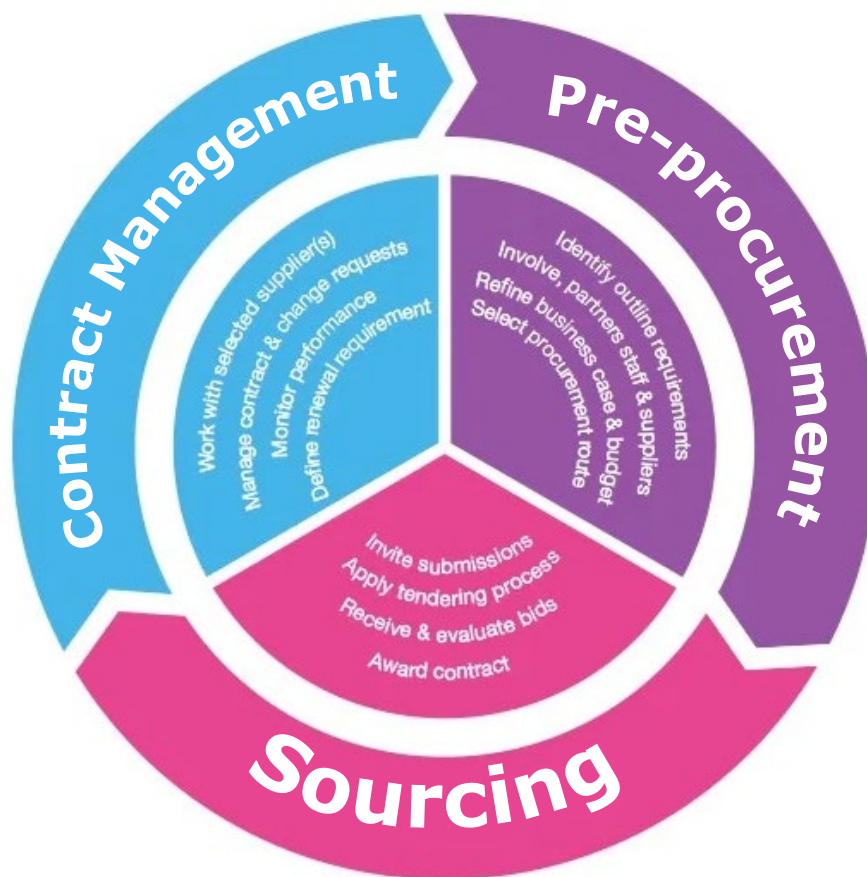


# WARWICK DISTRICT COUNCIL

## Code of Procurement Practice (The Code)

The Procurement Act 2023 (PA2023) defines 'Procurement' as 'any step taken for the purpose of obtaining, entering into or managing a contract'. Procurement is therefore any activity undertaken by the Council following its identification of the need for a third party deliver goods, works or services, to the point that party is no longer needed – 'the Procurement Cycle'.



The 'Code' should be read in conjunction with the Council's 'Code of Financial Practice', the Council's Procurement Strategy and the following Council specific policies and documents:

- Responsible Sourcing policy
- Equality in Procurement Policy
- Corporate Social Responsibility (CSR) Statement
- SME Procurement Policy
- Social Value Policy
- Contract Management Framework

legally compliant as well as meeting its obligations and objectives as a public body. It also covers how the Council will dispose of surplus assets and sell services to other organisations. It sets out the minimum requirements for Council Officers and Members when undertaking a procurement project and promotes the use of best practice processes and procedures, where it is proportionate and beneficial to do so.

This 'Code' is not intended to be a detailed set of instructions on how to undertake procurement activities. More detailed guidance on procurement activity processes is available on the Council's Intranet.

The Code has the following legislative and corporate objectives:

- To deliver Value for Money – A proportionate, cost effective, and efficient route of procurement and the delivery of the service or goods procured.
- Demonstrate integrity to ensure the highest standards of probity.
- To ensure that the Council complies with all legal requirements including its obligations under the Local Government Act 1999 to seek continuous improvement in the services it provides.
- Treat suppliers the same and do not put a supplier at an unfair advantage or disadvantage.
- To ensure that risks are managed to protect against any allegation of acting without due diligence, unfairly or unlawfully.
- Sharing information to ensure openness, fairness and transparency.
- Maximise public benefit through delivering Social Value through contracts.
- Have regard to Small, Medium Enterprises (SMEs).
- To support the Council's Corporate Strategy aims, objectives and policies.

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# SECTION ONE

## 1. Scope & Purpose

This Code aims to promote good procurement practice, public accountability, deter corruption and provide protection against allegations of impropriety.

## 2. Legal framework

- 2.1 The Public contract regulations 2015 (PCR2015) will be superseded by the Procurement Act 2023 (PA2023) and the Procurement Regulations 2024 (PR2024) as of the 'switch over date' set by the Cabinet Office.
- 2.2 The period of transition from PCR2015 to PA2023 & PR2024 will proceed as follows:
  1. All contracts awarded prior to the switch over date will be subject to PCR2015 until contract termination.
  2. All contracts that have already had a contract notice or VEAT notice issued prior to the switch over date will be subject to PCR2015 until contract end. Any contract that issues a tender notice (formerly contract notice) or transparency notice (formerly a VEAT notices) after the switch over date will be subject to PA2023 & PR2024.
  3. All contracts called-off from a framework agreement (Section 2.6) initiated before the switch over date, will be subject to PCR2015, even if the call off occurs after the switch over date.
  4. All contracts awarded using a Dynamic Purchasing System (DPS) framework launched before the switch over date, and will be subject to PCR2015, even if the call off occurs after the switch over date. All DPS frameworks and associated contracts call-offs must end by 2 years following the 'switch over date'.

## 3. Covered by this Code

- 3.1 All procurement projects undertaken by, or on behalf of the Council including where the Council is acting on behalf of other bodies. A relevant procurement for the purposes of this Code is any arrangement made by, or on behalf of, the Council for the carrying out of works, the supply of goods or services, the disposal of assets or the selling of Council services to other organisations. This includes contracts let as a 'Concession'.
- 3.2 All procurement projects undertaken by, or on behalf of the Council irrespective of the method of funding e.g. capital, revenue, sponsorship,

donations or grants from a third party, unless excluded under Section 2, point 5.2.

- 3.3 All Officers of the Council including any temporary employees, agents and/or consultants etc. undertaking procurement on the Council's behalf.
- 3.4 All Members of the Council.

#### **4. Exclusions from this Code**

- 4.1 Contracts of employment which make an individual a direct employee of the Council.
- 4.2 Agreements for the leasing or acquisition of buildings (excluding room or hall rental) or land.
- 4.3 Agreements for the disposal or transfer of land unless the Council exerts significant influence over what the land is used for.
- 3.4 Loans to banks or other financial institutions and investments made in accordance with the Council's Code of Financial Practice.

#### **5. Non-Compliance with this Code**

- 5.1 Any case of non-compliance with this Code must be reported immediately to the Section 151 Officer and/or Monitoring Officer. Where the non-compliance results in identifiable additional cost to the Council or where the non-compliance places the Council under an identifiable increase in risk exposure, or generally where the Strategic Procurement & Creditors Manager considers the non-compliance to be significant; a report will be submitted to the next meeting of the Senior Leadership Team then the Cabinet.
- 5.2 Failure to comply with this Code may result in further action in accordance with the Employee Code of Conduct or the Member Code of Conduct.

#### **6. Guiding Principles**

- 6.1 All contracts above £25,000 must be let through a competitive process as per PA2023 and meet the requirements of this Code, unless an exemption request has been appropriately approved or the arrangement is otherwise permitted by this Code.
- 6.2 The following are excluded from the requirement for competition:
  - i. Purchases deemed exempt under PA2023, schedule 2. However, a Transparency Notice must be published in accordance with PA2023.
  - ii. Purchases made via a catalogue or framework agreement owned and

managed by a purchasing consortium that is recognised as or led by a 'contracting authority'. Purchases are subject to the competition requirements associated with each individual framework agreement. Framework agreements must be accessible to the Council and have been let in accordance with the requirements of the PA2023.

