procurement Manager. The procedure enables suppliers/providers to adjust their tender price in the light of information from the tender prices submitted by competing suppliers/providers, then alterations will be accepted as permitted by the auction process. ~~This can only be done for open procedures and the technical details need to be described in the tender notice~~
- 14.3 All submitted tenders must be opened at the same time ~~when~~after the period for submission has ended ~~and not before the date of submission.~~
- 14.4 Suppliers who have expressed interest or have been invited to participate in a tender must be given adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirement. ~~The EU Directive on public procurement includes specific tendering time periods.~~
- 14.5 Any tender that does not comply with the Council's requirement, as set out in the tender invitation, should normally be excluded from consideration, with the circumstances recorded. Officers may, however, seek the agreement of the Chief Officer Governance and procurement to relax these requirements in appropriate circumstances.

15.0 Clarification Procedures and Post Tender Negotiation

- 15.1 Providing clarification of an invitation to tender to potential or actual candidates or seeking clarification of a tender, in writing, is permitted. Discussions with tenderers after submission of a tender and before the award of a contract (post tender clarification) with a view to clarifying obvious omissions, mistakes or errors, false statements or abnormal offers in the tender submitted, operational provisions or terms and conditions of contract are permitted. ~~and should be done wherever possible through the supplier portal. Officers are expected to evaluate the tenders as submitted and other than corresponding with the tenderer for minor or non-material clarifications, under no circumstances should any tenderer be given the opportunity to engage in negotiations with regard to pricing or any other material aspects of the tender. Where post tender clarification discussions~~negotiations are to take place with ~~a supplier,~~suppliers as part of the procurement process, this should be stated in the tender notice and the procurement documents ~~and all tenderers involved in the respective exercise must be notified~~and all. All information and correspondence must be documented by the Officers conducting the clarification. Competitive flexible procedure allows for negotiation at any stage of the procure process is designed that way by officers.
- ~~15.2 However, discussions with tenderers after submission of a tender and before the award of a contract with a view to obtaining adjustments in scope, price, delivery or content (i.e. post tender negotiations) must be subject to the current EU/UK Public Procurement Directives.~~

~~45.3~~ 15.2 The ~~officer~~Officer may negotiate the terms of a Tender ~~form~~for one or all ~~Candidates~~bidders in writing or at a meeting, provided that:

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- The Chief Officer ~~-is~~ is satisfied that the ~~officer~~Officer carrying out the negotiation has the skill and competency commensurate with the complexity and value of the contract and has authorised such action. -Confirmation of authorisation is to be kept as a record.
- The Procurement Manager should be made aware of any Post Tender negotiations that are taking place.
- Notes of that meeting are taken and agreed with all the parties
- The ~~officer~~Officer seeks advice and support from the Procurement Manager
- The ~~officer~~Officer has regard and follows the Council's Code of Conduct for Employees at all times.

~~45.4~~ 15.3 Officers may seek authorisation to carry out negotiations on contracts that are currently being delivered; this may be with regard to price or quality. Authorisation will be granted by the Chief Officer-.

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~~45.5~~ 15.4 Where post-tender clarification results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

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16.0 Evaluation, Award of Contract & Debriefing of Candidates

16.1 Apart from the debriefing required or permitted by these CPRs, the confidentiality of quotations, tenders and the ~~identity~~identities of candidates must be preserved at all times and information about one candidate's tender submission must not be given to another candidate.

~~In accordance with Regulation 24 you must "take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators"—16.2~~ Officers involved in the evaluation must review and update their conflict of interest declarations before evaluation.

~~16.3~~ Officers must check to determine if a tenderer is an excluded or excludable supplier, assess conditions of participation, where the tenderer or its nominated subcontractor is located, the tender meets all requirements, whether the price could be abnormally low, and is compliant with the tender documents and procedural requirements.

~~16.2~~ 16.4 Contracts must be evaluated and awarded in accordance with the award criteria and agreed evaluation methodology as published in contract notices and the procurement documents.

