



CONTRACT PROCEDURE RULES

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Appendix 2

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1. INTRODUCTION

- 1.1 The Council's Contract Procedure Rules (CPRs) are designed to provide the governance structure for the commissioning, procurement, and contract management of goods, works and services to ensure that integrity and compliance within the Council. These CPRs should be read in conjunction with the Council's Financial Procedure Rules (FPRs) which set out mandatory financial procedures that must be followed. These CPRs are also designed to ensure compliance with the following:
 - 1.1.1 Procurement Act 2023
 - 1.1.2 The Procurement Regulations 2024 and Guidance issued by the Cabinet Office
 - 1.1.3 Public Contracts Regulations 2015 (where contracts were procured under these regulations)
 - 1.1.4 Concessions Regulations 2016 (where contracts were procured under these regulations)
 - 1.1.5 The Social Value (Public Services) Act 2012 is complied with for procurements above £50,000 (lower if possible)
 - 1.1.6 The Local Government Act 1972
- 1.2 The rules cover Regulated and Unregulated procurement activities of the Council. Regulated procurements cover the letting of contracts governed by the Procurement Act 2023 (PA23) and the Procurement Regulations 2024 (PR24). Compliance with the PA23 and PR24 is a strict legal requirement upon the Council, and it is not open to the Council to waive compliance for such regulated procurement. Unregulated procurement covers contracts of a value below £30,000 (inc. VAT) which are not covered by the PA23. A more limited form of regulation applies to contracts above £30,000 (inc. VAT) up to the current thresholds [PPN-11_23-New-Thresholds.pdf \(publishing.service.gov.uk\)](#) . For more information on regulated below threshold procurements see paragraph 14.
- 1.3 All officers and members involved in procurement activity must comply with these CPRs, together with the Council's Financial Procedure Rules (FPRs), Employees Code of Conduct, Members' Code of Conduct, all Council policies and guidance. Particular care should be taken to comply with the requirement on employees and members to declare interests.
- 1.4 Council employees and Members have a duty to report breaches of the CPRs to a senior manager and/or a member of the Senior Management Team (SMT).
- 1.5 The CPRs represent a requirement upon the Council to have in place procedural rules to govern the letting of contracts. This document also represents a statement of the principles which the Council commits to in undertaking procurement as well as acting as the statement of the objectives and purposes of the Council which its procurement activities must support.
- 1.6 These CPRs do not replicate the legislation. If an officer is in doubt about whether the PA23 applies to a proposed procurement, they must seek the guidance of the Procurement Officer. However, the CPRs do set out the Council's position under the PA23, where there is discretion or choice and provide the necessary guidance to officers and members to understand how

they work. For regulated and unregulated below threshold procurements, these CPRs provide a comprehensive code which the Council shall follow in letting relevant contracts, which must be followed unless waived in the exceptional circumstances set out in paragraph 24.

2. PROCUREMENT PRINCIPLES

- 2.1 The PA23 binds the Council to follow the National Procurement Policy Statement (NPPS), issued by the government which may be amended from time to time. The NPPS sets out a number of important obligations upon the Council for procurement including:
 - 2.1.1 priority to achieving value for money
 - 2.1.2 due consideration for the inclusion of social value objectives
 - 2.1.3 providing a level playing field for small and medium enterprises (SMEs), voluntary, community and social enterprise (VCSE) and start ups
- 2.2 The PA23 also sets the following objectives for procurement of contracts:
 - 2.2.1 delivering value for money
 - 2.2.2 maximising public benefit
 - 2.2.3 sharing information for the purpose of allowing suppliers and others to understand that authority's procurement policies and decisions
 - 2.2.4 act, and being seen to act with integrity
- 2.3 Additionally, in carrying out any procurement, the Council shall:
 - 2.3.1 have regard to the fact that small to medium-sized enterprises may face particular barriers to participation
 - 2.3.2 consider where such barriers can be removed or reduced
- 2.4 In addition to the statutory requirements, the Council commits to undertake both Regulated and Unregulated Procurement, observing and applying the following principles:
 - 2.4.1 Proportionality
 - 2.4.2 Transparency
 - 2.4.3 Equal treatment
 - 2.4.4 Non-discrimination
- 2.5 In addition to compliance with the principles set out previously, the Council shall carry out all procurement in accordance with:

- 2.5.1 Council's Procurement Strategy
- 2.5.2 Council's Social Value Policy
- 2.5.3 Council's Corporate Strategy

3. APPLICATION OF THE CONTRACT PROCEDURE RULES

- 3.1 These mandatory CPRs apply to everyone (including external consultants and third-party suppliers providing procurement support) who are involved in commissioning, procurement and contract management conducted by the Council.
- 3.2 Approved Officers (Operational Management Team (OMT) and above) are accountable for all commissioning, procurement, and contract management in their respective service area. This includes ensuring that everyone that reports into them are complying with the CPRs.
- 3.3 All officers must ensure that the Council's approved processes and standards for procurement are always adhered to including, information governance; insurance; safeguarding; social value policy; and conflict of interest assessment requirements.
- 3.4 In accordance with the constitution, the Section 151 Officer may propose amendments to these CPRs after consultation with the Head of Legal & Governance & Monitoring Officer. Proposed amendments must then be submitted to the Audit Governance Committee with a recommendation to Full Council for approval where appropriate.
- 3.5 All procurement approvals must be in writing and follow robust governance through the procurement reporting process.
- 3.6 All decisions to commence procurement and award contracts must be authorised in accordance with the Scheme of Financial Delegation set out in the Financial Procedure Rules (FPRs).
- 3.7 The Approved Officer must appraise the purchase in a manner commensurate with its complexity and value and take into account any purchasing guidance and the requirements from any relevant Value for Money review – see Appendix 1 for further information.

4. EXEMPTIONS

- 4.1 The CPRs apply to all procurement activity, including the spending of income received by the Council from external sources.
- 4.2 Where the Council is the lead in a multi organisation procurement these CPRs will take precedence. Where the Council is part of a collaboration where another Council is the lead for the procurement then the lead authority's CPRs will take precedence.
- 4.3 The following are exempt from the CPRs and the Procurement Act 2023:
 - 4.3.1 Contracts falling within the specific exclusion provisions within the legal framework for public procurement. This exclusion applies to (amongst other things), contracts of

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employment; certain contracts for legal services; the delegation of function between local authorities; certain financial services and debt finance; and agreements for the sale, disposal or acquisition of land (including leases) or other exclusions as amended from time to time.

4.3.2 The receipt of grants from central government (or other bodies) and the award of grants. However, Council officers should always ensure the grant terms and conditions, principles of openness and fairness, non-discrimination, compliance with the public sector equality duty and value for money apply.

4.3.3 A contract between the Council and an entity which the Council controls (either individually or jointly with another contracting authority) known colloquially as a Teckal company shall be exempted from these rules, except to the extent covered in this Paragraph 4.

4.3.4 "Control" of an entity for the purposes of Paragraph 4.3.3:-

Vertical – The Council exercises a parent or similar control with other Authorities on the entity as it does its own departments, the entity conducts more than 80% of its activities for the controlling Contracting Authorities and there is no private sector money in the entity.

Horizontal – The Council and another authority co-operate to achieve objectives which the authorities have in common through an arrangement that is solely for the public interest and the parties perform less than 20% of the services covered by the arrangement on the open market.

4.3.5 This exemption shall not apply to contracts with an entity which the Council jointly controls with another person which is not also a contracting authority.

4.3.6 A contract or other arrangement between the Council and another contracting authority shall be exempted from these Rules, provided that it is entered into with the aim of achieving objectives in common in connection with the exercise of public functions and which is solely in the public interest.

5. THE CALCULATION OF CONTRACT VALUE

5.1 Contract value must be calculated as the actual or estimated aggregate value over the whole life of the contract including the value of any extension options. This must be calculated in pound sterling and exclusive (net) of value added tax for internal governance purposes.

5.2 Contract values inclusive of Value Added Tax (VAT) will determine whether advertising and conduct of procedure above thresholds is required. Where the Council is not able to estimate the value of the contract (for example where the contract duration is not fixed), the Contract is to be treated as being subject to the Procurement Act 2023 as a covered procurement (i.e., an above-threshold contract).

5.3 For Framework Agreements or Dynamic Markets the contract value must be calculated to include the total estimated value of all the contracts envisaged to be awarded for the total term.

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- 5.4 The value of contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding the application the CPRs and the Procurement Act 2023.
- 5.5 For Concession Contracts the maximum estimated value is the total estimated amount a supplier could expect to receive, taking account certain variables. Guidance should be sought in accordance with 9.1 when calculating the value.

6. PROCUREMENT OF CONTRACTS - THRESHOLDS

6.1 Contracts shall be procured in accordance with the CPRs, following the processes set out, dependent upon the value of the contract (and whether an eligible Framework or a Dynamic Market exists and exceptionally where justification exists for a direct award of contract without competition). Where the total value for a purchase is within the values in the first column below, the award procedure in the second column must be followed. Short listing shall be done by the persons specified in the third column.

Total Value (inc. VAT)	Award Procedure	Short Listing
£1 to £30,000	A minimum of one quotation, but good practice to seek further quotes. Must seek local suppliers where possible	Operational Manager/Other Designated Officer
£30,001 - £100,000	A minimum of three formal Requests for Quotation (RFQ) via the Council's e-tendering portal or use of a compliant framework. Must seek at least 2 local suppliers where possible	Operational Manager/Other Designated Officer
£100,001 – GPA Threshold	Invitation to Tender by advertisement, select list via the Council's e-tendering portal or use of a compliant framework. A minimum of 4 suppliers to be invited to tender if using a select list. Must seek at least 2 local suppliers where possible. All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these Contract Procedure Rules and no waiver is required. However, purchases above the GPA Threshold must be let in accordance with Open Procedure or Competitive Flexible Procedure, unless the consortium has satisfied this requirement already.	Operational Manager/Other Designated Officer/Projects Manager
Above GPA Threshold	Procurement in accordance with the Open Procedure or Competitive Flexible Procedure or via use of a compliant framework.	Operational Manager/Other Designated Officer/Projects Manager
All values - Collaborative Contracts	The Section 151 Officer must be consulted prior to commencing any procurement using collaborative contracts. The terms and conditions of Contract applicable to any collaborative Contract, including the requirement to undertake competition between providers, must be fully complied with.	Operational Manager/Other Designated Officer

- 6.2 Where it can be demonstrated that there are insufficient numbers of suitably qualified suppliers to meet the competition requirement, all suitably suppliers must be invited to Quote or Tender.