- iii. Contracts entered into through joint working with other public bodies, where a competitive process has been followed, in compliance with the Code of Procurement Practice or equivalent document of the lead organisation, provided that the collaborator has let their contract in accordance with the PA2023 and PR2024 on behalf of the Council.
  - iv. Purchases under Light Touch Contracts as defined under PA2023, that are below the Goods and Services UK threshold and are deemed unsuitable for a competitive approach by the Procurement Team.
  - v. Subscription services below the Goods and Service UK threshold that are reviewed on an annual basis.
  - vi. Membership arrangements in which the Council becomes a member organisation to the contracting body and gains access to contractual arrangements specifically let for the benefit of member organisations.
  - vii. Collaborative proposals for joint working or shared services with other public bodies. Where the aggregate contract value of the joint-working or shared services arrangement is expected to exceed the relevant UK threshold, the following conditions must be satisfied: -
    - o The principal activity of the collaborative arrangement is the provision of services back to the participating bodies;
    - o The collaborating public bodies when acting together exercise the same kind of control over the service as they would over an in-house service; and
    - o There is no independent or private sector partner involved in the collaborative arrangement.
- 6.3 All procurements will be classified as Bronze, Silver or Gold in accordance with the Public Sector classification tool (©Government Commercial Function Office). Classification is based on an evaluation of project/contract value, complexity and risk; and determines the level of resource and activities needed for contract management.
- 6.4 For all Procurements Projects valued at over £25,000 excl. VAT, a Procurement Project Initiation Document (PPID) must be completed and have appropriate approvals prior to the commencement of a sourcing activity to appoint a supplier. For Procurement Projects above the UK

- threshold for Goods and Services, approval by Cabinet will be required.
- 6.5 Adequate staff resources should be identified to undertake the entire procurement cycle, including planning and any subsequent contracts awarded. This information should be recorded within the PPID.
  - 6.6 Any contract which exceeds the relevant threshold set by the UK Government must comply with any legal requirements in the Public Contract Regulations 2015, or the Procurement Act 2023 and Procurement Regulations 2024 as per the Legal framework set out in Section One, point 2 of this Code.
  - 6.7 Procurement should be undertaken using electronic procurement systems unless otherwise agreed by the Strategic Procurement & Creditors Manager. Only approved electronic procurement systems should be used, and advice should be sought from the Strategic Procurement & Creditors Manager on their use. The use of electronic procurement systems does not negate the requirement to comply with all other elements of this Code.
  - 6.8 Comprehensive and robust records of all stages of the procurement must be maintained which support the decision to award a contract.
  - 6.9 Contracts will be awarded based on the most advantageous offer to the Council (MAT). In appropriate circumstances the lowest price (for purchases) or the highest price (for disposals) alone may be considered the most advantageous solution for the Council. Where it is considered that lowest price (for purchases) is in the best interests of the Council, advice should be sought from the Procurement Team prior to quotation/tender documents being issued.
  - 6.10 Contracts should be issued using electronic signing systems for both Under-hand and sealed contracts, unless otherwise agreed by Legal Services. Only approved electronic signing systems should be used, and advice should be sought from the Procurement Services and/or Legal Services on their use.
  - 6.11 All procurement must be appropriately authorised before a procurement process commences, and a contract is awarded.
  - 6.12 Sufficient budget must be available to cover the procurement project (including any associated costs such as professional support) and to cover the expected life and disposal of the contract.
  - 6.13 All contracts must include appropriate terms and conditions that are acceptable to the Council. Any deviations from the Council's acceptable terms must be agreed with Legal Services. Any deviations

that result in an increase in risk to the Council, must be approved by the Monitoring Officer, in consultation with the Audit & Risk Manager.

6.14 All Contracts, irrespective of value, shall clearly specify:

- What is to be supplied i.e. the specification
- The commercial response, including agreed price, quality, delivery deadlines,
- Appropriate performance information or key performance indicators (KPIs) or alternative performance monitoring methods to enable the effective management of contract performance.
- Social Value commitments including appropriate measures for ensuring these commitments are met, if above £50,000.
- Appropriate provision for contract 'change controls' and termination

## **7. Responsibilities**

7.1 Unless specifically excluded by this Code, anyone undertaking a procurement activity on behalf of the Council must comply with this Code, the Code of Financial Practice and with all legal requirements. They must also comply with any other Codes of Practice, guidance or instructions relating to procurement activity issued by the Strategic Procurement & Creditors Manager.

A high standard of ethical conduct is expected in public office and any conduct which is contrary to this is not acceptable. Anyone undertaking procurement activities on behalf of the Council must comply with the Council's Employee or Member Code of Conduct and for example must not invite or accept any gift or reward that may be perceived as compensation for the award of or performance of a contract. Gifts and Hospitality should only be accepted in accordance with the Council's Gifts and Hospitality policy and it will be for the individual to show that anything received was not received with the purpose of influencing the relationship or decision of the individual.

7.2 **Senior Leadership Team (SLT)** must in relation to their Service areas:

- Declare any potential conflict of interest to the Strategic Procurement & Creditors Manager and the Monitoring Officer;
- Be responsible for all procurement activity undertaken within their service;
- Ensure all Officers comply with this Code;
- Ensure that any Officer undertaking procurement is sufficiently skilled and competent and completes any required learning and development;
- Ensure that adequate time and resources are available for undertaking procurement activities;

- Ensure that all procurement and delegated decision-making is within approved budgetary limits and that there are effective systems in place to manage budgets on an on-going basis; this should include whole life costings that may affect other contracts or services;
- Ensure the procurement cycle activities align with Council policy;
- Ensure there are sufficiently resourced and skilled contract management arrangements in place for all awarded contracts;
- Provide any information requested by the Strategic Procurement & Creditors Manager regarding current procurement activities;
- Ensure there is a comprehensive documentary record of all Procurement exercises which will include correspondence/ documentation supporting the final award decision;
- Agree contract variations for their Service area contracts in consultation with the Procurement Service, where required;
- Ensure that in any procurement activity involving the transfer of staff into or out of the Council, that all applicable statutory obligations regarding TUPE are complied with;
- Where a contract involves the transfer of staff between existing and new providers, oversee the TUPE process and ensure that support of outgoing and incoming providers is undertaken to facilitate a smooth transition;
- Ensure that all procurement and delegated decision making is within the Council's Constitution;
- Formally consider within an SLT meeting, as appropriate, where any one of the following apply:
  - an innovative approach to procurement is proposed which is significantly different to current practice and carries greater risk;
  - a proposed procurement is likely to have a significant impact on the Council's workforce;
  - a proposed contract exceeds the approved budget by £10,000 or more, exceeds the time for completion or is incurring significant risks not initially identified
  - the provision of goods or services by the Council to other organisations.
- Agree requests to supply goods or services to other organisations with a value under £10,000;
- Ensure their Service area maintains the Council's contract data within the FMS contracts module, so that the 'Contracts Register' is accurate and compliant (which includes all live contracts with an aggregate value of £5,000 or above);

- Ensure the Procurement team is provided with details of proposed or planned contracts with an anticipated aggregate value of £25,000 or above.
- The Chief Executive, Deputy Chief Executive, or Programme Director for Climate Change will agree requests for Exemptions to this 'Code', up to the UK Goods and Services threshold.

7.3 The **Section 151 and Monitoring Officers** shall:

- Consider any declarations of interest (either as part of a procurement project or within the register of interests) and determine whether the individual making the declaration can continue to be involved in the procurement process or contract award;
- Escalate any high-risk potential conflict of interest to the Chief Executive;
- Agree requests for Exemptions to this 'Code' up to the value of £100,000, providing budget is agreed;
- Approve all Procurement Project Initiation Documents (PPIDs) to ensure financial and legal compliance;
- Nominate other officers to exercise all or part of these powers on their behalf.

7.4 The **Strategic Procurement & Creditors Manager** shall:

- Maintain a record of Conflict of Interest declarations and escalate declared conflicts of interest to the Section 151 and Monitoring Officers;
- Maintain the Code of Procurement Practice and all supporting procurement related policies and guidance;
- Provide appropriate professional advice, guidance, training and support to Officers and Members on all procurement related matters;
- Report all agreed requests for exemptions to this 'Code' to the Cabinet;
- Approve PPIDs above the UK Goods and Services threshold, and ensure they are complete, accurate and are compliant with the Code and PA2023 and PR2024;
- Maintain and publish a procurement pipeline showing all potential procurement opportunities with a total value of £25,000 or above over the forthcoming 18months; and publish a pipeline notice on 'Central Digital Platform' (CDP) within 56 days of the 1 April if the Council total contractual spend exceeds £100m (incl. VAT) per annum.
- Ensure all ICT related procurement projects are approved by ICT Service;
- Nominate other officers to exercise all or part of these powers on their behalf.

7.5 **Officers** shall

- Declare any potential conflict of interest to the Procurement function.

- Comply with the requirements of this Code and observe any guidance or instructions relating to procurement activity issued by the Procurement function
- Ensure that any procurement supports the Council's wider objectives
- Ensure they have all necessary governance approvals before commencing any procurement process or awarding any contract;
- Ensure that a PPID is approved prior to any 'Sourcing' activity commencing; including by Cabinet for all contracts above the UK threshold for Goods and Services.
- Ensure any necessary legal, procurement, finance, HR, ICT, risk management, technical support etc. is identified and engaged in good time;
- Ensure that adequate time and resources are made available for the undertaking all procurement activities
- Ensure that appropriate reporting measures are implemented to enable transparency notices to be published.
- Ensure that suitable and proportionate training has been undertaken to perform relevant procurement responsibilities.
- Escalate to SLT any opportunities to provide services to other organisations.

7.6 **Elected Members** shall:

- Declare any potential conflict of interest in Procurement to the Monitoring Officer and the procurement lead for that activity
- Through effective scrutiny and review via the Procurement Champions, ensure that significant procurement projects stay on track and deliver the Council's business case objectives and wider Council priorities.