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~~16.3~~ 16.5 Any evaluations that are undertaken independently should have scores determined, if necessary, by a tender evaluation panel during a moderation meeting. All documentation pertaining to the evaluation and decision including minutes, individual scores and notes are to be retained. Officers must ensure full written legible notes are made by evaluators and moderators to have an audit of the evaluation.

~~16.4~~ 16.6 If arithmetical errors are found in a ~~tender or the bidder's~~ tender submission or is deemed to be "abnormally low" ~~they~~these should be clarified with the tenderer. If the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.

~~16.5~~ 16.7 Officers may accept quotations and tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these ~~contract procedure rules~~CPRs and in respect of the Scheme of Delegation.

16.8 Where the total value of a Relevant Contract is at £100,000 (excluding VAT) and greater, both the successful and unsuccessful tenderers (those that submitted a tender which was evaluated) should each be provided with an assessment summary.

16.9 As required under Procurement Legislation:

a. Relevant Below-Threshold Contracts

~~16.6~~ The successful Supplier should be notified as soon as possible after promptly in writing, through the decision as possible.

i. ~~Supplier portal that they have been selected to carry out the contract falls within the PCR's 2015 then the appropriate Regulations should be followed. The~~

ii. Unsuccessful suppliers should be informed, in writing that they have not been selected to carry out the contract at the same time as the successful Supplier.

b. Relevant Above Threshold Contracts

i. The successful Supplier should be notified promptly in writing, through the supplier portal that they have been selected to carry out the contract.

ii. Unsuccessful suppliers should be informed, in writing that they have not been selected to carry out the contract at the same time as the successful Supplier.

iii. Both successful supplier and unsuccessful suppliers must be provided with assessment summaries

~~16.7~~iv. A contract award notice must be completed and published. This notice cannot be published until all bidders have been issued with an assessment summary and will trigger the start of the standstill period will commence from the date the final letter is sent. The letters must

a. Follow the Alcatel The "mandatory standstill period as specified under Regulation 87 of the PCR 2015.

b. In accordance with Regulation 86(2) the notice must provide the unsuccessful tenderers feedback to their total score, the reasons for the decision, including a narrative explanation of the characteristics and relative advantages of the winning tender.

c. Officers must provide unsuccessful candidates with a " is the period of at least ten calendar8 working days in beginning with the day on which to challenge the decision before the Officer awards the a contract. If the decision is challenged by an unsuccessful candidate, then the Officer shall not award notice is published or such other later date as provided for in the contract and should immediately seek the advice of the Council's Legal Services.

~~d.v. If during the alcatel period a candidate requests in writing the reasons award notice. This does not apply for specific contracts such as award of direct award, in accordance with a framework, reference to a dynamic market or a contracting decision, the Officer must give the reasons in writing within 15 days of the request. light-touch contract.~~

16.10 Assessment summaries must include information about the assessment of the tender and if different, the most advantageous tender- the successful tender.

16.11 When evaluating prices, indexation may be allowed if provided for under the contract. General increases in contract prices in relation to indexation depends on the mechanism in the contract. Officers to consider this when valuing contract and determining whether the value can exceed the relevant procurement thresholds (noting the existence of convertible contracts see Rule 8.8 above)

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16.12 The Council is required to confirm with the preferred supplier that their information on the central digital platform is up-to-date and accurate. Officers must ensure that this step is undertaken before any contract award step is taken.

17.0 **Waivers (Single Tender Action – Direct Award Contracts)**

17.1 For Relevant Above-Threshold Contracts above the PCR's 2015 thresholds, it is recognised that, under exceptional circumstances, only one provider may be chosen by the Council able to fulfil the needs of the Council. The Public Contracts Regulations/Procurement Legislation do not provide only a single term to cover such arrangements and consequently they may be referred to by various names. These will include Single Tender Action, Direct Awards, Single Sourcing, Waivers etc. All must be treated in the same manner. Officers may carry out a selection process or take such other preliminary steps as they considers appropriate for the purpose of directly awarding a contract