7. PRE-PROCUREMENT

- 7.1 Officers must identify an appropriate route to market. For each regulated above threshold procurement, the officer will need to consider which procedure to use:
- 7.1.1 **Open Procedure** for the most straightforward procurements (single stage). There is no restriction on who can submit tenders and all information needs to be provided at the point of tender and is made available to all suppliers. There is no requirement to set Conditions of Participation, previously Standard Selection Questionnaire (SQ) (see paragraphs 8.6 & 8.7), where they are set and a supplier fails to meet them, there is no need to consider their tender any further. Timescales for submission of a tender are now 25 days via the procurement portal and 10 days where a qualifying Planned Procurement Notice has been published.
- 7.1.2 **Competitive Flexible Procedure** for more complex procurements (multiple stages). This is a bespoke procurement procedure, where the Council have the flexibility to design their own process by building in multiple stages providing that the tender notice and associated tender documents clearly set out how the process will be carried out. Failure to comply with the process described in the notice and documents will mean there is grounds for legal challenge. In designing and conducting this procedure, the Council must have regard to the procurement objectives and meet the procedural requirements applicable to the competitive flexible procedure, such as time limits and transparency. Ensure the process is proportionate to the contract having regard to the nature, complexity and cost of the contract and being mindful of having a process which encourages suppliers to participate as well as the associated costs and resources of both the Council and the supplier.
- 7.1.3 **Direct Award** (above threshold) – providing an appropriate direct award justification applies (see paragraph 17)
- 7.1.4 **Framework** – closed or open (see paragraph 11)
- 7.1.5 **Dynamic Market** (paragraph 12)
- 7.2 Before publishing a tender notice for a Regulated Procurement (above threshold) the Council shall consider whether to publish a Planned Procurement Notice setting out its intention to carry out a Regulated Procurement. The Council shall, if possible, issue the Planned Procurement Notice at least 40 days prior to the tender notice, in order to give the ability if required to utilise reduced tendering periods in the procurement itself.
- 7.3 Before publishing a tender notice for a Regulated Procurement, the Council shall consider whether to undertake preliminary market engagement. Where the Council undertakes preliminary market engagement, it shall, unless it has good reason not to, publish a preliminary market engagement notice. Should it choose not to publish such a notice, it must provide the reasons for conducting such engagement without a preliminary market engagement notice in the tender notice itself. Officers must ensure that any preliminary market engagement is carried out in a manner which does not put any suppliers at an unfair advantage or which

otherwise distorts competition. Preliminary market engagement shall only be carried out after consultation with the Procurement Officer.

- 7.4 If an officer is concerned that the supplier's participation in any preliminary market engagement has put it at an unfair advantage or otherwise distorts competition, they must seek the advice of Procurement Officer as to whether to exclude such supplier from the tendering procedure.
- 7.4 The Council may undertake preliminary market engagement for any Unregulated Procurement (below threshold) in such manner as it deems appropriate, provided such engagement does not put any supplier at an unfair advantage or otherwise distort competition.
- 7.5 Before commencing a Regulated Procurement, the Council shall consider whether the requirement could reasonably be supplied under more than one contract and whether such contracts could appropriately be awarded by reference to Lots. Where the Council concludes not to procure by reference to Lots, it must record its reason for not doing so.

8. REGULATED PROCUREMENT (ABOVE THRESHOLD) – TENDERS

- 8.1 Regulated Procurements shall be undertaken in a way which is fully compliant with the PA23 and the PR24. If an officer is unsure as to any matter regarding the procurement, they must seek advice from the Procurement Officer.
- 8.2 The scope of this section covers all of the Council's above PA23 threshold requirements, except where the contract is awarded under a Framework or a Dynamic Market or a justification exists for a Direct Award.
- 8.3 Regulated Procurements shall be conducted applying either the Open Procedure or the Competitive Flexible Procedure. A decision to follow the Competitive Flexible Procedure shall be made only after consultation with the Procurement Officer.
- 8.4 All tender opportunities must be commenced by the publication of a tender notice via the Council's e-tendering procurement portal and the Government's Central Digital Platform (CDP). In the case of a Competitive Flexible Procedure, the tender notice shall either invite suppliers to submit a request to participate in the process or invite suppliers to submit their first or only tender as part of the procedure. Officers shall seek the advice of the Procurement Officer as to which of the forms of tender shall be used in those circumstances.
- 8.5 No tender opportunity shall be placed on the Council's e-tendering procurement portal and the Government's Central Digital Platform until the Council has prepared a specification for the goods, works or services, the conditions of contract, the conditions of participation (if required) and the invitation to tender (Open Procedure) or participate in the Competitive Flexible Procedure.
- 8.6 Information about suppliers in an above threshold procurement process will no longer be captured using the Standard Selection Questionnaire (SQ) used under PCR 2015. The basic mandatory information for above threshold procurements will be captured using the Supplier Information System on the Central Digital Platform and the Conditions of Participation will be captured separately. Note, that Conditions of Participation must not be set for below threshold procurements.

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- 8.7 Conditions of Participation must be a proportionate means of assessing the supplier's legal and financial capacity, or technical ability, having regard to the nature, complexity and cost of the contract. When planning a procurement the Officer will need to decide whether or not to include Conditions of Participation. By not adding unnecessary conditions, this should enable the widest range of suppliers with to participate, particularly small and medium sized enterprises (SME's).
- 8.8 Each invitation to tender or participate shall contain the following information:-
- 8.8.1 A statement of the validity of a submitted tender (which shall not be less than 90 days);
 - 8.8.2 An anti-collusion certificate;
 - 8.8.3 A form of tender;
 - 8.8.4 The evaluation criteria, the weighting to be applied to such criteria and the scoring methodology for assessing the evaluation;
 - 8.8.5 In the case of a competitive flexible procedure a statement as to whether the procedure will be conducted in successive stages and if so whether the Council intends to refine the evaluation criteria and/or the weightings;
 - 8.8.6 A statement as to whether a parent company guarantee, a performance bond or other security is required from the suppliers;
 - 8.8.7 A statement that the Council is not bound to accept any tender; and
 - 8.8.8 Notification that tenders are submitted at the tenderer's expense.
- 8.9 The Council shall permit tenders to ask clarification questions relating to the procurement. The Council shall respond to all clarifications as soon as reasonably possible and no later than 4 days prior to the tender submission date. All responses shall be provided to all tenderers, unless the tenderer requesting the clarification has indicated that the question is confidential. Where a tenderer has indicated that a question is confidential, the officers shall seek confirmation from the Legal Team as to whether it is agreed that the information is confidential. If the Council agrees, the response shall be sent to the tenderer who submitted the clarification question only. If the Council disagrees, the tenderer which submitted the question shall be given the opportunity to withdraw the question. If the question is not withdrawn, the response shall be provided to all tenderers.
- 8.10 All communication with tenderers in an Open Procedure shall be conducted through the Council's e-tendering procurement portal. Officers and members shall make no direct contact in person, telephone or email with suppliers in any circumstances.
- 8.11 All communication with tenderers in a Competitive Flexible Procedure shall be conducted through the Council's e-tendering procurement portal, except to the extent that the Council has determined the formal structure of the procedure to include face to face or online meetings.

- 8.12 Post-tender negotiations are not permitted in an Open Procedure. Negotiations may be undertaken at any stage in a Competitive Flexible Procedure, provided that they have been allowed for as part of the procedure within the tender notice.

9. REGULATED PROCUREMENT – EXCLUSION OF SUPPLIERS

- 9.1 The Council shall disregard any tender from a supplier that is an Excluded Supplier. An Excluded Supplier is defined within the PA23.
- 9.2 Before conducting evaluation of an Open Procedure tender, the Council shall consider whether the supplier is an Excludable Supplier.
- 9.3 Where the Council receives a tender from an Excludable Supplier, it shall consider whether it shall disregard that tender. No decision to exclude an Excludable Supplier shall be taken without the agreement of the Legal Team.
- 9.4 As part of every tendering procedure, the Council shall request information about whether a supplier is intending to subcontract any part of the performance of the contract and shall request that such information as is necessary to determine whether the subcontractor is an Excludable Supplier.
- 9.5 Where a proposed subcontractor is an Excluded Supplier, the Council shall exclude the supplier from the procurement.
- 9.6 Where a proposed subcontractor is an Excludable Supplier, the Council shall treat the supplier as an Excludable Supplier and determine whether to exclude the supplier from the procurement in accordance with paragraph 9.3.
- 9.7 Where the Council determines to exclude the supplier in the circumstances set out in paragraph 9.6, it shall notify the supplier of its intention and give the supplier a reasonable opportunity to find an alternative subcontractor.
- 9.8 The Council shall exclude the supplier if the supplier acts improperly, and its behavior puts it at an unfair advantage in relation to the award. A supplier is deemed to have acted improperly where it:-
- 9.8.1 fails to provide information requested by the council
 - 9.8.2 provides incomplete, inaccurate or misleading information
 - 9.8.3 accesses confidential information of the council; or
 - 9.8.4 unduly influences the Council's decision making in relation to any contract.
 - 9.8.5 where the Council excludes a supplier, it shall notify the Cabinet Office.

9.9 The Council shall exclude a supplier which is on the Debarment List or is an associated person of a supplier on the Debarment List.

10. REGULATED PROCUREMENT – EVALUATION AND AWARD

10.1 The Council shall award a public contract (above threshold) to the Most Advantageous Tender which satisfies the Council's requirements, and which best satisfies the award criteria.

10.2 The award criteria must:

10.2.1 relate to the subject matter of the contract (as defined in paragraph 10.3)

10.2.2 be sufficiently clear, measurable and specific

10.2.3 satisfy the PA23 requirements relating to technical specifications of contracts; and

10.2.4 be a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.