7.7 **Cabinet Members** shall:

- Consider PPIDs and accompanying business cases (if referenced) in relation to Council procurement projects above UK threshold for goods and services.
- Agree requests for Exemptions to this 'Code' with a value exceeding the UK goods and services threshold, as long as it does not contravene PA2023 and PR2024.
- Agree requests to supply of goods or services to other organisations with a value of £10,000 and above.
- Agree the disposal of assets, excluding buildings and land, expected to be worth £20,000 and above.
- Consider reports relating to procurement and contracting submitted by the Strategic Procurement & Creditors Manager

## **8 Reserved Contracts**

- 8.5 A contract can be reserved for a specified supplier or supplier type if:
- 8.5.1 The supplier is a supported employment provider which wholly or partly operates to provide employment for or in support of disabled or disadvantaged people.
  - 8.5.2 A group of multiple organisations collaborating to form an employment programme wholly or partly for the purpose of providing employment to or in support of disabled or disadvantaged people.
  - 8.5.3 Below threshold Light Touch Contracts for the provision of temporary accommodation or facilities, can be reserved for suppliers with a physical presence within the borders of Warwick district.

## **9 Exemptions from this 'Code'**

- 9.5 Any requirement of this 'Code' may be waived with the consent of the Section 151 and Monitoring Officers, and where required, the Cabinet subject to any legal constraints.
- 9.6 Requesting an Exemption from this 'Code'
- 9.6.1 All requests for an exemption must be submitted on the Exemption Request form and in accordance with the Exemption process.
  - 9.6.2 The Exemption request must clearly set out the reasons for requesting the exemption and include:
    - sufficient justification to support the request,
    - how the proposal complies with any applicable law including a statement of the regulation under which the exemption is being made,
    - evidence to demonstrate that the request achieves best value and supports the Council's objectives,
    - confirmation that an agreed budget is in place.
  - 9.6.3 Where the total contract value is below £100,000, the Section 151 or Monitoring Officer may agree the exemption.
  - 9.6.4 Where the total contract value is £100,000 up to below UK threshold for Goods and Services, in addition to approval by the Section 151 or Monitoring Officer, approval must also be obtained from the Chief Executive and retrospectively reported to Cabinet.
  - 9.6.5 Where the total contract value is at or above the UK Goods and

Services threshold, the Exemption must be agreed by Cabinet, prior to any commitment being made to the supplier or any contract being entered into.

9.7 Obtaining an Exemption in an Emergency Situation:

- 9.7.1 Where an exemption is necessary because of an unforeseeable emergency, in accordance with the definition provided with the PA2023, and involves immediate risk to persons, property or serious disruption to Council services the Senior Leadership Team member may make all necessary and reasonable arrangements to manage the emergency. Full details must be reported to the Strategic Procurement & Creditors Manager as soon as practicable following the event.
- 9.7.2 Any contract entered under the emergency provisions should be for the minimum duration required to remove the immediate risk to persons or property or to reduce the disruption to Council services to a manageable level.
- 9.7.3 Any contract awarded under the Emergency Exemption provisions must not be extended beyond a maximum 6-month initial term without the prior approval of Cabinet.
- 9.7.4 Any contract entered under the emergency provision must be reported to the Cabinet at the next available opportunity.

## SECTION TWO

### PROCUREMENT PROCESS

The Council has 4 different thresholds for procurement as detailed in the table below. Section 2 sets out in more detail the requirements when dealing with a specific procurement. Further guidance is available via the Intranet.

<b>Procurement Type</b>	<b>Estimated Contract Value (Excl. VAT)</b>
1	£1 - £24,999
2	£25,000 to £49,999 threshold
3	£50,000 up to UK Goods and Services threshold (Note – this includes Works contracts even though the thresholds for Works contracts is higher than this threshold)
4	UK Goods and Services threshold and above (Note – this includes Light Touch Contracts even though the thresholds for Light Touch Contracts is higher than this threshold)
5	Framework call off

#### **1. Pre-Procurement**

1.1 Before commencing a procurement project, Officers must:

- Assess and challenge the need for the expenditure;
- Define the objectives of the procurement and identify out of scope requirements;
- Review any legal implications and considerations e.g. Data protection, insurance, risk, grants;
- Review the relevant supply market to understand competition, availability, innovations, costs; as per the information within Preliminary Market Engagement of this document;
- Identify the appropriate contract length, including breaks, extensions and milestones;
- Calculate and verify an estimated Total Value of the contract, including extensions;
- All Procurement Projects, both anticipated and agreed, must be added to the

Councils Procurement project pipeline;

- The Council's Procurement Pipeline will be published quarterly on the Council's website;
- If the Council's contract spend equals or exceeds £100m incl. VAT per annum, a Pipeline notice must be published on the CDP within 56 days of 1<sup>st</sup> April.

## **2 Procurement Planning**

2.1 Once a procurement project has received appropriate approvals to commence, Officers must:

- Ensure that appropriate measures are taken to consider and account for Micro SMEs, SMEs and Voluntary Community Sector Enterprises (VCSEs) participation;
- Ensure there is sufficient budget available which covers the whole-life financial commitment being made (including any consultant's or other external charges or fees);
- Ensure the Council's requirements for IT system security and data security (GDPR) are satisfied where appropriate;
- Ensure that relevant regulatory requirements are considered and accounted for;
- Ensure any necessary subject matter experts e.g. legal, procurement, finance, HR, ICT, risk management, technical support etc. are identified and engaged;
- Agree the type and form of contract to be used and the terms and conditions that are to apply to the proposed contract;
- Consider the need for a performance bond and/or parent company guarantee;
- Ensure resources with the necessary skills and capacity to undertake the full procurement cycle are identified and allocated, including resources to collect and relay to Procurement Services information for mandated legal notices;
- For procurements of £25,000 excl. VAT and above, this information must be captured within the Procurement Project initiation Document (PPID).

2.2 For all procurement projects above the applicable UK threshold for Goods and Services (this includes any projects for 'Works' or projects covered under PA2023 as a 'Light Touch Contract') Officers must in addition to Section 2 point 2.1: -

2.2.1 Comply with any legal requirements in the Public Contract

Regulations 2015 or Procurement Act 2023 and Procurement Regulations 2024 in accordance with the Legal framework set out in Section One, point 2 of this Code.

- 2.2.2 Comply with the Council's Procurement Commissioning Gateway Procedures
  - 2.2.3 Consider any contract management information, KPIs and lessons learned from the previous contract where this exists.
  - 2.2.4 Consult with internal and external stakeholders (including users and, the supply market (in accordance with Section 2 point 5 of this Code) where appropriate
  - 2.2.5 Consider how through the procurement, improvements to the economic, social, environmental and ethical wellbeing of the area might be achieved, in accordance with the Council's Corporate Social Responsibility (CSR) statement and Social Value Policy. Social Value)
  - 2.2.6 Carry out an options appraisal to decide the best way to achieve the Council's objectives, including internal or external sourcing, partnering, collaborative procurement with another contracting authority, recycling, reuse etc.
  - 2.2.7 Produce a business case and have this approved by a member of the Senior Leadership Team
  - 2.2.8 Assess the potential risks and how to manage them
  - 2.2.9 Consider required governance and reporting resources to meet transparency obligations for contract management.
  - 2.2.10 Ensure that the Procurement project is added to the Procurement update cabinet report for approval to proceed.
- 2.3 All contracts or purchase orders issued by the Council shall:
- 2.3.1 Be evidenced in writing;
  - 2.3.2 Refer to a contract reference number and/or contain a purchase order number;
  - 2.3.3 Include appropriate Terms and Conditions;
  - 2.3.4 Support the Council's Corporate Strategy priorities and policy objectives; and
  - 2.3.5 Endeavour to fulfil the priorities of the National Procurement Policy Statement (NPPS) excluding contracts awarded via framework call off or Dynamic market contracts, which may be updated from time to time.
  - 2.3.6 Include a requirement for the supplier to comply with all

relevant statutory requirements

2.3.7 Include a requirement for the supplier to notify the Council of any actual, potential or perceived conflicts of interest for the duration of the contract.

### **3 Covered Procurement publication requirements**

3.1 For all 'covered procurements' (procurement projects above the UK Goods and Services threshold), if it is deemed appropriate to do so, a Planned Procurement Notice can be published on the CDP to alert suppliers to an upcoming procurement project.

### **4 Debarment List**

- 4.1 The debarment regime enables Ministers to put suppliers on a published debarment list.
- 4.2 Inclusion on the list means that the supplier's past behaviour or circumstances mean that it is not, or may not be, allowed to participate in covered procurements or be awarded public contracts.
- 4.3 The Debarment List should be checked prior to any purchase or contract award.
- 4.4 Purchases and contract awards cannot not be made to a supplier that appears on the Debarment List.
- 4.5 For active contracts, the Debarment List should be checked periodically to ascertain whether the contracted supplier has been added to the List. Should a contracted supplier be added to the Debarment List during their contract term, the Council should take all reasonable steps to terminate and relet the contract as quickly as possible.

### **5 Conflicts of Interest**

- 5.1 The Council is obligated to identify, mitigate and review Conflicts of Interest from the moment a Procurement Project is initiated until the resulting contract is terminated. Officers and Members must declare any actual, potential or inferable direct or indirect conflicts of interest. This may take the form of:
  - 5.1.1 Evaluator Conflicts of Interest declaration form;
  - 5.1.2 'Conflicts of Interest assessment' form for Procurement Projects above the UK Goods and Services threshold; and/or
  - 5.1.3 Declaration under the officer or member codes of conduct relevant to the procurement project they are directly involved in.