17.2 A Single Tender Action is the award of a contract to a single or a limited group supplier, service provider or contractor of Suppliers, Service Providers or Contractors the Council's choosing without undertaking a competitive tendering exercise. Such action is permitted under the EU Procurement Directives, in the following, exceptional circumstances:

- a. **Technical Reason** – Only one enterprise has the expertise to do the work required for novel prototypes and development (PA 2023)
- b. **Exclusive Rights** – only one party can perform the contract due to intellectual/industrial property rights e.g. patents/trademarks or copyright
- c. **Artistic Rights** – engaging an artist or performer in the creation or acquisition of a unique work of art or artistic performance
- d. **Urgency** – strictly necessary for reasons of extreme and unavoidable urgency,
- e. **Additional/Repeat delivery of services/goods or works by existing supplier** – a change in supplier would be different or incompatible with the current supplier and the difference of incompatibility would result in disproportionate technical difficulties in operation or maintenance.
- f. **Reserved repeat delivery of similar services/goods or works by previous supplier** – only if indicated in previous tender notice or tender document no more than 5 years from request of repeat.
- g. **Consultancy Services** – follow up work to complete the assignment previously awarded on a competitive tendering exercise.
- h. For Contracts below the PCR's 2015 threshold **Protect life** – considered necessary for protection of human, animal or plant life or health or protections of public order/safety (PA 2023)
- i. **Excluded supplier** – if there is an overriding public interest in awarding the contract to that supplier
- j. **No suitable tenders** were submitted following a competitive procedure
- k. **Purchase of commodities** – goods purchased on the commodity market (direct award under PA 2023)
- l. **Advantageous terms on insolvency** – Awarding a contract to a particular supplier will ensure particularly advantageous terms due to the supplier undergoing insolvency proceedings
- m. **Or any other circumstance as provided for in Procurement Legislation.**

17.3 For Relevant Above-Threshold Contracts, Offices are required to complete a waiver before entering into or applying a contract modification (See Rule 27).

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~~17.2~~ 17.4 For Relevant Below- Threshold Contracts, the Council and its Cabinet may waive any requirements within these CPRs for specific projects. However, consideration must be given to the risk of legal challenge should a decision not to advertise the requirement and proceed to award the contract or framework without competition be made. The Council may delegate that authority in line with section 8.2 of ~~these Standing Orders~~ the Constitution and the Chief Officer Governance. ~~Normally the~~ The circumstances under which a waiver can be agreed include ~~those listed in 17.1 and:~~

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- a. **Demonstrable Best Interest:** it can be demonstrated that it is in the Council's best interest and this is clearly demonstrated in the comments section in the waiver report
- b. **Emergency:** There is a clear need to provide a service or product immediately in the instance of a sudden unforeseen crisis; the immediate risk is to health, life, property or environment. Normal competitive processes are not feasible
- c. **Changing an Existing Contract:** making significant improvements and/or changes to an existing contract. This will usually be captured in a contract variation waiver
- d. **Urgency:** there exists an unforeseen situation calling for prompt action in order to provide a product or service that fulfils a specific statutory obligation, e.g. health and safety requirements. Competitive processes may not be feasible
- e. **Exigencies of a Service:** there are demonstrable circumstances that are genuinely exceptional
- f. **Extension as Waiver:** where a contract extension is being sought which was not duly authorised in the original Officer Delegated Decision

~~17.5~~ 17.5 Single Tender Actions **will not** be permitted in the following circumstances:

- time constraints through poor project planning
- previous relationships with suppliers
- to avoid a competitive tendering exercise.

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~~17.3~~ 17.6 All waivers, the reasons and the justification for them and the period for which the waiver is valid must be recorded and signed off by the relevant officer and manager in accordance with the Council's Scheme of Delegation.

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~~17.7~~ 17.7 A single tender still requires a set of Invitation to Tender documents including terms and conditions and scope of works to be drafted and issued, and a written formal response to be made by the supplier through the Council's e-tendering portal.