10.3 The subject matter of the contract shall include the following factors:

10.3.1 goods, services and works to be provided by the supplier including and in respect of any aspect of their production, trading or other stage in their life cycle

10.3.2 how or when the goods, services or works are to be supplied

10.3.3 qualifications, experience, ability, management or organisation of staff where such factors are likely to make a material difference to the quality of the goods, services or works to be supplied

10.3.4 price, other costs which the council may incur as a result of acceptance of a particular tender and value for money; and

10.3.5 social value

10.3.6 Length of contract

10.4 Criteria other than those set out in paragraph 10.3. shall not be included except with the agreement of the Procurement Officer. The exclusion of any of the criteria set out in paragraph 10.3. shall also require the agreement of the Procurement Officer.

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- 10.5 The award criteria shall be given a weighting representing a percentage of the total importance. Social Value criteria shall be given a weighting of no less than 10%. Other weightings shall be appropriate and proportionate, taking account of the nature, complexity and cost of the procurement.
- 10.6 The Council may, in Competitive Flexible Procedures, refine the award criteria and/or the weighting, provided that it has given notice of its intention to do so in the tender notice or the tender documents. Any decision to give notice of the intention to refine shall require the agreement of the Procurement Officer and the application of any refinement to the criteria or weighting to a procedure shall be carried out after consultation with the Procurement Officer.
- 10.7 If the Council considers the price offered in a tender to be abnormally low, it may disregard that tender but must first give the supplier a reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered. Advice must be taken from the Legal Team before taking any action with regard to what may be considered to be an abnormally low tender.
- 10.8 Prior to evaluating tenders refer to the Evaluation Guide which is available on the Council's intranet. When evaluating tenders, all evaluators must evaluate separately and when complete forward evaluation sheets to the moderator. The moderator will call a moderation meeting where all evaluators must attend and agree a consensus score for each question. The moderator must be separate from the evaluation team. It is the responsibility of the moderator to keep a record of how the evaluation team have reached each consensus score. It is at this stage that the moderator will reveal the pricing to the evaluation team.
- 10.9 Tenders and Quotations must be evaluated and awarded in accordance with the Selection and Award Criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 10.10 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender.
- 10.11 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. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to the Section 151 Officer as appropriate, in line with the Scheme of Delegation.
- 10.12 Assessment summaries must be completed for all assessed above threshold tenders and issued prior to the Contract Award Notice being issued, this starts the Standstill period (see paragraph 18 for more information).
- 10.13 Information about suppliers in an above threshold procurement process will no longer be captured using the Standard Selection Questionnaire (SQ) used under PCR 2015. The basic

mandatory information for above threshold procurements will be captured using the Supplier Information System on the Central Digital Platform and the Conditions of Participation will be captured separately. Note, that Conditions of Participation must not be set for below threshold procurements.

10.14 The council must obtain confirmation from a supplier before awarding a contract that:

10.14.1 the supplier has registered on the Central Digital Platform

10.14.2 the supplier has submitted and updated or corrected supplier information to the Central Digital Platform and the Council

11. CONTRACTS AWARDED UNDER FRAMEWORKS

11.1 The Council may award a public contract (above threshold) or a below threshold contract which is covered by a framework which the Council has itself procured or which another contracting authority has procured and which the Council is permitted to use.

11.2 Any decision to award a contract from a framework shall be taken if this represents better value for money in the opinion of the Council than conducting an individual procurement.

11.3 There are two types of Framework: -

11.3.1 Closed Frameworks – these have a lifespan of 4 years and these are closed off to any supplier other than those who had gained a place on them following a compliant procurement procedure. Closed frameworks will enable the future award of a contract without further competition in the marketplace; either by awarding to a sole supplier or running a mini competition between the suppliers who are party to the framework.

11.3.2 Open Frameworks – these have a lifespan of up to 8 years and will allow suppliers to apply (via a tender) to join the framework at various points during the framework term. Section 49(1) defines an open framework as one that provides for the award of successive frameworks on essentially the same terms provided it is re-opened to new suppliers.

12. CONTRACTS AWARDED UNDER DYNAMIC MARKETS

12.1 The Council may establish arrangements for the purposes of awarding public contracts known as a Dynamic Market by submitting a dynamic market notice to the Central Digital Platform (CDP) and via the Council's e-tendering portal.

12.2 In establishing a Dynamic Market, the Council shall set conditions for participation relating to the legal and financial capacity to perform contracts to be awarded by reference to membership of the Dynamic Market and which have the technical ability to perform the contract. Such conditions shall be proportionate to the requirements, having regard to the nature, complexity and cost of the contract to be awarded.

- 12.3 To award a public contract under a Dynamic Market, the Council must utilise the Competitive Flexible Procedure.
- 12.4 If a tender is submitted by a supplier which is not a member of the Dynamic Market, the Council shall exclude such supplier and disregard the tender unless the supplier has made an application for membership of the Dynamic Market and the Council has accepted the application.
- 12.5 If, due to exceptional circumstances arising from the complexity of the particular procurement, the Council is unable to assess an application to be admitted to the Dynamic Market prior to the deadline for submitting a request to participate in the procedure (or where no such invitation has been made, the deadline from receipt of initial tenders) the Council shall not exclude the supplier or disregard the tender.
- 12.6 A Dynamic Market cannot be used for the purposes of awarding a below PA23 threshold contract.

13. PURCHASING FROM A CENTRALISED PROCUREMENT AUTHORITY

- 13.1 The Council may purchase goods, services or works from a centralised procurement authority without the need for additional competition.
- 13.2 For the avoidance of doubt, a purchase from a centralised procurement authority is not the same as a procurement from a framework which a centralised procurement authority has set up, which must observe the requirements of paragraph 11.

14. REGULATED BELOW THRESHOLD PROCUREMENT

- 14.1 The Council is obliged to issue a below threshold tender notice on the Council's e-tendering portal and the Central Digital Platform (CDP) for all contracts with a value above £30,000 (inc. VAT) and below the threshold for a notifiable below threshold contract. A notifiable below threshold contract is a regulated below threshold contract. A below threshold tender notice must be published on the CDP before being published elsewhere.
- 14.2 Where the Council advertises for a below threshold contract, it shall not restrict the submission of tenders by reference to a supplier's suitability to perform the contract, by reference to its legal and financial capability and its technical ability. This does not prevent the Council asking for this information in a bid and assessing suitability at the award stage.
- 14.3 When advertising a below threshold contract, an appropriate description of the goods, services, or works (commensurate with the value of the contract) setting out the Council's requirements in sufficient detail, must be provided to prospective suppliers to enable the submission of competitive tenders.
- 14.4 The below threshold tender notice shall also make reference to or include the following as a minimum:
 - 14.4.1 the terms and conditions of contract that will apply

- 14.4.2 notification that tenders are submitted to the Council on the basis that they are compiled at the supplier's expense
- 14.4.3 a description of the award criteria as appropriate
- 14.4.4 the date and time by which a tender is to be submitted; and
- 14.3.5 that the Council is not bound to accept any tender submitted
- 14.5 As soon as reasonably practicable after entering into a notifiable below threshold contract, the Council must publish a contract details notice.

15. UNREGULATED BELOW THRESHOLD PROCUREMENT

- 15.1 Unregulated below threshold procurements give greater flexibility to the Council in designing and running a procurement and awarding and managing the resulting contract. This flexibility (subject to CPRs) includes the ability to choose to award a contract without competition, to request quotes from targeted known suppliers only or to restrict the award of contracts to suppliers located in the local area. See paragraph 6.1 for thresholds.
- 15.2 When requesting a quote, an appropriate description of the goods, services, or works (commensurate with the value of the contract) setting out the Council's requirements in sufficient detail, must be provided to prospective suppliers to enable the submission of competitive quotes.
- 15.3 The request for a quote shall also make reference to or include the following as a minimum:
 - 15.3.1 The terms and conditions of contract that will apply.
 - 15.3.2 notification that quotes are submitted to the Council on the basis that they are compiled at the supplier's expense.
 - 15.3.3 The date and time by which a quote is to be submitted, and
 - 15.3.4 That the Council is not bound to accept any quotes submitted.
- 15.4 The suppliers must be given a reasonable period in which to prepare and submit a quote, consistent with the complexity of the contract requirement.
- 15.5 There is no requirement to publish a below-threshold tender notice where the authority invites quotes, proposals or tenders from a closed group of pre-selected suppliers, provided it is not advertised in any way.
- 15.6 As soon as reasonably practicable after entering into a below threshold contract, the Council must publish a contract details notice.

16. CONCESSION CONTRACTS

- 16.1 Concession Contracts are contracts under which the council outsources works or services to a contractor or provider, who then has the right to commercially exploit those works or services

to recoup its investment and make a return. The key feature is that the contractor/provider bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs. The Procurement Officer and Legal Team must be engaged for advice and guidance.

- 16.2 The Council may procure a works concession or a services concession in the same way as a contract for works or services accordance with the provisions of paragraph 8. Only concession contracts with a value of more than £5m need to be procured in accordance with such provisions. The procurement of a concession contract with a lower value shall be treated as a Regulated below threshold Procurement.
- 16.3 In estimating the value of a concession contract, the Council shall take into account the amount the supplier could expect to receive under or in connection with the contract, including revenue received and any payments by the Council.

17. DIRECT AWARD – ABOVE THRESHOLD PROCUREMENTS

- 17.1 The Council may make an award of contract without competition where the contract is of a type described in paragraph 17.3 or is necessary to protect human, animal or plant life or health or to protect public order or safety.
- 17.2 A direct award shall not be made to an Excluded Supplier unless there is an overriding public interest in doing so.
- 17.3 Direct award justifications:-
- 17.3.1 Prototypes and development:
- 17.3.1.1 The contract concerns the production of a prototype, or supply of other novel goods or services, for the purpose –
of testing the suitability of the goods or services,
researching the viability of producing or supplying the goods or services at scale and developing them for that purpose, or
other research, experiment, study or development.
- 17.3.2 Single suppliers:
- 17.3.2.1 Where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

The contract concerns the creation or acquisition of a unique work of art or artistic performance.

due to a particular supplier having intellectual property rights or other exclusive rights, only that supplier can supply the goods, services or works required;

due to an absence of competition for technical reasons, only a particular supplier can supply the goods, services or works required

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and in each case there are no reasonable alternatives to those goods, services or works.