- 5.2 Failure to declare any potential conflict of interest may lead to further action.
- 5.3 Any Officer or Member who has an actual, potential or inferable direct or indirect interest in any procurement project and contract must declare their interest when it arises at any point during a Procurement cycle by notifying in writing to the Procurement Team who will escalate any concerns to the Strategic Procurement & Creditors Manager. The Strategic Procurement & Creditors Manager will then make a recommendation to the Section 151 and Monitoring Officers about whether the Officer or Member should or should not remain involved in the procurement or proposed contract. The Section 151 and Monitoring Officers (or the Chief Executive if either are subject to a Conflict of Interest in themselves) will make the final decision as to whether a conflict of interest will result in an Officer or Member being removed from the Procurement project or contract.
- 5.4 The Section 151 and Monitoring Officers, having due regard to any recommendation in 5.2 and in relation to Officers and Members, ensure the availability of sufficiently skilled staff to undertake the evaluation of bids prior to the commencement of a Procurement Project and throughout in response to any highlighted conflicts of interest that may result in the exclusion of an individual from being involved in the project.
- 5.5 For procurement projects and contracts classified as Gold or Silver, a Conflicts of Interest assessment form must be completed and maintained for the duration of the procurement project. For procurement projects and contracts above the UK Goods and Services threshold, recognition of this form must be included within the following legal notices on the CDP: Tender notice, Transparency notice or Dynamic Market notice, Contracts details notice, Contracts change notice.

## **6 Contract Value**

- 6.3 The procurement procedure will usually be determined by the estimated aggregate value of the contract, although the project classification may also impact on the procedure recommended. The aggregate value of the contract is calculated as follows:
- 6.3.1 For long term arrangements, the initial term of the contract plus any extension periods multiplied by the annual contract value.
- 6.3.2 For one off requirements, the available agreed budget that has been based on a genuine estimate of contractual spend.

- 6.3.3 For concession contracts, the est. turnover value to the supplier (concessionaire) generated over the course of the contract.
- 6.4 Contract values must not be distorted or disaggregated in order to avoid the requirements of PA2023 and PR2024, this Code and/or to prevent the use of an optimum Sourcing process.
- 6.5 Where the estimated aggregate value of the contract exceeds the relevant UK threshold, a UK compliant procurement process should be undertaken

## **7 Use of Existing Council Contracts**

- 7.1 Before commencing a procurement process and/or seeking to let a new contract, Officers must check whether the Council already has a suitable contract in place which could satisfy the requirement. Where a suitable contract exists, that contract should be used unless agreed otherwise by the Contract Owner and the Procurement Team.

## **8 Preliminary Market Engagement and Consultation**

- 8.1 Officers may consult potential suppliers prior to the issue of an Invitation to Quote/Tender about the nature, level and standard of the supply, contract packaging and other relevant matters. Records must be kept of this consultation.
- 8.2 Officers must not, once any consultation period under 8.1 has ended seek or accept technical advice on the preparation of the actual Invitation to Quote/Tender from anyone who may have a commercial interest in bidding for the contract as this may prejudice the equal treatment of all potential bidders and distort competition.
- 8.3 For procurements that will be tendered under PA2023 & PR2024, the additional obligations under Section 16 and 17 of PA2023 will apply. Preliminary Market Engagement must take place before the publication of a Tender or Transparency notice and help contracting authorities, and the market prepare for an upcoming procurement. Preliminary Market Engagement:
- includes any and all engagement with suppliers with the aim of using that information to shape a future procurement or contract e.g. soft market testing, market consultations, supplier engagement, formal pre-market engagement, supplier events, informal supplier discussions.
  - must be conducted in a way that does not give a supplier an unfair advantage or distort competition.

- should be used to help level the playing field for competition by removing or mitigating any unfair commercial advantages or competition distortion identified (including incumbents). If the distortion cannot be mitigated, the advantaged supplier must be prevented from tendering.
- must be advertised via a Preliminary Market Engagement notice to encourage new entrants and supplier engagement; or the notice must be used to notify suppliers that it has taken place.

8.4 For all procurement projects above the applicable UK threshold for Goods and Services, a Preliminary Market Engagement Notice should be completed to either, notify the market of a pre-market engagement opportunity, or advise the market of market engagement already undertaken. If this notice is not published, information must be provided as to why in the Tender notice on the CDP.

## **9 Using Frameworks**

9.1 Contracts based on framework agreements may be awarded by either:

- Applying the terms and commercial offering laid down in the framework agreement (where such terms are sufficiently precise to cover the call-off) without reopening competition; or
- Where the terms laid down in the framework agreement or the specification requirements require the re-opening of competition by holding a mini competition, to enable a bespoke commercially suitable tender.

9.2 A mini competition must be run in accordance with the framework's guidance, and the following procedure:

- Inviting all organisations within the framework agreement who are capable of delivering the contract to submit written tenders, unless they have expressed their need to be excluded in writing;
- Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract

## **10 Use of existing External Frameworks**

10.1 Before undertaking sourcing in a procurement project, Officers shall consider whether there is an existing pre-tendered framework agreement available. This may be a framework agreement let by another public body or by a purchasing consortium (e.g. CCS, ESPO, YPO). It may be necessary to

- examine a number of framework agreements to identify the best value solution for the Council.
- 10.2 Existing framework agreements may be used where these have been established by an appropriate contracting authority (as defined under PA2023) and the Council can evidence that they can legitimately and legally access them.
- 10.3 Where the use of an existing framework agreement is identified as the appropriate procurement route, the Officer will, in conjunction with the Procurement Service, agree the appropriate procedure for accessing the framework agreement.
- 10.4 When using an existing framework agreement, Officers must not invite additional suppliers to bid which are not included on the framework agreement.
- 10.5 The use of an existing framework agreement does not remove the requirement to comply with all other elements of this Code or relevant UK law.
- 10.6 Frameworks should be used in accordance with their own guidance and UK as per Section One, point 2.2.2 of the Legal framework within this Code.

## **11 Creating Council Frameworks**

- 11.1 Officers may establish framework agreements for goods, works or services. For any contracts where the aggregate contract value is likely to exceed the relevant UK threshold, the framework agreement must be established in accordance with the requirements of PA2023 and PR2024. Where Services are considering establishing a framework agreement, they must seek advice from the Procurement Service, before commencing the procurement process
- 11.2 For a 'Closed framework', the duration of a framework agreement shall not exceed 4 years except in exceptional circumstances and only with permission from the Strategic Procurement & Creditors Manager and legal services. Single supplier frameworks are permitted; and a maximum number of suppliers to be awarded can be specified.
- 11.3 For an 'Open framework', the duration of a framework agreement shall not exceed 8 years, and as a minimum, must be reopened for competition within and including the initial 3 year term, and every 5 year term following that until the framework expires. A minimum of 2 suppliers is required for a valid 'Open framework'. Should the number of suppliers drop to 1, the framework will revert to a 'Closed framework'. There is no

limit to the number of suppliers awarded to the framework though a maximum number can be specified. There is no limit to the number of times the framework can be reopened for competition.

- 11.4 For a Dynamic Market, there is no maximum duration that the framework can run, or the number of suppliers that can be awarded. No maximum can be applied to the number of suppliers. The framework must always remain open to the addition and removal of suppliers.
- 11.5 For all framework types and Lots (or categories for Dynamic Markets) should be considered to remove barriers to SMEs and VCSEs. Evidence of this consideration should be recorded including reasons for not undertaking Lots if so decided.

## **12 Publication of Council Framework Notices**

- 12.1 For closed and open frameworks, the notices applicable to an above threshold procurement apply.
- 12.2 For Dynamic markets, the following notices will apply:
  - 12.2.1 Dynamic Market intention notice (in place of a Tender notice)
  - 12.2.2 Dynamic Market establishment notice (in place of an Award notice)
  - 12.2.3 Dynamic Market modification notice (in place of a Contract Change notice)
  - 12.2.4 Dynamic Market cessation notice (in place of a Contract Termination notice)

## **13 Awarding Contracts from a Framework**

- 13.1 Contracts awarded by call-off from a Closed framework, cannot exceed 4 years unless otherwise stated within the framework guidance and notices.
- 13.2 For Closed and Open Frameworks, contracts should be awarded to the supplier in accordance with the framework's guidance. This can be via direct award to the most suitable supplier on the basis of the award criteria set out in the framework agreement or price; or by reopening competition.
- 13.3 For Dynamic Markets, contracts can only be awarded through undertaking a competitive procedure in accordance with the framework guidance.
- 13.4 Where the contract value exceeds £5,000 Officers should include details on the awarded contract on the Council's 'Contract Register'
- 13.5 Where the contract value is £25,000 or above, a Contract Award Notice

should be placed on Contracts Finder for frameworks let under PCR2015; and the CDP for frameworks let under PA2023 and PR2024.

13.6 Where the contract value exceeds the relevant UK threshold, Officers should observe a 'standstill period' before finalising the award of the contract.

13.7 Where the contract value exceeds the relevant UK threshold a contract Award Notice should also be placed on the Central Digital Platform (CDP) followed by a Contract Detail Notice.