~~17.4~~ 17.8 The decision-making route for waivers is as follows: Waiver

Value	Decision Maker
£0.00 up to £150,000	<ul style="list-style-type: none">• Chief Officer
£150,000 and greater	<ul style="list-style-type: none">• Monitoring Officer or Section 151 officer

~~17.9~~ 17.9 A Transparency Notice must be published before a contract is directly awarded.

~~17.10~~ 17.10 In relation to urgency and Relevant Above-Threshold Contracts, a direct award is permitted where the requirement for goods, services or works is strictly necessary for reasons of extreme urgency and cannot be procured via a competitive tendering procedure and has been brought about by circumstances unforeseeable by and not attributable to the Council.

Section 4: Contract Documents & Other Formalities

18.0 Contract Documents

- 18.1 All relevant contracts should be in writing and should set out the parties' obligations, rights and risk allocations.
- 18.2 All relevant contracts, irrespective of value, should clearly specify:
- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
 - The provisions for payment (i.e. the price to be paid and when)
 - The time, or times, within which the contract is to be performed
 - The provisions for the Council to terminate the contract
 - The terms and conditions to be applied to the contract
- 18.3 The Council's terms and conditions of contract should be used wherever possible rather than the suppliers. If you intend to use the supplier's terms advice must be sought from the ~~Legal Services~~procurement team.
- 18.4 If the Council's standard terms and conditions are not used, every relevant contract of purchase over £100,000 (excluding VAT) must also state clearly as a minimum:
- That the contractor may not assign or sub-contract without prior written consent
 - How the contractor would indemnify the Council against any negligent act or omission
 - Any insurance requirements
 - How the contract may be ended because of non-performance or otherwise
 - How intellectual property is dealt with
 - How services may be varied
 - That the contractor should pay the living wage
 - ~~important~~At least 3 materially important key performance indicators (unless not appropriate – see rule 19.5)
 - Health and safety requirements
 - Ombudsman requirements, if relevant
 - Data protection requirements (GDPR), especially where data processing is to be undertaken, if relevant
 - That charter standards are to be met if relevant
 - ~~m. Race relations requirements~~
 - ~~a.m.~~ Requirements under the Equalities Act 2010
 - ~~e.n.~~ Anti-fraud, Corruption and Modern Slavery
 - ~~p.o.~~ Freedom of Information Act requirements
 - ~~e.p.~~ Where Agents are used to let contracts, that Agents must comply with the Council's contract procedure rules-CPRs
 - ~~f.g.~~ A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
 - ~~s.r.~~ Special conditions relating to Responsible Procurement
 - ~~t.s.~~ Where required Special Conditions (as required by the Council) relating to Works Contracts
- 18.5 The formal advice of ~~Legal Services~~The procurement team must be sought for the following contracts:
- Where it is proposed to use a supplier's own terms
 - Those that involve insourcing or outsourcing
- 18.6 In addition to Legal advice the advice of the Procurement Manager should be sought for contracts:
- Where the total value exceeds £100,000
 - Those involving leasing arrangements
 - That are complex in any other way.

18.7 Officers must arrange for the original copy of all signed contracts to be lodged with Legal Services the procurement team as soon as the contract has been awarded.

18.8 Where possible, Relevant Above-Threshold Contracts should expressly state those terms and conditions which are implied into them by the Procurement Legislation):

- Electronic invoicing
- Payment terms in contract and sub-contracts (including Relevant Below-Threshold Contracts)
- right to terminate public contracts, and
- Framework terms

19.0 Contract Formalities

19.1 All contracts should be concluded formally in writing before the supply, service or construction work begins.

19.2 The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

19.3 Subject to any exceptions as provided elsewhere in the Scheme of Delegation, all contracts to be made under seal (other than contracts for the sale and acquisition of land at auction, electronic e-auctions and insurance contracts) will be determined by the Chief Officer Governance

19.4 Where contracts are completed by each side adding their formal seal, such contracts shall be attested by the Chief Executive or Chief Officer-. The seal must not be affixed without the proper authority. A contract must be sealed where in the opinion of the Chief Officer Governance :

- a. The Council wishes to enforce the contract more than six years after its end
- b. The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- c. There is any doubt about the authority of the person signing for the other contracting party

19.5 Officers must set at least 3 key performance indicators for all public contracts with an estimated value of more than £5 million (including VAT) except where Officers determine it is not appropriate (for instance one-off delivery of goods).