17.3.3 Additional or repeat goods, services or works:

17.3.3.1 The contract concerns the supply of goods, services or works by the existing supplier which are intended as an extension to, or partial replacement of, existing goods, services or works in circumstances where -

a change in supplier would result in the contracting authority receiving goods, services or works that are different from, or incompatible with, the existing goods, services or works, and

the difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance.

17.3.3.2 The contract concerns the supply of goods, services or works by the existing supplier that are similar to existing goods, services or works where -

the existing goods, services or works were supplied under a contract that was awarded in accordance with a competitive tendering procedure within the period of five years ending with the day on which the transparency notice is published, and

the tender notice or any tender document in respect of that earlier contract set out the Council's intention to carry out a subsequent procurement of similar goods, services or works in reliance on this direct award justification.

17.3.4 Commodities

The contract concerns goods purchased on a commodity market.

17.3.5 Advantageous terms on insolvency

The award of the contract to a particular supplier will ensure terms particularly advantageous to the Council due to the fact that a supplier, whether or not the one to whom the contract is to be awarded, is undergoing insolvency proceedings.

17.3.6 Urgency

Where -

the goods, services or works to be supplied under the contract are strictly necessary for reasons of extreme and unavoidable urgency, and

as a result the contract cannot be awarded on the basis of a competitive tendering procedure.

For the purpose of paragraph 18.3.6, urgency is unavoidable if it -

is not attributable to any act or omission of the Council, and

could not have been foreseen by the Council.

18. STANDSTILL AND ASSESSMENT SUMMARIES

- 18.1 The standstill period is now a minimum of eight working days beginning with the day on which the contract award notice is published. Before entering into a public contract as a result of a Regulated Procurement, the Council shall first provide an assessment summary to each supplier that submitted an assessed tender. Assessment summaries must be provided before the Contract Award Notice can be published and the standstill period commenced. The standstill period under PA23 starts on the date the Contracts Award Notice is published.
- 18.2 An assessment summary shall set out the Council’s assessment of the supplier’s tender and the most advantageous tender in accordance with the assessment methodology. It sets out how the tender was assessed against the award criteria by reference to scores. Unsuccessful tenderers who have submitted an assessed tender will also receive information about the most advantageous tender submitted in respect of the contract. It is provided, not publicly published, to each supplier that submitted an assessed tender. The assessment summary templates are available on the Council’s intranet.
- 18.3 The Standstill Period shall end at midnight on the final day of Standstill and no sooner. If the decision is challenged by an unsuccessful Supplier then the Officer shall not award the Contract and shall immediately seek the advice of the Head of Legal & Governance and Monitoring Officer.

19. CONTRACT FORMALITIES

- 19.1 Agreements shall be completed as follows and in all cases an official order issued.

Total Value	Method of Completion	By
Purchase orders up to £100,000	Electronic order or signature	Authorised officers S151 Officer and deputy over £30,000
Contracts and licences up to £100,000 with the Council’s standard Terms & Conditions	Signature	Head of Legal & Governance and Monitoring Officer or deputy
Contracts and licences up to £100,000 with the non-standard Terms & Conditions	Signature	Head of Legal & Governance and Monitoring Officer or deputy
Above £100,000 or if any of paragraph 6.2	Signature or sealing (unless advised by the Council’s Head of Legal & Governance and Monitoring Officer that sealing is not necessary)	Head of Legal & Governance and Monitoring Officer or deputy

20. CONTRACT PROVISIONS

- 20.1 Every Contract must be in a form approved by the Head of Legal and Governance & Monitoring Officer or delegated officer if its value is £100,000 or over or where it is appropriate to seek such approval due to the nature of the Contract.
- 20.2 Contracts with an estimated procurement value of £100,000 and over must be signed or sealed (unless advised by the Legal Team that sealing is not necessary). The Head of Legal and Governance & Monitoring Officer or delegated officer can require contracts below this value to also be sealed.
- 20.3 The formal advice of the Head of Legal and Governance & Monitoring Officer must be sought for contracts where any of the following apply:
- 20.3.1 Where the total value exceeds £100,000
 - 20.3.2 Below £100,000 if other Council's standard Terms & Conditions are to be used
 - 20.3.3 Those involving leasing arrangements (Section 151 Officer to be advised)
 - 20.3.4 Where it is proposed to use a supplier's own Terms and Condition's
 - 20.3.5 Those involving the application of software with a Total Value of more than £100,000
 - 20.3.6 Those that are complex in any other way
- 20.4 All contracts are required to have a clear start and end date, detail all approved extension options and full aggregate contract value including the value of the potential full term of extensions.
- 20.5 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Head of Legal & Governance and Monitoring Officer, Deputy or Section 151 Officer. An award letter is insufficient.
- 20.6 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. The use of Letters of Intent (which are binding for the Council) should be avoided, but in exceptional circumstances they may be used with the approval of and review by the Monitoring Officer before issue.
- 20.7 Any new Contract should not be signed until the Contract it replaces is either ended or under notice.
- 20.8 All original contracts must be given to the Monitoring Officer for secure storage and Procurement Officer notified for recording in the Council's Contract Register.
- 20.9 It is a breach of the Financial Regulations and the CPRs to engage with suppliers and to order the provision of goods, works or services without the appropriate approval to do so. A Purchase Order (PO) must be raised on the Corporate Financial System prior to making a commitment to procure goods, works or services unless an exemption has been approved by the Finance Manager. The PO number must be referenced on the invoice by the supplier.

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- 20.10 All contracts set out the parties' obligations, rights and risk allocations and must incorporate the Council's appropriate standard terms and conditions. Advice should be taken from as to the appropriate form of contract and any deviations from the standard terms must be approved by legal.
- 20.11 All contracts, irrespective of value, shall clearly specify as a minimum: -
- 20.11.1 what is to be supplied (i.e. the goods, services or works to be provided)
 - 20.11.2 the provisions for payment (i.e. the price to be paid and when) with a statement of discount or other deductions
 - 20.11.3 the time or times within which the contract is to be performed
 - 20.11.4 the provisions for the Council to terminate the contract and seek damages in the event of the contractor's default
 - 20.11.5 the policies and procedures that must be complied with
 - 20.11.6 data protection requirements (if relevant)
 - 20.11.7 relevant insurance requirements
 - 20.11.8 Freedom of Information Act and Environmental Information Regulations requirements
- 20.12 All contracts must be either signed by the Head of Legal & Governance and Monitoring Officer or executed under seal.
- 20.13 The Council's purchase orders or standard terms and conditions issued by a relevant professional body must be used for simple purchases of goods and works.
- 20.14 In addition, every Relevant Contract of purchase over £100,000 must also state clearly as a minimum:
- 20.14.1 Health and Safety requirements (where applicable and proportionate)
 - 20.14.2 Sustainability and environmental management requirements (where applicable and proportionate)
 - 20.14.3 Social Value Act requirements (where applicable, i.e., for all procurements with a Total Value in excess of £50,000)
 - 20.14.4 Equality Act 2010 requirements (where applicable and proportionate)
 - 20.14.5 That the contractor may not assign or sub-contract without prior written consent
 - 20.14.6 Any insurance requirements
 - 20.14.7 Ombudsman requirements
 - 20.14.8 Data protection requirements, if relevant

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- 20.14.9 That charter standards are to be met if relevant
- 20.14.10 Bribery and whistleblowing policies
- 20.14.11 Freedom of Information Act requirements
- 20.14.12 Where Agents are used to let contracts, that Agents must comply with the Council's Contract Procedure Rules
- 20.14.13 A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
- 20.14.14 Any confidentiality requirements
- 20.14.15 Tax evasion and avoidance requirements
- 20.14.16 A prompt payment clause
- 20.14.17 Termination clauses compliant with the Procurement Act 2023
- 20.15 Where appropriate contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by a further officer on behalf of the Head of Legal & Governance and Monitoring Officer or deputy.
- 20.16 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's Constitution.
- 20.17 A contract must be sealed where:
 - 20.17.1 The Council may wish to enforce the contract more than six years after its end
 - 20.17.2 The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services, or
 - 20.17.3 There is any doubt about the authority of the person signing for the other contracting party.

21. CONTRACT MODIFICATIONS

- 21.1 Where a public contract has been procured as a result of a Regulated Procurement or it is proposed to modify a contract with the effect that the contract once modified would have a value above the threshold for the procurement to be classified as a Regulated Procurement, such modification shall only be allowed where it is a permitted modification in accordance with

paragraph 21.2 or is not a substantial modification, as defined in paragraph 23.3 or is a below threshold modification as defined in paragraph 23.4.

- 21.2 A permitted modification is one which is described as a permitted contract modification in Schedule 8 of the PA23.
- 21.3 Where a modification is not set out in Schedule 8 of the PA28, it shall nevertheless be permitted if the modification is not a substantial modification. A substantial modification is one which would either:
- 21.3.1 increase or decrease the term of the contract by more than 10% of the maximum term (including any extension provisions provided for in the contract); or
 - 21.3.2 would materially change the scope of the contract; or
 - 21.3.3 would materially change the economic balance of the contract in favour of the supplier.
- 21.3.4 If any one of these three circumstances apply, the modification is not permitted. A modification shall be deemed to materially change the scope of the contract where it materially provides for the supply of goods, services or works of a kind which are not already provided for in the contract.
- 21.4 A below threshold modification is one which would not increase or decrease the estimated value of the contract by more than:
- 21.4.1 10% (in the case of a contract for goods or services); or
 - 21.4.2 15% (in the case of a contract for works)
- and where the aggregated value of all below threshold modifications would be less than the threshold amount for that type of contract and would not otherwise materially change the scope of the contract.

22. CONTRACT MANAGEMENT

- 22.1 Contract Management is the active management of the relationship between the Council and a supplier over the term of the contract for the provision of services, supplies and works to a set of agreed standards.
- 22.2 Contract management activities should be proportionate to the value, duration, risk and complexity of the contract.
- 22.3 All contracts with an estimated value of more than £5m, shall contain at least three key performance indicators. Key performance indicators are factors or measures against which a supplier's performance of the contract can be assessed during the lifecycle of the contract. This provision shall not apply to a Light Touch contract or a contract where it is considered, with the approval of the Leal Team, that performance cannot be measured by key performance indicators.
- 22.4 Where the Council has set key performance indicators, it shall at least once in every 12-month period during the lifecycle of the contract and upon termination of the contract assess

performance against those key performance indicators and publish information in relation to that assessment in accordance with the PR24.