#### **14 Inviting Quotations (Contract Type 1 and 2)**

All Invitations to Tender shall, as a minimum:

14.1 Be conducted electronically using the Council's approved E-Procurement system or another E-Procurement system approved by the Procurement Service unless agreed otherwise by the Strategic Procurement & Creditors Manager;

14.2 Be issued to at least 3 potential suppliers unless:

- There are not 3 suppliers in the market or
- An individual supplier has been identified and evidenced as the most cost-effective provider.

14.3 Ensure consideration is given to local suppliers, micro SMEs, SMEs and VCSEs, recording evidence of this consideration and reasons for any exclusions.

14.4 Include clear instructions on how and where quotations are to be returned

14.5 Include the date, time and process for the return

14.6 Include appropriate terms and conditions or specified requirements regarding substantial terms.

14.7 Include a clear specification which describes the Council's requirements and expected levels of quality.

14.8 Specify the time limit (if any) for delivery;

14.9 Describe the criteria and process that will be used to evaluate the bids including any question weightings and sub-criteria that apply ensuring that the Council's preference towards 'quality' criteria always has a combined weighting higher than that of financial or 'price' criteria

14.10 Include performance measures to demonstrate that the contract is delivering the required business benefits/outcomes.

14.11 Procurement Projects with an estimated aggregate value below £25,000 excl. VAT are not required to be publicly advertised; however, informal

advertising and engagement is encouraged.

14.12 For Contract Type 2 only:

Procurement Projects with an estimated aggregate value of between £25,000 and £49,999 excl. VAT, must publish a below threshold contract notice if a competitive process is undertaken.

## **15 Inviting to Tenders (Contract Types 3-5)**

All Invitations to Tender shall, as a minimum:

- 15.1 Be conducted electronically using the Council's approved E-Procurement system or another E-Procurement system approved by the Procurement Service unless agreed otherwise by the Head of Finance
- 15.2 Be advertised in accordance with the requirements of this Code
- 15.3 Ensure consideration is given to removing any barriers to local suppliers, SMEs and VCSEs, recording evidence of this consideration and reasons for any exclusions.
- 15.4 Be advertised as an open-competition via the CDP portal: -
- 15.5 Include clear instructions on how and where tenders are to be returned
- 15.6 Include the date, time and process for the return
- 15.7 Include appropriate terms and conditions
- 15.8 Include a clear specification which describes the Council's requirements and expected levels of quality including setting out how any social value can be achieved in line with the Council's policies, such as addressing climate change impacts, sustainability issues or other Corporate Social Responsibilities associated with the contract.
- 15.9 Specify the time limit (if any) for delivery;
- 15.10 Describe the criteria and process that will be used to evaluate the bids including any question weightings and sub-criteria that apply ensuring that the Council's preference towards 'quality' criteria always has a combined weighting higher than that of financial or 'price' criteria
- 15.11 Include 'Corporate Social Responsibility (CSR)' Criteria (including addressing Climate Change) at a combined weighting of 5-15% in addition to the 'quality' criteria, for all tenders over £50,000; or review CSR criteria and inclusion for all framework direct award contracts.
- 15.12 Where relevant, consider whether an assessment of the foreseeable element of 'embedded carbon' contained within any tendered offer should be sought.
- 15.13 Include a robust and proportionate framework for managing the

performance of the contract capable of evidencing that the contract is delivering the required business benefits/outcomes, including performance in relation to carbon emissions. For contracts valued at £5m including VAT, a minimum of 3 KPIs must be specified in accordance with section 52 of PA2023.

- 15.14 Include any supplementary information required by potential bidders to enable them to submit clear and concise bids.
- 15.15 Require the completion and return of a Form of Tender and certificates applicable to the contract.
- 15.16 When establishing a framework agreement, a clearly defined process shall be included outlining how call off contracts are to be awarded see Section 2 Point 9 of this Code
- 15.17 All Procurement Projects with an estimated aggregate value of £25,000 excl. VAT or above must be advertised on the Council's E-Tendering portal and on the CDP.
- 15.18 For Procurement Projects below the relevant UK threshold, a Below-threshold Tender notice should be published.
- 15.19 For Procurement Projects equal to or above the relevant UK threshold, a Tender notice should be published.

## **16 Management of Quotations and Tenders (All Contract Types)**

- 16.1 Bidders must be given an adequate period of time in which to prepare and submit a quotation/tender consistent with the complexity of the procurement. Where the contract value is expected to exceed the applicable UK threshold, the Public Contract Regulations require specific time periods to be observed depending on the procurement procedure being followed.
- 16.2 Providing clarification on any aspect of the quotation/tender to bidders during the bidding period is permitted. All clarification requests should be in writing and therefore Officers must not accept or respond to verbal clarification requests. The clarification questions asked (anonymised to ensure the integrity of the bidders) together with the Council's response must be made available to all bidders.
- 16.3 Officers may extend the deadline for submission of quotations/tenders where it is considered appropriate to do so. Where the deadline for submission of quotations/tenders is extended, all bidders will be notified of the extension and any bidders that have already submitted a quotation/tender shall be given the opportunity to re-submit.
- 16.4 Quotations/Tenders will be submitted by bidders via the Council's approved

E-Tendering portal unless alternative arrangements have been agreed by the Strategic Procurement & Creditors Manager.

- 16.5 No quotation/tender submissions will be available to evaluate until after the quotation/tender deadline has passed.
- 16.6 Late quotations/tenders will not normally be accepted. Officers must obtain the agreement of the Strategic Procurement & Creditors Manager prior to accepting any late quotations/tenders

## **17 Evaluation of Quotations (Contract Type 1 and 2)**

- 17.1 Officers are responsible for ensuring that all bids are suitably assessed. The assessment process shall, as a minimum, establish that all potential bidders have sound economic and financial standing and sufficient technical ability and capacity to fulfil the requirements of the Council
- 17.2 Evaluation of bids must be undertaken in accordance with the evaluation methodology and evaluation criteria described in the quotation/tender document.
- 17.3 Completion of a Procurement Summary form, to be approved by the Procurement Service must be undertaken prior to the award of a contract.

## **18 Evaluation of Tenders (Contract Types 3 - 5)**

- 18.1 Officers are responsible for ensuring that all bids are suitably assessed. The assessment process shall, as a minimum, establish that all potential bidders have sound economic and financial standing and sufficient technical ability and capacity to fulfil the requirements of the Council.
- 18.2 Evaluation of bids must be undertaken in accordance with the evaluation methodology and evaluation criteria described in the quotation/tender document.
- 18.3 Evaluators are required to evaluate bids independently and provide comprehensive comments in support of their evaluation.
- 18.4 Where less than 3 quotations/tenders are returned, the evaluation can still proceed. Prior to awarding any contract in these circumstances, Officers should be confident that the bids received secure best value for the Council.
- 18.5 Where only one quotation/tender has been received, the Head of Service in conjunction with the Procurement Service will agree whether it is appropriate to award a contract or to abort the procurement and consider alternative options.
- 18.6 If the tender evaluation reveals any errors which affect the tender price, the bidder will be provided with the details of the error and given the

option of confirming the price as submitted or withdrawing from the procurement process. If an Officer considers an alternative approach to be in the best interests of the Council, Officers must receive prior approval from the Strategic Procurement & Creditors Manager

- 18.7 Where information is missing from a tender, Officers may clarify the omission with the bidders with the prior agreement of the Procurement Service.
- 18.8 Seeking clarification of a submitted tender whether in writing or by way of a meeting is permitted. However, discussions with bidders after submission of a quotation/tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post tender negotiations) must be the exception rather than the rule. In particular, such negotiations must not be conducted during an above UK threshold tender (other than within the provisions of the Competitive Flexible Procedure) without the prior agreement of the Strategic Procurement & Creditors Manager
- 18.9 If post tender negotiations appear necessary, you should take professional advice on whether negotiations are permissible. Normally such negotiations should be undertaken with all those bidders who have met the selection criteria in the original procurement process. During negotiations, the Council's requirements set out in the original procurement process should not be substantially altered.
- 18.10 Apart from the debriefing required or permitted by this Code, the confidentiality of tenders and the identity of bidders must be preserved at all times and information about one bidder's response must not be given to another during the evaluation process. Notwithstanding this, Officers should be mindful of the Council's duties under the Freedom of Information Act and in some circumstances some disclosure may be required to comply with those

## **19 Procurement Termination**

- 19.1 The Council can choose to terminate a procurement project at any point prior to the acceptance of a tender. Abandonment of a tender exercise requires approval from the Strategic Procurement & Creditors Manager and the relevant Head of Service.
- 19.2 For procurement projects above the Goods and Services UK threshold, approval is also required from the Section 151 and Monitoring Officers.
- 19.3 For all 'covered procurement' projects a Procurement termination notice must also be published on the CDP.

## 20 Acceptance of Tenders

20.1 The table below sets out the approvals required. They apply equally to contracts that may be awarded through negotiation as they do to those awarded through competition. They also apply to contracts intended to be awarded from collaborative procurement exercises or framework agreements including those let by organisations such as CCS, ESPO, YPO etc.