20.0 Publishing Contract Information

20.1 The Council must publish a copy of all contracts which are more than £5 million

- a. If a light touch contract within 180 days from the day the contract is entered into; or
 - b. other public contract within 90 days from the day the contract is entered into,
- which may be redacted. Officers should review with the information governance team before publishing.

20.2 Where the Officers have set KPIs the Council is to publish at least the 3 of the most material KPIs annually for the lifetime of the contract therefore all Relevant Above-Threshold Contracts must have adequate performance monitoring and reporting mechanism. This information needs to indicate how the contract has been performed against set criteria:

<u>Rating</u>	<u>Description</u>
<u>Good</u>	<u>Performance is meeting or exceeding the key performance indicators</u>
<u>Approaching target</u>	<u>Performance is close to meeting the key performance indicators</u>
<u>Requires improvement</u>	<u>Performance is below the key performance indicators</u>
<u>Inadequate</u>	<u>Performance is significantly below the key performance indicators</u>

<u>Rating</u>	<u>Description</u>
<u>Other</u>	<u>Performance cannot be described as good, approaching target, requires improvement or inadequate</u>

20.021.0 Bonds & Parent Company Guarantees

~~20.4~~ 21.1 The Officer must consult the appropriate Chief Officer to determine whether a Parent Company Guarantee (PCG) is necessary and at what level when a ~~Candidate~~ candidate is a subsidiary of a parent company and:

- a. Award is based on evaluation of the parent company, or
- b. There is some concern about the stability of the candidate or
- c. The candidate, associated or connected persons (or parent company) are listed in the mandatory/discretionary grounds debarment list (see Rule 20.2).

~~21.2~~ Further to Rule 20.1 (c.), the Officers will need to make an assessment as to whether the 'self-cleaning' information is sufficient and acceptable.

~~20.2~~ 21.3 The Officer must consult the appropriate Chief Officer about whether a Bond is needed, the value it must be where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the candidate.

24.022.0 Prevention of Corruption

~~24.4~~ 22.1 The Officer must comply with the Officer Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory. Findings of corrupt behaviour in Council officers may lead to dismissal.

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22-023.0 Declaration of Interest

~~22.4~~ 23.1 If it comes to the knowledge of a member or an employee of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Chief Officer Governance.

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~~22.2~~ 23.2 Such written notice is required irrespective of whether the pecuniary (financial) interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.

~~22.3~~ 23.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this standing order.

23.4 Responsible Officers must take reasonable steps to identify, and keep under review, any actual or potential conflicts of interest that any staff or consultant has in relation to a Relevant Above-Threshold Contract and mitigate the effect of a conflict of interest by taking reasonable steps to avoid putting a supplier at an unfair advantage or disadvantage. If the conflict of interest cannot be avoided or mitigated to nullify any advantage or if a supplier to undertake mitigated steps then that supplier is to be treated as an excluded supplier and not be allowed to participate in the procurement process.

23.5 Where an Officer (or consultant) is involved in the decision-making process, and has a personal, professional or financial interest (whether direct or indirect) in relation to a Relevant Contract, the Officer should declare this interest whether or not it is in existence at the time of the declaration or could arise in the future should certain circumstances occur as this could be considered a perceived conflict of interest.

23.6 Where conflicts of interest exists, potentially could or could be perceived to exist, Officers need to determine what can be done to mitigate the effects and put into effect as soon as reasonably possible.

23.7 Before commencing an above Threshold procurement, a conflict assessment is to be prepared before a tender or Transparency Notice is published. This assessment must include details of the conflict of interest, steps taken or will be taken to mitigate conflicts of interest and address circumstances which the contracting authority considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest. Officers should discuss with the procurement and information governance team before publishing.