- 22.5 If the Council considers that a supplier is not performing a public contract to its satisfaction and the supplier has been given proper opportunity to improve its performance but has failed to do so, the Council shall publish information relating to the circumstances in accordance with the provisions set out in the PR24.
- 22.6 Any contract which the Council enters into shall contain terms committing the Council to pay all sums due before the end of the period of 30 days (as per PA23) or 14 days (as per TDC FPRs) beginning with the day on which an invoice is received or if later the day on which payment falls due in accordance with the invoice.
- 22.7 It shall be implied into every contract that the above term shall be included in all contracts, whether included explicitly or not.
- 22.8 The Council need not pay an invoice within 30 days (as per PA23) or 14 days (as per TDC FPRs) if it considers the invoice is invalid or disputes the invoice, but where those circumstances apply, it must notify the supplier without undue delay of those circumstances.
- 22.9 The Council shall publish a “payments compliance notice” setting out the details of all payments made under contracts twice yearly for the periods ending on 31 March and 30 September. Such notice shall set out the information required by the PR24.

23. CONFLICTS OF INTEREST

- 23.1 Officers of the Council shall be strictly bound by section 117 of the Local Government Act 1972 to declare any interest in a contract or proposed contract, whether direct or indirect. Such notice shall be given to the Legal Team as soon as the Officer becomes aware of the interest. A failure to declare such interest is an offence under section 117.
- 23.2 An Officer shall not, under colour of their office or employment, accept any fee or reward whatsoever other than their proper remuneration.
- 23.3 Before publishing a tender or transparency notice in relation to a regulated procurement, a conflicts of interest assessment must be prepared.
- 23.4 The conflicts of interest assessment must be kept under review and when publishing the relevant notice, advise that it has been prepared.
- 23.5 The Council must take all reasonable steps to identify and keep under review any actual or potential conflicts of interest and take all reasonable steps to ensure that a conflict does not put a supplier at an unfair advantage or disadvantage.
- 23.6 Members of the Council are bound by the Council’s Members Code of Conduct.

24. THE PROCUREMENT WAIVER PROCESS

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- 24.1 The Council can only waive the rules established by the Council – the Council cannot waive the Procurement Act 2023 or Public Contracts Regulations 2015 (where contracts were procured under these regulations) or any UK law.
- 24.2 In exceptional circumstances a waiver from these CPRs may be granted. The circumstance under which a waiver may be considered include:

Waiver Reason	Meaning
Life or Death	There is significant chance that the life or health of officers, members, or the public will be put at real risk.
Increased cost/loss of Income	The Council will incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council.
Limited Markets	The Council would be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or few businesses.
Reputation	The Council would be criticised for failing to act promptly.

- 24.3 All waivers shall be completed on the Standard Form of Waiver which will be monitored and reported to the next relevant committee.
- 24.4 A waiver may not be granted simply on the grounds of convenience.
- 24.5 If a decision requires referral to Community & Resources Committee but is urgently required, the Urgency procedure may be used by completing the last section of the Waiver form. The last section of the waiver form requires the decision to be noted by the Leader or Deputy Leader of the Council. The Urgency decision will be subsequently reported to Community & Resources
- 24.5 Waivers must be sought and approved in advance of any contractual agreement, order placement, use of Works, Services, or purchase of Supplies. Refer to the Financial Procedure Rules on Waivers.
- 24.6 The Legal Team will keep a register of all Waivers.

25. PROCUREMENT DOCUMENTATION

- 26.1 Council Officers must prepare their Procurement documentation using the Council's standard templates, which are available on the Council's Intranet site or via the Procurement Officer and are appropriate to the size and nature of the contract.
- 25.2 The Procurement documentation shall state that no Bid will be considered unless it is received

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by the date and time stipulated. A Bid delivered in contravention of this clause shall be considered only under exceptional circumstances, e.g. Council error/council software breakdown.

- 25.3 All procurement documentation should include the following as appropriate to the type of Contract:
- 25.3.1 A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers
 - 25.3.2 A requirement for Suppliers to declare that the Bid content, price or any other figure or particulars concerning the Bid have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose)
 - 25.3.3 A requirement for Suppliers to complete fully and sign all Bid documents including a Form of Tender and Terms and Conditions
 - 25.3.4 Notification that Bids are submitted to the Council on the basis that they are compiled at the Supplier's expense
 - 25.3.5 A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and if possible in descending order of importance
 - 25.3.6 Notification that no Bid will be considered unless it submitted via the Council's approved electronic tendering system
 - 25.3.7 Quotations by email are acceptable for quotes under £30,000 (inc. VAT), but must be dated and clearly stated
 - 25.3.8 The method by which any arithmetical errors discovered in the submitted Bids is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa
 - 25.3.9 Instructions to Suppliers concerning the procurement process and procurement documentation and information concerning the contract opportunity
 - 25.3.10 The pricing schedule, schedule of rates, whole life costing schedule or other such appropriate pro-forma for gathering the Supplier's pricing
 - 25.3.11 A stipulation that no tender issued electronically via the Portal can be submitted by other means
 - 25.3.12 Details of any subcontractors and consortium arrangements.
 - 25.3.13 All Suppliers invited to bid must be issued with the same information at the same time

and be subject to the same conditions. Any supplementary information must be given on the same basis.

- 25.3.14 All Procurement documentation must specify the goods, service or works that are required, together with the terms and conditions of Contract that will apply and must state that the Council is not bound to accept any Quotation or Tender, either as a whole or in part.
- 25.3.15 Contracts that exceed the total value of £100,000 must be kept for six years and twelve years if under seal after the end of the contract.

26. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

- 26.1 Suppliers must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. PA23 lays down specific time periods.
- 26.2 Each tender is recorded within the Procurement Portal.
- 26.3 Tenders received after the set date and time must not be accepted. For the purposes of these rules the time will be deemed to be at the first stroke 12:00 Noon.
- 26.4 The Officer or Procurement Officer must ensure that all Tenders are opened at the same time via the procurement portal when the period for their submission has ended.

27. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 27.1 Providing clarification of an invitation to tender to potential or actual suppliers is allowed. Tender, or bid clarifications may become necessary during the evaluation of tenders, for example where there are aspects of the tender that are unclear or contain minor errors. Tender clarification is contact between the buyer and the bidder(s) to clarify aspects of the tender which are ambiguous or irregular. Clarification is permitted:-
- Via the Council's electronic tendering system
 - At a meeting, provided that a written record is made of the meeting
 - In a way that is fair, transparent and equal to all participants

Negotiations in relation to price, essential aspects of the tender or other areas where bid improvements may be possible must not take place as part of the clarification process

- 27.2 Post tender negotiation must not be confused with tender or bid clarification. Post tender negotiation may be used to refine and improve bids from the preferred supplier(s). This is to ensure that prices, delivery or associated terms of the contract are competitive.
- 27.3 If post-tender negotiations are necessary after an Open Procedure or Competitive Flexible Procedure, then such negotiations shall only be undertaken with the tenderer who is

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identified as having submitted the best tender and after all unsuccessful suppliers have been informed.

- 27.4 Officers carrying out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 27.5 Where post-tender negotiations result in a fundamental change to the specification (or contract terms) the contract must not be awarded but re- tendered.

28. EVALUATION, AWARD OF CONTRACT AND DEBRIEFING CANDIDATES

- 28.1 Tenders and Quotations must be evaluated and awarded in accordance with the Selection and Award Criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 28.2 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender.
- 28.3 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. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to the Section 151 Officer as appropriate, in line with the Scheme of Delegation.
- 28.4 Assessment summaries must be completed for all assessed above threshold tenders and issued prior to the Contract Award Notice being issued, this starts the Standstill period (see paragraph 18 for more information).

29. BOND AND PARENT COMPANY GUARANTEES

- 29.1 The Officer must consult the Major Projects Manager, Estates Manager and Section 151 Officer if a Parent Company Guarantee or Bond is needed. A Parent Company Guarantee maybe necessary when a supplier is a subsidiary of a parent company. A Bond is where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract. Either of these may be needed if:
 - 29.1.1 The total value of the contract exceeds £5,000,000
 - 29.1.2 Where there is concern about the stability of the supplier following a formal risk assessment

30. RISK ASSESSMENTS

- 30.1 Appropriate risk assessments must be undertaken for all contracts and shall continue throughout the life of the contract, ensuring contingency measures are in place.

31. PROJECT INITIATION DOCUMENT (PID)

- 31.1 Any Officer proposing a project for inclusion in the Capital Programme must complete a Project Initiation Document (PID), and have this signed as approved by their Strategic Manager. The PID must then be submitted to the Section 151 Officer, who will refer the project to the relevant Committee for approval.
- 31.2 The Project Initiation Document will include the objectives of the project; a risk assessment and contingency plan; details of how the project will be controlled including appointment of a Project Manager; funding required and any revenue impact that the project may incur.
- 31.3 Overspends of greater than 10% against the original capital project budget and which are also in excess of £10k shall be reported to Community and Resources Committee. Additionally, all overspends of greater than £30k will be reported to Community & Resources.