Contract Type	Approval To Award a Contract
1	Commissioner or above and Procurement Service
2	Commissioner, Head of Service, Accountant and Procurement Service
3 & 4	Commissioner, Accountant, Head of Service, Section 151 or Monitoring Office and Procurement Services

20.2 Where external funding has being agreed to support the budget for the procurement, e.g. ERDF, Heritage Lottery Fund, Friends Groups etc. acceptance of the award decision may need to be obtained from the external funder prior to a tender being accepted.

20.3 Tenders may be accepted provided that the tender sum and any on-going financial commitments can be met from within the available budget or in relation to capital expenditure, the tender sum together with any other scheme costs (e.g. fees, capital, salaries, post-contract services etc.) can be met from within the capital programme provision and that Cabinet approval for the capital expenditure has previously been granted.

20.4 Where a tender cannot be accepted because of budget limitations, a report should be submitted to the Cabinet outlining the circumstances and the possible options. It will then be a matter for the Cabinet to decide: if the shortfall will be funded in line with the Financial Code of Practice; to proceed on a reduced basis; or not to proceed with the scheme.

## 21 Notifying Suppliers of the Outcome

21.1 Suppliers should be notified of the outcome of a procurement project as soon as possible after relevant approvals to award the contract have been obtained and should be notified in writing.

21.2 For contracts below £25,000 excl VAT (Types 1), the winning bidder should be advised of the outcome prior to communicating with any unsuccessful bidders. Unsuccessful bidders should be advised of the outcome, once the successful bidder has indicated their willingness to deliver the contract

21.3 For Type 2 contracts below the applicable UK threshold, the Award letters should be issued simultaneously to all bidders (successful and unsuccessful) advising them of the tender outcome and award of contract. A voluntary 'standstill period' of 8 working days can be implemented prior to issuing the contract, if desired.

21.3.1 The Council's standard Award letter must be used and must include the following debriefing information: -

- The criteria for the award of the contract;
- The name of the successful bidder(s);
- The score of the bidder, together with the score of the successful bidder(s);
- The evaluation summary sheets for bidder and successful bidder indicating the agreed score and evaluator comments for each individual quality and CSR question; and
- Confirmation of the date before which the Council will not enter into the contract (allowing for a standstill period is desired).
- Once an award of contract is accepted, a Below Threshold Contract Detail notice must be published on the CDP within 30 days.

21.4 For Type 4 and 5 Contracts that are subject to PA2023 and PR2024 the following should be adhered to:

- Intention to award letters should be issued simultaneously to all bidders (successful and unsuccessful) advising them of the intention to award the contract and providing them with a 'standstill period' of at least 8 working days when sent electronically via the Council's approved E-Tendering portal.
- The Council's standard Intention to Award letter must be used and must include the following debriefing information:
  - The criteria for the award of the contract;
  - The name of the successful bidder(s);
  - The score of the bidder, together with the score of the successful bidder/s;
  - The evaluation summary sheets for bidder and successful bidder

indicating the agreed score and evaluator comments for each individual quality and CSR question; and

- Confirmation of the date before which the Council will not enter into the contract (i.e. the date the standstill period finishes).
- A Contract Award notice must also be published on the CDP, this commences the standstill period.
- Following completion of the standstill period, an award letter must be sent to the successful bidder and a Contract detail notice must be published onto the CDP within 30 days of Award.

21.5 For Type 4 and 5 Contracts above the relevant UK threshold let under PCR2015 or PA2023 and PR2024, Award letters should be issued simultaneously to all bidders (successful and unsuccessful) advising them of the tender outcome and award of contract. A voluntary 'standstill period' of 8 working days can be implemented prior to issuing the contract, if desired.

21.5.1 The Council's standard Award letter must be used and must include the following debriefing information: -

- The criteria for the award of the contract;
- The name of the successful bidder(s);
- The score of the bidder, together with the score of the successful bidder(s);
- The evaluation summary sheets for bidder and successful bidder indicating the agreed score and evaluator comments for each individual quality and CSR question; and
- Confirmation of the date before which the Council will not enter into the contract (allowing for a standstill period is desired).
- Once an award of contract is accepted, a Contract Detail notice must be published on the CDP within 30 days of the contract being entered into, except for light touch contracts which must be published within 120 days.
- For contracts valued at £5m or more including VAT, the notice must include a link to access a full copy of the contract (commercially sensitive data can be redacted) and set out the 3 KPIs regarded as most material to the performance of the contract at the time of publication.

21.6 Unsuccessful bidders wishing to formally challenge an above UK threshold contract award decision are initially required to do so during the standstill

period and before the contract award is confirmed. If an award decision is questioned in writing or formally challenged by or on behalf of an unsuccessful bidder after the issue of an Intention to Award letter and during the standstill period, the Officer shall not proceed to award the contract but shall immediately inform the Strategic Procurement & Creditors Manager and seek the advice of Legal Services on next steps.

- 21.7 Subject to no formal challenges being received during the standstill period, the Officer may confirm the award of the contract to the successful bidder using the Council's Confirmation of Award letter template.

## **22 Procurement Review Unit (PRU)**

- 22.1 The PRU has been appointed to manage the oversight regime (Part 10 of PA2023) on behalf of Ministers of the Crown and will:

22.1.1 monitor compliance and investigate patterns of repeated non-compliance;

22.1.2 investigate supplier complaints submitted to the Public Procurement Review Service (PPRS)

22.1.3 manage the central debarment list.

- 21.2 The PRU will have the power to issue recommendations to improve compliance including an obligation to report on progress and publish guidance on lessons learned.

- 21.3 Formal challenges under the PA2023 and PR2024 should be instigated in accordance with the [Technology and Construction Court \(TCC\) guidance](#).

## **23 Contract Signing and Order Authorisation**

- 23.1 All contracts should be in written form and the written formalities should be completed before the contract is due to start except in exceptional circumstances and only then with the prior approval of the Section 151 and Monitoring Officers.

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

- 23.3 Contracts over the sums specified in the Public Contracts Directive must be sealed in accordance with the Council's Constitution by the Chief Executive, Deputy Chief Executive, Monitoring Officer and Programme Director for Climate Change (Delegation A(2)).

- 23.4 All other contracts may be signed by Chief Officer as defined under Article 12 of the Constitution or their duly authorised nominated officer- The Officer

signing the contract on behalf of the Council must ensure that they have the relevant authorisation to sign the contract.

- 23.5 Contracts under Seal can only be signed by either Chief Executive, Deputy Chief Executive, Monitoring Officer and Programme Director for Climate Change (or a person authorised by them). A contract must be sealed where:
- 23.5.1 The Council wishes to extend the liability period under the contract and enforce its terms for up to 12 years; or
- 23.5.2 The price(s) specified under the contract are nominal and do(es) not reflect the value of the goods or services.
- 23.6 Order Authorisation - Orders can only be placed by approved Officers. Senior Leadership Team members will authorise the Officers allowed to place orders on behalf of the Council, along with each individual's authorisation limits.
- 23.7 Contracts valued at £5m or more including VAT must be published on the Council's website. All contract documents must be included in the publication. Commercially sensitive or personal data may be redacted. Commercially sensitive data must have been specified by the supplier within their tender submission.

## **24 Document Storage & Document Retention**

- 24.1 By default, the Council will use an e-signature solution for all contracts and a digital copy of the contract must be stored against the contract within the Council's FMS contracts module.
- 24.2 Exceptions may be made with prior agreement from the Strategic Procurement & Creditors Manager in consultation with the Monitoring Officer.
- 24.3 Any hard copy signed contracts must be scanned and then stored in the Deed Store with the pdf copy attached to the contract within Council's FMS contracts module.
- 24.4 Appropriate documents and records must be retained for all procurement projects, in particular:
- 24.4.1 Documents or records relating to successful quotations/tenders (e.g. any documents which might have a bearing on the way the contract was let or is interpreted) must be kept for at least 6 years after the contract comes to an end. If the contract is made as a deed/under seal the records must be kept for a minimum of 12 years.
- 24.4.2 Documents or records relating to unsuccessful quotations/tenders must be kept for at least 24 months from the date the contract starts.

24.4.3 Sensitive or personal data must not be retained longer than 6 months following the award of contract.

## **25 Form and Conditions of Contract**

25.1 The contract terms and conditions used must be the most appropriate for the procurement project and can be: the Council's pre-agreed standard terms and conditions; industry standard terms and conditions such as JCT, NEC etc.; framework call-off terms and conditions; and/or bespoke terms and conditions written specifically for the particular procurement project.

25.2 Contracts will clearly state:

25.2.1 The Services/Works to be carried out or the goods to be supplied

25.2.2 The total contract value

25.2.3 The price(s) or schedule or rates to be paid including any discounts

25.2.4 The mechanism for managing any changes or variations to the contract during its life

25.2.5 The mechanism by which price adjustments (e.g. for any agreed contract changes or contract variations, any additional payments for over performance, any payment deductions for under performance, any general efficiency (cost management) initiatives and the mechanism for any inflationary increases etc.) will be managed;

25.2.6 The delivery period by when (or during which) the contract is to be carried out;

25.2.7 Appropriate performance management provisions to allow for effective contract management

25.2.8 Powers for the Council to cancel the contract and recover any resulting losses from the contractor

25.2.9 Appropriate provision for information sharing to support the Council in meeting its statutory duties

25.2.10 Appropriate contract termination provisions

## **26 Managing Contracts**

26.1 A Contract Owner must be appointed to act on behalf of the Council for all contract types.

26.2 For all type 3 contracts, a member of the Senior Leadership Team must be appointed as part of the contract governance structure.