~~22.4~~ 23.8 A record of all declarations of interests notified by Officers will be ~~maintained~~ Reviewed and revised as necessary (before any Tender Notice, Transparency Notice, dynamic market notice, Contract Details Notice or Contract Change Notice is to be published) confirming that this has been completed. The review and confirmation requirement ceases to apply after the Council has published a procurement or contract termination notice.

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23.9 While these provisions do not apply to below-Threshold procurements, Officers should undertake responsible due diligence and take a proportionate approach to having a conflicts of interest assessment.

Section 5: Contract Management

23-024.0 Managing Contracts

~~23.1~~ 24.1 Chief Officers are to name contract managers for all new contracts. All contracts should have a named Council contract owner and contract manager for the entirety of the contract.

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~~23.2~~ 24.2 Contract managers must follow the procedures set out in the Council's ~~Contract Procedure Rules~~CPRs and are responsible for KPI assessments and providing all contract information in the relevant form, required to be published.

24-025.0 Risk Assessment & Contingency Planning

~~24.1~~ 25.1 Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

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~~24.2~~ 25.2 For all contracts with a value of £100,000 and greater, the contract manager must:

- a. Maintain a risk register during the contract period
- b. Undertake appropriate risk assessments and for identified risks
- c. Ensure contingency measures and business continuity plans are in place

~~25.3~~ Prior to commencing an above- Threshold procurement process, the risk types need to be identified and any mitigating steps would need to be considered:

- a. Known Unknowns – there is insufficient information for consequences to be known in advance; the risk is lower priority/non-critical, due to unknown probability and impact; and the cost of defining the risks up-front and building into the contract may be disproportionate against the actual cost paid if the risk materialises. This can, for instance be mitigated by Officers by undertaking pre-market engagement, design an appropriate specification that considers the risks and developing relevant KPIs to manage the risk or likelihood of these 'known unknown' risks occurring. Officers could also detail in tender documents and/or notices how the risks may impact satisfactory performance of the contract, why it cannot be addressed 'upfront' in the contract, raise the possibility of additional modification if any of these 'known unknown' risks later materialise and who is assigned it in the tender documents and notices. These are risks that the Council is aware of but unaware of size and effect of impact. For instance if the council wishes to refurbish one of their buildings and while they can undertake site surveys which does not identify problems, the risk remains that some issues with the building fabric may still be uncovered if for instance the building was not fully surveyed. Known elements of a risk are those that can be reasonably identified in advance of the risk materialising and the unknown elements of a risk are those that cannot be reasonably identified in advance of the risk materialising due to insufficient information on the probability and impact.
- b. Unknown Unknowns – unforeseeable risks that Officers are not aware of, and therefore also unaware of the size and effect of their impact. This can, for instance be mitigated by Officers undertaking pre-market engagement to help identify potential risks using market / supplier knowledge.
- c. Known Knowns – foreseeable risks that Officers are aware of, and are also aware of the size and effect of their impact. This can, for instance be mitigated by Officers undertaking pre-market engagement, design an appropriate specification that considers the risks and developing relevant KPIs to manage the risk or likelihood of it occurring. Officers could also detail the risk in the tender documents and notices which could be beneficial if the risk materialises and the Council needs to modify the contract accordingly (costs must not be increased by more than 50%).

25.026.0 Contract Monitoring, Evaluation & Review

~~25.026.1~~ All contracts valued at £100,000 and greater are to be subject to regular formal reviews with the contractor. An initial review should be done at the first 3 months of a contract start date and on-going reviews should then be conducted on a regular schedule.

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~~25.026.2~~ A formal review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.

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~~25.026.3~~ During the life of the contract, the Officer must monitor a contract in respect of:

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- a. Performance and compliance with specification and contract
- b. Cost and any value for money requirements including inflation, bonuses, any gain/share arrangements and the application of service credits (if relevant)
- c. Whether payment of valid and non-disputed invoices (or such other payable sum) are made by the Council within 30 days of receipt of it. This is to be published twice a year.
- d. All contract variations, the reasons for them and whether they affected the cost/value of the contract (and the difference in pounds and percentage change in comparison to the originally awarded value of the contract); and ensure contract has been modified within 90 days of the modification for publishing-only those contracts estimated or modified to be over £5million.