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32. GLOSSARY OF TERMS

For the purpose of these Rules the following terms have the meanings as set out below:

Term	Meaning of Term
Assessment Summaries	<p>A letter detailing the outcome of the assessment of any Tenders received. For the successful Supplier it will include their scores and reasons for those scores against each of the published Award Criteria.</p> <p>For all unsuccessful Suppliers, the letter will include their scores and the reason for those scores against each of the published Award Criteria and the successful Supplier's scores.</p>
Award Criteria/ Assessment Methodology	<p>criteria set in accordance with section 23 of PA23 against which Tenders may be assessed for the purpose of awarding a Public Contract; these criteria must:</p> <ul style="list-style-type: none"> (a) Relate to the subject-matter of the Contract, (b) Be sufficiently clear, measurable, and specific, (c) Not break the rules on technical specifications in section 56, and (d) Be a proportionate means of assessing Tenders, having regard to the nature, complexity, and cost of the Contract. <p>And where there are more than one, their weighting or relative importance must be stated.</p> <p>Officers are also required to describe how the Tenders will be assessed (a scoring matrix), and the document must state whether failing to meet a specific score could amount to a Supplier being excluded from the procurement</p>
Best Value	<p>The Best Value Duty relates to the statutory requirement for local authorities and other public bodies defined as best value authorities in Part 1 of the Local Government Act 1999 ("the 1999 Act") to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". This terminology has now in many instances been superseded by <u>Value for Money</u></p>
Clarification	<p>Means the request for additional/ missing information and/ or an explanation regarding information that is incomplete, inaccurate, or misleading.</p> <p>Where the clarification relates to the Council seeking a clarification from a Supplier, this may only occur where it is not unfair to do so.</p>
Closed Framework	<p>These have a lifespan of 4 years and these are closed off to any supplier other than those who had gained a place on them following a compliant procurement procedure.</p>
Code of Conduct	<p>The code of conduct binding on all Officers of the Council within the Council's Constitution.</p>
Competitive Flexible Procedure	<p>This is a multi-staged procurement which can include a discrete Conditions Of Participation stage, limiting Suppliers (following the SQ or other assessments), one or more Tender rounds (and intermediate assessments), refinement of the Award Criteria, modification of the Tender procedure, interaction with the Suppliers (e.g., negotiations, presentations, site visits) and then following a final submission, there is a potential to finesse the submission and subsequent staged awards – all this being subject to what was specified in the Invitation to Tender Notice and documentation.</p>

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Competitive Tendering Procedure(s)	This includes the Open Procedure and the Competitive Flexible Procedure
Concession Contracts	a Contract for the supply, for pecuniary interest, of works or services to a Contracting Authority where— a) at least part of the consideration for that supply is a right to exploit, and b) under the Contract the Supplier is exposed to a real operating risk. (it may also be paid for by service users rather than the Council).
Conditions of Participation	this is a condition that a Supplier must satisfy if the Supplier is to be awarded the Public Contract. These conditions must be a proportionate means of assuring that a Supplier has. (a) the legal and financial capacity to perform the Contract, or (b) the technical ability to perform the Contract.
Conflict Assessments	Means an assessment that has been carried out by the Council and in which, it identifies all and any potential or actual conflicts and the actions taken/ to be taken to mitigate them to ensure equal treatment.
Conflict of Interest	There is a Conflict of Interest in relation to a Covered Procurement if— (a) A person acting for or on behalf of the contracting authority in relation to the Procurement has a Conflict of Interest, or (b) A Member acting in relation to the Procurement has Conflict of Interest
Contract(s)	an agreement to be made in writing between the Council and a Supplier
Contract Award Notice	A notice that is published on the Central Digital Platform and that informs the market of and intent to award and where a Mandatory Standstill Period (or Voluntary Standstill Period) is required, this notice initiates that Standstill Period. There is a different form of notice for below and above threshold procurements.
Contract Change Notice	For Contracts let under the Procurement Act 2023 A notice that must be published before a Contract modification is applied, where that modification increases or decreases the estimated value of the Contract by— (a) in the case of a Contract for goods or services, 10 per cent or less, (b) in the case of a Contract for works, 15 per cent or less, or (c) the modification increases or decreases the term of the Contract by 10 per cent or less of the Issued in accordance with section 75. For Contracts let under the Public Contracts Regulations 2015 A modification notice must be published where a modification is made under Regulation 72(b) or 72(c).
Contract Details Notice	A notice that confirms that the Contract has been entered into within the previous 30 days. There is a different form of notice for below and above threshold
Contract Management	Contract Management is the active management of the relationship between the Council and the Supplier over the term of the Contract for the provision of services, supplies and works to a set of agreed standards.

TORRIDGE DISTRICT COUNCIL CONTRACT PROCEDURE RULES

Contract Management Notice(s)	<p>For Contracts let under the Procurement Act 2023 (PA23) The Council will be required to publish the following in line with the PA23.</p> <ul style="list-style-type: none"> (a) Contract Performance Notice – required for all Public Contracts over £5m and used to report on KPIs and whether the Contract is being delivered to the Council's required standards e.g., satisfactory performance against the KPIs, and/ or a breach of Contract which resulted in, partial termination, and/ or damages. (b) Payment Compliance Notice – used to publish the Contracting Authorities payment performance. (c) Contract Termination Notice – used where the Contracting Authority terminates a Contract in full.
Contract Modification	<p>For Contracts let under the Procurement Act 2023 (PA23) A modification permitted under section 74 and schedule eight of the PA2023 or is not a substantial modification or is a below-threshold modification. For Contracts let under the Public Contracts Regulations 2015 (PCR2015) A modification permitted under Regulation 72.</p>
Contract Performance Notice	<p>Means a notice setting out.</p> <ul style="list-style-type: none"> (a) An assessment of performance against Key Performance Indicators OR (b) Details of poor performance against a specified standard and/ or a breach which is sufficiently serious enough to result in the payment of damages, partial termination, or a settlement agreement.
Contracts Procedure Rules (CPRs)	<p>This document setting out the principles of procurement, roles and responsibilities, Contract procedure rules and processes involved in purchasing services, supplies, and works Contracts.</p>
Contract Register	<p>A register of Council Contracts published via the Council's e-tendering portal</p>
Contract Termination Notice	<p>Is a notice setting out that a Contract has been terminated</p>
Contract Value	<p>The estimated total monetary value of a Contract over its full duration and any extensions or potential variations. (N.B. not just the annual value.)</p>
Council	<p>Torrige District Council</p>
Councillor/ Member	<p>An elected Member of the Council.</p>
Covered Procurement	<p>Means an above threshold procurement that is intended to result in a Public Contract. PPN-11_23-New-Thresholds.pdf (publishing.service.gov.uk) These values apply for 2024 and 2025.</p>
Debarment List	<p>Means a list kept by a Minister of the Crown for the purposes of identifying Suppliers to whom a Public Contract is not to be awarded.</p>
Direct Award	<p>Means the award of a Contract without a competitive process.</p>

TORRIDGE DISTRICT COUNCIL CONTRACT PROCEDURE RULES

Discretionary Exclusion Grounds	<p>Schedule 7</p> <ul style="list-style-type: none"> (a) Labour market misconduct (b) Environmental misconduct (c) Insolvency, bankruptcy, etc (d) Potential competition infringements (e) Professional misconduct (f) Breach of Contract and poor performance (g) Acting improperly in procurement (h) Threat to national security
Dynamic Market	<p>a list of Suppliers who have met the published Conditions of Membership and are eligible to submit a Tender against a competition let under the market. These markets can be set up to purchase any requirements that a Contracting authority may wish to purchase and require the use of the competitive flexible procedure to award a Contract.</p>
Dynamic Purchasing System (DPS)	<p>A completely electronic system used by a Contracting Authority (buyer) to purchase commonly used goods, works or services. Unlike a traditional framework, Suppliers can apply to join at any time.</p>
E- Tendering System	<p>A system for the end-to-end Tendering process, both Suppliers and buyers submit and respond to Tenders electronically removing the need for paper</p>
Equalities Act	<p>Protects individuals from various forms of discrimination and harassment relating to disability, age, gender, religion / belief, and sexuality.</p>
Estimated Contract Value	<p>Means the value being estimated by a contracting authority for the entire possible scope and duration of the potential Contract Requirements including all options, premiums, fees etc as may become due under the contract.</p>
Excludable Supplier(s)	<p>An Excludable Supplier is a Supplier.</p> <ul style="list-style-type: none"> (a) To whom a discretionary exclusion ground applies, and such exclusion ground circumstances are continuing/ likely to occur again; or (b) They are on the debarment list by virtue of a discretionary exclusion ground. Tenders from excludable Suppliers may be disregarded in any Competitive Tendering Process (s.26(2)) and Contracting Authorities may exclude an Excludable Supplier from participating in a Competitive Flexible Procedure (s.27(1)(b)). <p>The Council may also terminate a Contract with a Supplier who becomes an excluded Supplier after the award of the Contract or where one of their sub-Contractors is an excludable Supplier and they fail to replace them when</p>

TORRIDGE DISTRICT COUNCIL CONTRACT PROCEDURE RULES

Excluded Supplier(s)	<p>An excluded Supplier is a Supplier.</p> <p>(a) To whom a Mandatory Exclusion Ground applies to, and such exclusion ground is continuing/ likely to occur again; or</p> <p>(b) They are on the Debarment List by virtue of a Mandatory Exclusion Ground.</p> <p>Tenders from excluded Suppliers must be disregarded in any competitive Tendering process and Contracting Authorities must exclude an Excluded Supplier from participating in a Competitive Flexible Procedure.</p> <p>Supplier must be removed from a Dynamic Market if it is on the Debarment List by virtue of a Mandatory Exclusion Ground and may be removed if otherwise an Excluded Supplier or an Excludable Supplier.</p> <p>The Council may also terminate a Contract with a Supplier who becomes an Excluded Supplier after the award of the Contract or where one of their Sub-Contractors is an Excluded Supplier and they fail to replace them when</p>
Exempt Contract(s)	<p>The kind of Contract listed in Schedule 2 of the Procurement Act 2023, and for which the rules of the PA23 do not apply.</p>
Framework	<p>An agreement with Suppliers which sets out terms and conditions under which specific purchases can be made throughout the term of the agreement and which has been Tendered in accordance with UK Directives.</p>
Freedom of Information Act	<p>Freedom of Information Act 2000 is an act defining the ways in which the public may obtain access to government-held information.</p>
Financial Procedure Rules (FPRs)	<p>The rules on how Council funds is to be received, spent, and reported, as set out in the Council's Constitution.</p>
Grant Agreements	<p>an agreement by the Council to pay a recipient funding for a specific set of aims and objectives.</p>
Invitation to Tender (ITT)	<p>The document that invites Suppliers to submit a Request to Participate or a Tender in response to a Tender Notice. It must include clear instructions of what is required, a description of the procurement process, the Conditions of Tendering, and the Award Criteria/ Assessment Methodology as a minimum.</p>
Key Performance Indicator (KPIs)	<p>a factor or measure against which a Supplier's performance of a Contract can be assessed during the life cycle of the Contract.</p>
Light Touch Regime	<p>These are Contracts/procurements which cover Health, Social Care, legal and Education related requirements.</p>
Local Government Act 1972	<p>Local Government Act 1972 (legislation.gov.uk)</p>
Local Supplier(s)	<p>A Supplier who has a local presences/ an address with a Torridge District postcode.</p>
Lots	<p>Means splitting the goods, services or works to be supplied into more than one Contract to make them accessible to SME and facilitate effective competition. This is not to be done to circumvent the PA23.</p>