26.3 Contract Owners must ensure sufficient resources are allocated within the contract governance structure to ensure effective Contract Management and

administration, in accordance with the recommended levels based on the contract's classification level of Gold, Silver or bronze (Public Sector classification tool ©Government Commercial Function Office).

- 26.4 As a minimum, every 12 months, all contract owners must:
  - 26.4.1 Meet with the Supplier to discuss contract improvements, innovation opportunities, and added value (including Social Value if applicable)
  - 26.4.2 Monitor contract performance and report supplier adherence to contractual obligations and report to the Strategic Procurement & Creditors Manager and Head of Service.
  - 26.4.3 Review Supplier financial standing and failure risk, including potential risks from supply chains.
  - 26.4.4 Manage the contract exit plan, including documenting decisions regarding contract termination.
  - 26.4.5 Set up and maintain a lesson learnt log
  - 26.4.6 Ensure Financial controls are met within the Council's FMS.
- 26.5 For contracts classified as Silver and Gold, the contract owner must also:
  - 26.5.1 Meet with the supplier to discuss performance, including reviewing KPI achievement and varying KPIs is appropriate.
  - 26.5.2 Benchmark supplier performance and record outcomes and actions
  - 26.5.3 Manage the contract management plan to ensure contract management and administration is effective
  - 26.5.4 Set up and maintain a change control register
  - 26.5.5 Ensure business appointment rules are met regarding certification and financial requirements
  - 26.5.6 Monitor risk and mitigate or escalate early signs of failure
  - 26.5.7 For contracts above the Goods and Services UK threshold, ensure a reporting mechanism is implemented and managed for the retention and publication of data in accordance with PA2023 and PR2024.
- 26.6 Contract Owners must ensure contracts are managed in accordance with the Councils Contract Management Framework

## **27 Contract Performance Reporting**

- 27.1 For contracts awarded under PA2023 and PR2024 in accordance with the legal framework within this code, all contracts valued at £5m including VAT (excluding concession contracts) are required to publish performance data at least every 12 months. The performance notice must include ratings for a

minimum of 3 KPIs, as per the rating system set out in regulation 39 of PA2023. If more than 3 KPIs are applicable, all KPI data must be published.

## **28 Extending Contracts**

- 28.1 Contracts can be extended by a Contract owner if the original contract included the provision to extend (an 'option period'). Before activating any option period, an Extension Approval Request must be completed and submitted to Procurement Services in order that an appropriate level of due diligence and a value for money assessment can be undertaken.
- 28.2 Officers wishing to extend a contract where the original contract did not include the provision to extend (an 'option period') must follow the Exemption process.
- 28.3 When negotiating a contract extension Officers must make all reasonable efforts to secure added value for the Council.

## **29 Changes to Contract**

- 29.1 Changes (variations/modifications) to requirements and/or contracts are likely to occur throughout the life of a contract. Each individual contract should describe the specific process to be adopted to manage any change however all changes are subject to the following:
  - 29.1.1 The value of any changes and/or any resulting changes to the performance management framework etc. required as a consequence of the change should be fully understood by the Council and documented prior to the change being agreed/implemented.
  - 29.1.2 Contract variations not provided for within the awarded contract should only be agreed in writing and must be approved by a member of the Senior Leadership Team following consultation with Procurement and if appropriate, Finance, Legal, HR etc.
  - 29.1.3 If a specific change, or cumulative changes significantly increase or decrease the value, scale or scope of the contract, it may constitute 'Substantial Change'. Changes or variations to contracts that are considered substantial changes must not be agreed without the prior approval of the Strategic Procurement & Creditors Manager in consultation with the Monitoring Officer.
  - 29.1.4 Any agreed change or modification will take effect on the

date of signature

- 29.1.5 The Contract owner is responsible for updating the contract entry within the FMS contract module to reflect any changes/variations agreed.
- 29.2 For light touch contracts and contracts below the Goods and Works UK threshold, contracts may be modified in accordance with this code.
- 29.3 For all contracts above the Goods and Works UK threshold, contracts can only be modified in accordance PCR2015 or PA2023 and PR2024, which ever is applicable as per the legal framework within this document.
- 29.4 For contracts awarded under PA2023 and PR2024, in accordance with the legal framework within this document, contract modification notices must be published, in accordance with reg 75, on the CDP prior to the modification being implemented. Following the publication of a modification notice, a stand still period of 8 working days must be observed before the modification can be made.

### **30 Reviewing Contractual Arrangements**

- 30.1 Existing contracts must (as a minimum) be reviewed in accordance with the following requirements:

<b>Total Contract Value</b>	<b>Review Date</b>
£1 - 24,999	At least 3 months before a break clause, the end of the initial contract term or the final contract end date.
£25,000 - UK threshold for Goods & Services	At least 9 months before a break clause, the end of the initial contract term or the final contract end date.
UK threshold for Goods & Services and above	At least 18 months before a break clause, the end of the initial contract term and the final contract end date.

### **31 Contract termination**

- 31.1 A contract shall be deemed terminated is the following occurs:
  - 31.1.1 The contract has reached its specified end date
  - 31.1.2 The contract has reached a break clause or extension option, and the Council has decided not to exercise its right to extend.

31.1.3 The contract has been terminated by either the Council or the supplier in accordance with the mechanisms set out within the contract terms and conditions

31.1.4 The contract has been terminated by mutual agreement following a dispute.

30.2 For contracts awarded under PA2023 and PR2024 in accordance with the legal framework within this document, a contract termination notice must be published on the CDP setting out the date and reason for the termination. The notice must be published within 30 days of the agreed termination date. In situations where there is an award of damages, details must be included the number of damages and any other monies paid.

## **32 Concession Contracts**

32.1 A Concession contract is a specific type of arrangement under which the Council will grant the supplier the right to exploit an opportunity and receive some or all of its income from third parties. The operating risk which comes from exploiting the opportunity must pass to the supplier.

32.2 Where Services are considering establishing a Concession contract, they should seek advice from the Procurement and Legal Services before commencing the procurement process.

32.3 Where the Council seeks to grant a Concession, the Officer should follow this Code as though it were a procurement, having regard to the various thresholds, need to advertise and other matters to ensure an open, transparent and competitive process.

32.4 Where the Council seeks to grant a Concession contract, the Officer should consider the potential to secure future income streams or other non-cost benefits to the Council

32.5 Where the value of a Concession contract to be awarded is above the threshold set out in PA2023 and PR2024, Officers must follow the process identified in those Regulations.

## **33 Appointment of Consultants**

33.1 Consultants are subject to the same competition requirements as any other type of contract and must be selected and awarded a contract in accordance with this Code.

33.2 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided, the

deliverables expected, the total cost to be paid and any stage payment arrangements. The engagement shall also be subject to completion of a contract of appointment.

- 33.3 Records of consultancy contracts shall be maintained in accordance with this Code
- 33.4 Consultants shall be required to provide evidence of, and maintain, professional indemnity insurance policies to the satisfaction of the Council's Risk Management Policy for the periods specified in the respective agreement.

### **34 The Council as a buyer or supplier to contracting Authorities**

- 34.1 In the purchase or sale of goods, works or services, the Council shall act in accordance with its internal controls for the recharging of those goods, works or services. This will apply to:
  - 34.1.1 Horizontal agreements between the Council and another contracting authority or group of contracting authorities.
  - 34.1.2 Vertical agreements with person's or organisations wholly owned and controlled by the Council
  - 34.1.3 Vertical agreements with organisations jointly owned and controlled by a group of contracting authorities of which the Council is a partner.
- 34.2 Council owned organisations that are not covered by the vertical or horizontal arrangements specified in PA2023 must be treated as external organisations.

### **35 The Council as a supplier to non-contracting Authorities**

- 35.1 The Strategic Procurement & Creditors Manager, Section 151 and Monitoring Officers must be consulted where contracts to work for organisations other than the Council are proposed, in order to:
  - a) Confirm the Council can legally enter into the contract;
  - b) Confirm the legality of the charging arrangements; and
  - c) Approve the terms and conditions of the proposed contract.
- 35.2 Officers shall produce a robust business case for the Council acting as a supplier which fully considers the costs to the Council of delivering the goods, works or services concerned. The financial viability of such business cases must be approved by the Strategic Finance Manager and Section 151 Officer.

- 35.3 Officers shall liaise with the Council's Audit and Risk Manager to ensure any potential liabilities are sufficiently covered by the Council's insurance policies.
- 35.4 Prior to signing any agreement to supply services to another organisation, Officers must get the necessary approval. For contracts with a value less than £10,000 approval can be obtained from the relevant member of the Senior Leadership Team. For contracts with a value of £10,000 and above approval must be obtained from the Cabinet.