~~e.~~ User satisfaction and risk management

~~f.~~ Equality Assessment Progress Report (including Living Wage)

~~g.~~ Supplier Financial Health Check

~~h.~~ Relevant Due Diligence clarifications including Modern Slavery

i. Performance of KPIs/ service levels and the how the supplier is performing the contract against the KPIs in particular the top 3 most material KPIs essential to that contract

j. Social Value

k. Environmental

l. Insurances to be maintained under the contract

m. records for contract termination

n. any audits which are undertaken during lifetime of contract

27.0 Modifications

~~27.1~~ Any variation to contract for a contract valued above the Threshold can only be varied if the variation is a permitted modification and not a substantial modification in accordance with Procurement Legislation.

~~27.2~~ All variations of current or future Relevant Above-Threshold Contracts will need to be varied in accordance with the applicable Procurement Legislation. all variations should be reviewed by Legal Services prior to the agreement of any variation. Permitted modifications include:

- Change provided for in the contract
- Urgency and protection of life(PA 2023)
- Unforeseen circumstances (subject to the change not exceeding 50% of the value of the original contract under PCR 2015; and the proposed change does not increase the estimated value of the contract by more than 50% under PA 2023)
- Materialisation of a known risk (subject to the change does not increase the estimated value of the contract by more than 50% PA 2023)
- Additional goods, services or works (under PCR 2015 provided that any increase in price does not exceed 50% of the value of the original contract; and under PA 2023 provided the modification would not increase the estimated value of the contract by more than 50%)
- 'Convertible contract' (PA 2023)
- Any other permitted modification allowed under the applicable Procurement Legislation.

27.3 For Relevant Above-Threshold Contracts, Officers are required to complete a waiver before entering into or applying a contract modification (see Rule 17 above) such as before a contract change notice is published.

27.4 Variations to Relevant Below-Threshold Contracts (subject to whether it is a convertible contract) and light touch contracts are allowed. Input from the procurement team should be requested by Officers.

PA 2023

27.5 Before any modification to a contract can be made, a contract change notice must be published unless there is an exception (such as if the modification increases or decreases the estimated value of the contract by 10% or less for goods or services or 15% or less for works; or the contract term by 10% or less of the maximum term provided for on award).

27.6 Under the PA 2023, changing the term of a contract term by more than 10% of the maximum term is considered substantial (calculated in months). Officers must therefore ensure they account for all possible extensions in all Relevant Contracts.

27.7 If the change increases or decrease the estimated value of the contract by 10% or less for goods or services or 15% or less for works unless the modification is permitted in relation to novation or transfer of the contract on corporate restructuring (PA 2023).

27.8 Modifications apply to the value of the contract at the time of the modification (i.e. the estimated value of the contract immediately before the modification is made) - therefore if more than 1 modification is applied to the contract, the value will be the new value (including the previous modification) rather than the old value.

27.9 Officers may observe a voluntary standstill period of at least 8 working days from the day of publication of the contract change notice and it is strongly recommended to do so to provide additional protection for the Council. If Officers are choosing not to apply the voluntary standstill period, this would need to be discussed and agreed with the procurement team.

27.10 Officers must publish either the modification or the modified contract within 90 days of entering into it, provided that a contract change notices is required to be published and the estimated value of the contract is more than £5 million.

Public Contracts Regulations 2015 (as amended) (PCR 2015)

27.11 Officers must note that any changes made to Relevant Above-Threshold Contracts that started their procurement process or existed before the PA 2023 comes into effect are still subject to the modification rules of the PCR 2015. It is important to check when the contract was procured and if calling off a framework agreement, check when the framework agreement was established. If they were procured with the PCR 2015 were in force, then the PCR 2015 will apply to modifications under them.

27.12 Permitted modifications are allowed if the value is below 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts, provided that the modification does not alter the overall nature of the contract.