TORRIDGE DISTRICT COUNCIL CONTRACT PROCEDURE RULES

Mandatory Exclusion Grounds	<p>Schedule 6 - Part 1</p> <ul style="list-style-type: none"> (a) Corporate manslaughter or corporate homicide (b) Terrorism (c) Theft, fraud, bribery, etc (d) Labour market, slavery, and trafficking offences (e) Organised crime (f) Tax offences. (g) Cartel offences (h) Ancillary offences Schedule 6 - Part (i) National Security (j) Tax Misconduct, (k) Competition Law Infringements, Or the equivalent for conduct outside the UK (l) Failure To Cooperate with An Investigation
MAT	<p>Most Advantageous Tender – Is the Tender that the Council considers—</p> <ul style="list-style-type: none"> a) Satisfies the Council’s requirements, and b) Best satisfies the Award Criteria when assessed against them
National Procurement Policy Statement	<p>[Withdrawn] National Procurement Policy Statement - GOV.UK (www.gov.uk)</p>
Negotiation	<p>Means a discussion between the Council and a Supplier with a view to improving the content of Tenders</p>
Operational Management Team (OMT)	<p>As defined in the Constitution</p>
Open Framework	<p>A scheme of Frameworks where the initial Framework is open for 3 years or less, and the subsequent Frameworks cannot last for more than 5 years before it must be re-opened. The maximum overall term being 8 years and how Suppliers are appointed onto the Framework will depend on how the Open Framework is established.</p>
Open Procedure	<p>This is a single stage procedure where any interested Supplier can submit a Tender; and a Supplier’s suitability, capacity and capability and their Tender response are all evaluated together.</p>
Payment Compliance Notice	<p>Means a bi-annual notice that sets out the timescales in which the Council has made payments against Public Contracts, and its performance against the requirement to pay valid invoices within 30 days (or less).</p>
Performance Bond	<p>A performance bond is issued to by a Supplier to the Council as a guarantee against the failure of the other party to meet the obligations of the Contract. A performance bond is usually issued by a bank or an insurance company.</p>
Preliminary Market Engagement	<p>Analysis of the market prior to formal Tender This can be used for the purpose of—</p> <ul style="list-style-type: none"> (a) developing the authority’s requirements and approach to the procurement. (b) designing a procedure, Conditions of Participation or Award Criteria. (c) preparing the Tender notice and Associated Tender Documents.

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	<ul style="list-style-type: none"> (d) identifying Suppliers that may be able to supply the goods, services or works required. (e) identifying likely Contractual terms. (f) building capacity among Suppliers in relation to the Contract being awarded.
Preliminary Market Engagement Notice	Means a notice setting out that the Council intends to conduct, or has conducted, Preliminary Market Engagement,
Procurement	Means the process by which the Councils identifies and purchases goods, services and works.
Procurement Legislation Guidance	Means the guidance issued by the Cabinet Office that is to be considered in the development and delivery of the procurement process. Procurement Act 2023 - Guidance documents - GOV.UK (www.gov.uk) Procurement policy notes - GOV.UK (www.gov.uk)
Procurement Objectives	<ul style="list-style-type: none"> (a) Value for Money (b) Sharing information (c) Public Benefit (d) Acting with integrity (e) Removing barriers to SMEs (f) Equal treatment
Procurement Strategy	The document setting out the Council's approach to procurement and key priorities for the next few years
Procurement Thresholds	the values that determine which route to market to use
Public Contract(s)	All Contract Values which are Covered Procurement (above threshold) under the Relevant Procurement Legislation (this value to be inclusive of VAT)
Public Services (Social Value) Act 2012	Act places a requirement on procurers to consider the economic, environmental, and social benefits. Please refer to the Corporate Social Value Policy and toolkit
Quotation	The provision of a price to deliver the Council's requirements without the conduct of a formal procurement process.
(Regulated/ Notifiable) Below Threshold Contract Detail Notice(s)	Means a notice detailing that a Below Threshold Procurement has resulted in the Council entering into a contract with a value in excess of £30k inc. VAT.
(Regulated/ Notifiable) Below Threshold Procurement(s)	A procurement which is below the Covered Procurement threshold and not exempt from the PA23. PPN-11_23-New-Thresholds.pdf (publishing.service.gov.uk) These values apply for 2024 and 2025.
(Regulated/ Notifiable) Below Threshold Tender Notice(s)	Means an advert inviting tenders from Suppliers where the Contract value is below that of a Covered Procurement
Regulated Below Threshold Procurements Goods, Services or Works	Means a contract with a value less than that of a covered procurement but to which Part 6 of the Procurement Act 2023 applies; specifically, the requirement to publish notices, procedural rules (for Goods and Services this means a single stage process and for Works, this includes an option for a two stage process), implied payment terms and a duty to consider SMEs

TORRIDGE DISTRICT COUNCIL CONTRACT PROCEDURE RULES

Relevant Contract	Contracts to which the Contract Procedure Rules apply
Relevant Procurement Legislation	Public Contracts Regulations 2015 (PCR15) or Concession Contracts Regulations 2016 (CCR16) – the legislation that applies to Contracts let under one of these regimes where the Contract continues to be used/ delivers post 24th February 2025 Procurement Act 2023 (PA23), Procurement Regulations 2024 (PR24)– for Contract that are to be or were procured post 24th February 2025 Provider Services Regime 2023 (PSR23) where the procurement relates to
Sensitive Commercial Information	Means information which. (a) Constitutes a trade secret, or (b) Would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.
Scheme of Delegation	The rules as to who has the authority to make which decisions, as set out in the council's constitution.
Site Visit	Means a visit to an office, or project location to aid a Supplier in understanding the Contract requirements/ Specification and to aid in putting in an effective and compliant Tender.
Specification	Means the document that sets out the Councils specific requirements for a specific contract/ project.
SME	Small to Medium Enterprise – fewer than 250 employees; and annual turnover not exceeding approximately £50 million
SMT	Senior Management Team
Social Value Policy	Council's Social Value Policy for use in procurements over the value of £50,000 with a minimum weighting of 10%
Standstill Period	Means period of eight working days commencing on the day that the Contract Award Notice was published on the Central Digital Platform. Mandatory for all Covered Procurement other than for the following exception, for which a Voluntary Standstill Period of eight working days may still be applied. <ul style="list-style-type: none"> ▪ Direct Award under sections 41 or 43 ▪ Award under a Framework. ▪ Award by reference to a Dynamic Market
Supplier(s)	Means all or any of economic operators, tenderers, bidders, contractors (or subcontractors) supplying goods, services or works to the Council
Tender(s)	Means the response against which a Contract may be awarded
Tender Notices	Regulated Below Threshold Tender Notice - A call for competition (advert) where a Below Threshold Contract which is published on the Central Digital Platform/ FTS. Tender Notice (separate forms for Open Procedure, Competitive Flexible Procedure, Frameworks and Dynamic Markets) - A call for competition (advert) for a Public Contract which is published on the Central Digital Platform/ FTS.
Transparency Notice	Means a notice setting out that the Council intends to award a contract directly to a Supplier

TORRIDGE DISTRICT COUNCIL CONTRACT PROCEDURE RULES

Thresholds	PPN-11_23-New-Thresholds.pdf (publishing.service.gov.uk) The values which determine the procurement process that is required.
Utilities Contracts	a Contract for the supply of goods, services or works wholly or mainly for the purpose of a utility activity. (Gas, electric, Water)
Value for Money	Means the balance of quality and price deemed representative of the Most Advantageous Tender

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Appendix 1

Appraise	Define	Consider	Consult	Approve
<ul style="list-style-type: none"> •Appraising the need for the expenditure and its priority 	<ul style="list-style-type: none"> •Defining the objectives of the purchase 	<ul style="list-style-type: none"> •Considering what procurement method is most likely to achieve the purchasing objective; including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority or public sector purchasing consortium 	<ul style="list-style-type: none"> •Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring 	<ul style="list-style-type: none"> •Ensuring there is member or delegated approval for the expenditure and purchase accords with the approved policy framework and scheme of delegation as set out in the constitution

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Appendix 2 Notices to publish under Procurement Act 2023

Pre-procurement stage notices

Compulsory Notice

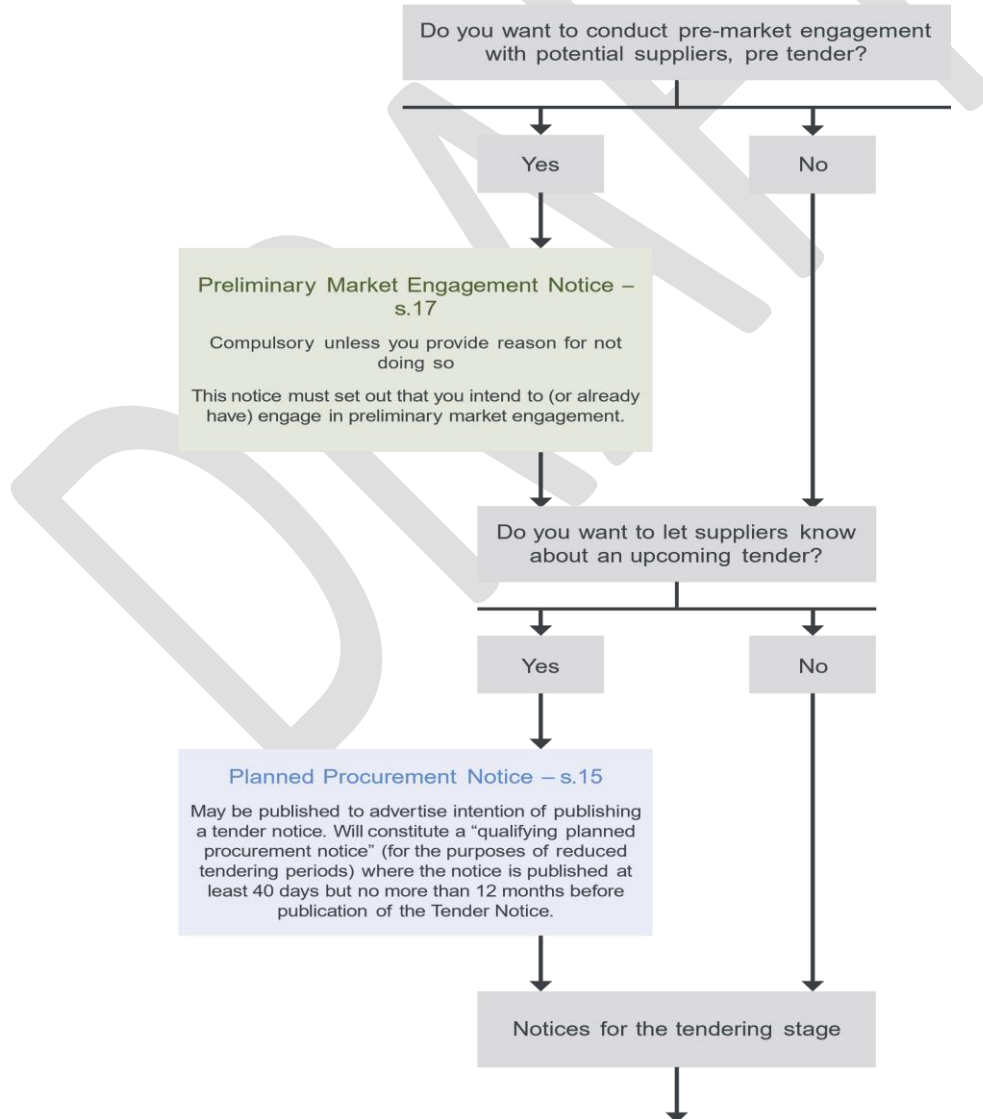
Voluntary Notice

Compulsory in specified circumstances

Pipeline Notice – s.93

Compulsory where you consider that you will pay more than £100 million under relevant contracts in the coming financial year. **(not relevant to TDC)**

Within 56 days of the start of the new financial year, this notice must be published, setting out specified information about any public contract with an estimated value of more than £2 million, in respect of which you intend to publish a tender notice or transparency notice during the reporting period.

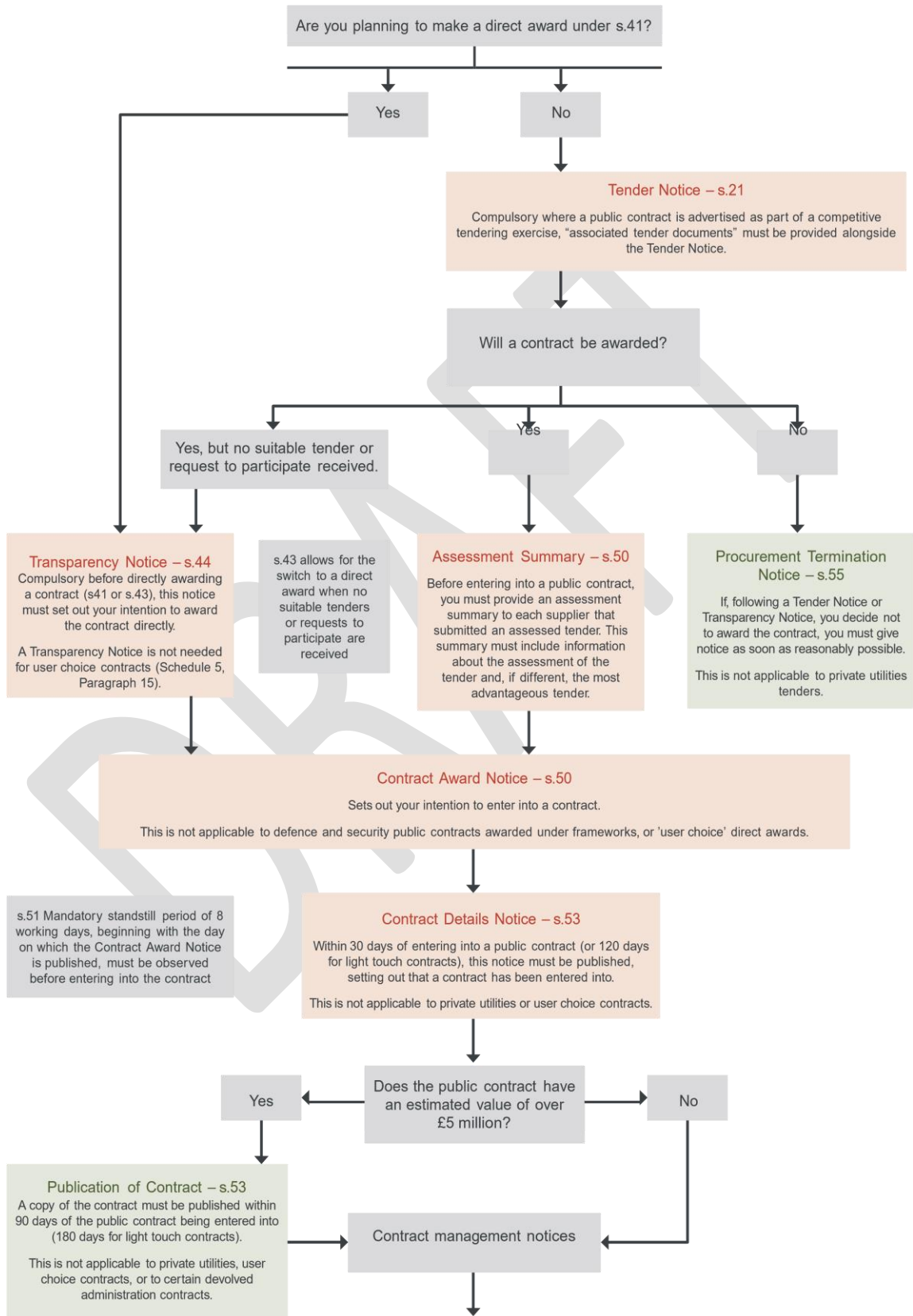


Notices for the tendering stage

Compulsory Notice

Voluntary Notice

Compulsory in specified circumstances

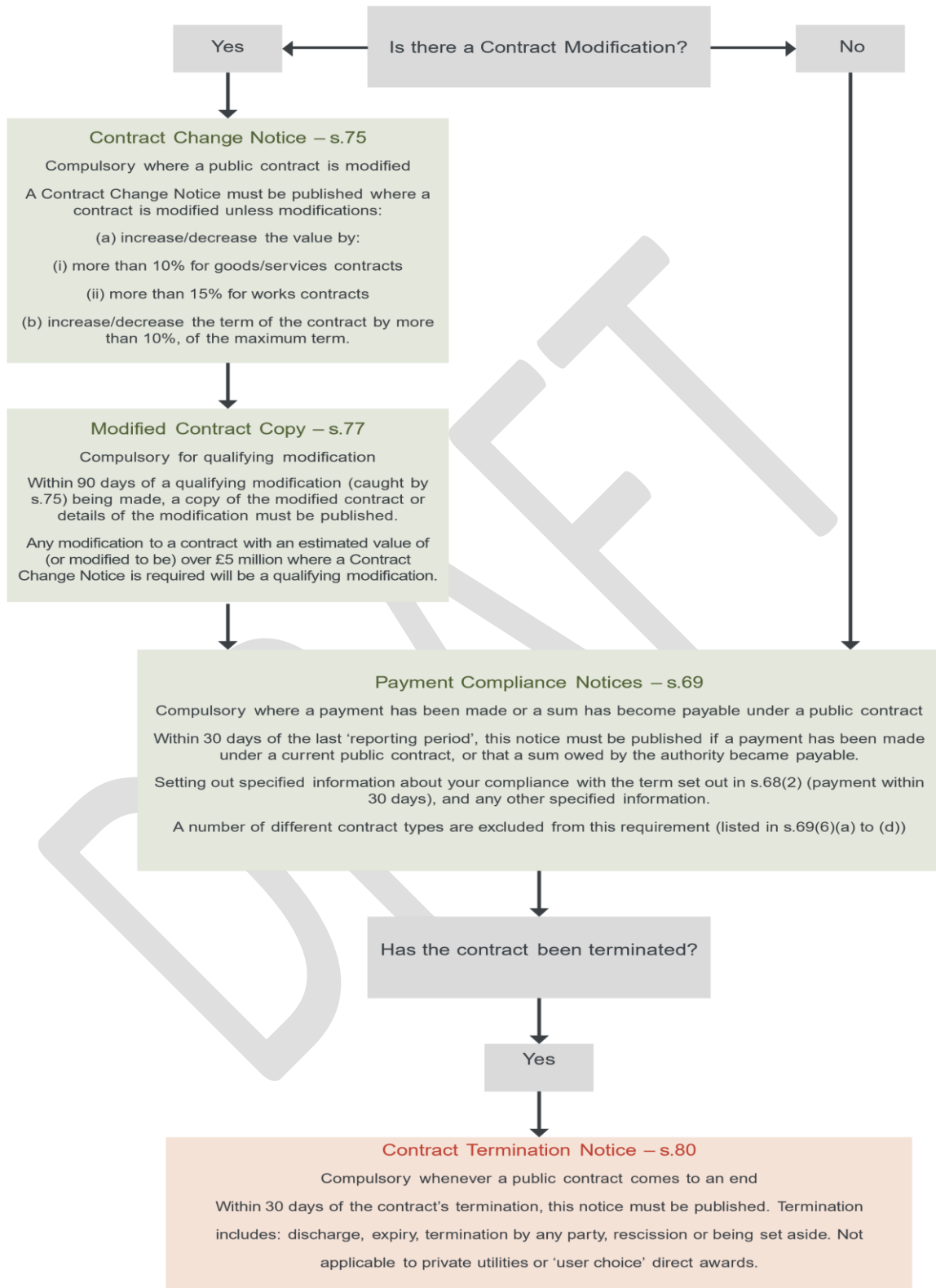


Contract management notices

Compulsory Notice

Voluntary Notice

Compulsory in specified circumstances



TORRIDGE DISTRICT COUNCIL CONTRACT PROCEDURE RULES

For “notifiable below-threshold contracts”