## **36 Disposal of Assets**

- 36.1 The following requirements apply to asset disposals
- 36.1.1 Any asset considered to be available for disposal should be offered for re-use within the Council prior to being disposed of externally.
  - 36.1.2 Assets should not be sold without competition unless agreed by the Section 151 Officer.
  - 36.1.3 For assets expected to be worth £50,000 and above, Cabinet approval should be sought prior to commencing the disposal process.
  - 36.1.4 Officers should use best endeavours to secure at least two written quotations.
  - 36.1.5 Quotations can be obtained in the form of formal bids (the Council's E- Tendering portal can be used for this purpose) or by public auction.
  - 36.1.6 In the event that an online auction is used then the auction must be conducted using a Council account and under **NO** circumstances personal accounts used.
  - 36.1.7 If a low value asset cannot be sold then consideration should be given as to its suitability to support local charities, voluntary groups, parish councils etc.
- 36.2 The Disposal of land and buildings are not covered by the PA2023, PR2024 or this Code. However, if the disposal is linked to further outputs or developments that fall under this Code, then there may be a requirement to comply with the above. In these circumstances, Officers must seek advice from the Procurement team.

## DEFINITIONS

Term	Definition
Agent	A person or organisation acting on behalf of the Council.
Award Criteria	The criteria used to select the successful Quotation/Tender.
Best Value (VFM)	A balance of economy, efficiency, effectiveness in obtaining organisational benefits; and how community benefits can be achieved.
Bidder	Any person or organisation submitting a Quotation or Tender
CCS	The Crown Commercial Service
Code of Conduct	The 'Officers Code of Conduct'
Commissioner	Those officers within the Council responsible for identifying a business need and through the process of procurement securing that need on behalf of the Council. This Officer may be a Project or Programme Officer commissioning multiple procurement projects, or a Service area Officer.
Conflicts Assessment form	A record of any identified conflicts (actual potential, or perceived) and the plan to mitigate them or confirmation that the conflict doesn't exist including evidence. Should be applied proportionately
Conflict of Interest - <b>Actual</b>	An individual has a direct or indirect personal, professional or financial connection that may affect the outcome of a procurement project (whether through the specification, evaluation, contract management), including connection to suppliers and company shares.
Conflict of Interest - <b>Potential</b>	An individual has private interests that may result in a conflict if they were to become involved in a procurement project e.g. through relatives, or social club memberships, group or business associates. Risk should be identified, with a plan to monitor and mitigate if required.

<b>Term</b>	<b>Definition</b>
Conflict of Interest - <b>Perceived</b>	Situations that may lead to the public wrongly believing that a reasonable person may have an actual or potential conflict e.g. receiving gifts or hospitality that have no connection to a procurement activity. Risks should be identified, and steps taken to demonstrate no conflict exists. Up to Council how far they take this, e.g. recording or publishing information
Concession	A specific type of contractual arrangement under which the Council will grant the supplier the right to exploit an opportunity and receive some or all of its income from third parties. The operating risk which comes from exploiting the opportunity must pass to the supplier
Consultant	Someone engaged for a specific length of time to work to a defined project brief with clear outcomes to be delivered, and who brings specialist skills or knowledge to the role.
Contract	A legally enforceable agreement between two legally recognised bodies.
Contract Administrator	Those officers carrying out post award day to day usage, monitoring and payment processing of a contract in accordance with the Council's contract management framework.
Contract Manager	Those officers carrying out post award overarching monitoring and management of a contract in accordance with the Council's contract management framework.
Contract Management	The monitoring and management of a contract whether by an individual a Contract Manager that also owns or administers the contract; or by a group of collaborating Officers each undertaking one of the Contract Officer roles.
Contract Owner	Those officers carrying responsible for the sponsoring or budgetary oversight of a contract in accordance with the Council's contract management framework.

<b>Term</b>	<b>Definition</b>
Contracts Finder	A Government portal for notices pertaining to central and local government contract opportunities and contract awards ( <a href="https://www.contractsfinder.service.gov.uk/Search">https://www.contractsfinder.service.gov.uk/Search</a> )
Contract Termination	The end of a contract, whether by a pre-determined date specified within the contract, or by mutual agreement to terminate, or by termination due to contractual breach.
Contract Register	The Council's published record of all contracts awarded with a value of £5,000 or above
Convertible contract	Below threshold contract that when modified in value becomes subject to above threshold rules.
Councils E-Tendering Portal	E-procurement portal for the publication of tendering opportunities and the management of tendering processes in compliance with UK law.
Covered Procurement	Procurement activity (award, entry into and management of) a public contract with a value above the relevant UK threshold, that is not exempt under Schedule 2 of the Procurement Act 2023. Formerly known as In-scope procurement.
ESPO	The Eastern Shires' Purchasing Organisation
Existing Council Contract	A contract already owned by the Council that can be utilised by all Services for the supply of the goods, works or services specified within its terms.
Existing Framework Agreement	An existing contract let by another public body or purchasing organisation such as CCS, ESPO, YPO that may be legally utilised by the Council
Framework Agreement	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the main terms governing call off contracts to be awarded during a given period.

<b>Term</b>	<b>Definition</b>
Freedom of Information	The Freedom of Information Act 2000 is an Act of Parliament that creates a public "right of access" to information held by public authorities.
CDP	The Official Central Digital Platform of United Kingdom; a central platform for the recording and publication of all relevant data covered under the Procurement Act 2023 and Procurement Regulations 2024.
Integrity	Act and be seen to act in a non-fraudulent or corrupt way as demonstrated through good management, misconduct prevent, and process controls.
Invitation to Tender	A document issued to bidders inviting competitive bids for works goods or services
JCT	Joint Contracts Tribunal standard building contract designed for large or complex construction projects
Substantial Change	Material changes or variations (individual or cumulative) that result in the agreement being 'substantially' different in value, scope or character from the original agreement
MAT	(Most Advantageous Tender) A method of assessment that allows the contracting party to award the contract based on aspects of the tender submission other than just price.
Maximising Public Benefit	Achieving greater benefits for their community through collaboration, social value, CSR.
Micro SME	An organisation with less than 10 employees and an annual turnover of less than £2m
Monitoring Officer	Statutory officer responsible for the legal governance of the Council or his/her specified nominee.

<b>Term</b>	<b>Definition</b>
NEC	The New Engineering and Construction (NEC) Contract, is a formalised system created by the Institution of Civil Engineers that guides the drafting of documents on civil engineering and construction projects for the purpose of obtaining tenders, awarding and administering contracts.
NPPS	Sets out the current strategic priorities for public sector procurement and how they can be delivered.
Officer	A person employed by or acting on behalf of the Council
Planned Procurement Notice	Formerly a Prior Information Notice (PIN). An optional notice published on the CDP, used to provide advance notice of an upcoming procurement. It also enables a reduction in minimum time periods between a tender notice and the tender submission deadline.
PPID	The Procurement Project Initiation Document, the Council's internal governance document for procurement projects.
Preliminary market engagement	Any engagement with an external supplier in relation to a new contract opportunity. A mandatory notice for when premarket engagement has been and/or will be undertaken. If not published, reasons why must be included in the Tender notice.
Procurement cycle	All activities covered by the Procurement Act 2023, including, but not limited to: Project Planning; Commissioning; Market exploration and engagement; Whole-life costing and Cost-benefit analysis; Sourcing and Tendering; Contract implementation, Contract Management and Contract termination.
Procurement Notices	Legal notices to be published on the CDP throughout the procurement cycle for all new procurements tendered after the 'go live date' set by the Cabinet Office.
Procurement Pipeline	The Council's internal record of all existing or potential contracts with a value of £25,000 or above

<b>Term</b>	<b>Definition</b>
Procurement Pipeline Notice	A notice published to the CDP providing information about current and future public contract opportunities (12 to 18 months) to benefit supplier, particularly SMEs and VCSEs by allowing them time to plan for future work. Mandatory for Council's that spend £100m or more incl. VAT.
Procurement Service	The centralised support service providing practical support in the sourcing of contracts on behalf of the Council; as well as the advisory service for compliant and best practice Procurement.
Purchasing Consortium	Two or more independent organisations that join, either formally or informally for the purpose of combining their individual requirements for purchased goods, services and works
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Scheme of Delegation	The Council's internal arrangements delegating responsibility and accountability to take decisions and commit expenditure
Section 151 Officer	Chief Financial Officer responsible for ensuring that the Council plan's for the proper administration of its financial affairs or their specified nominee.
Selection Criteria	The criteria by which Bidders are chosen to have their Award criteria evaluated or to submit quotations or tenders
SME	An organisation with less than 250 employees and a turnover of less than £40m.
SLT	The Council's Senior Leadership Team, consisting of the Chief Executive, Deputy Chief Executive, Assistant Director, and Heads of Service.
Standstill Period	A legal requirement imposed through the Public Contract Regulations which provides for a short (at least 8 business days) pause between the point when the contract award decision is notified to Bidders and the final contract conclusion during which time the decision can be challenged.

<b>Term</b>	<b>Definition</b>
TUPE	<p>Transfer of Undertakings (Protection of Employment) Regulations 2006 [SI2006 No.246]</p> <p>Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the Council are transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a 'contracting-out' or competitive tendering process); and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer - the rights of employees are transferred along with the business.</p>
UK Threshold	The contract value at which the UK public procurement directives must be applied
Utilities contract	The supply of goods, services or works wholly or mainly for the purpose of utility activity carried out by a non-public authority that has special or exclusive rights e.g. gas and heat networks, electricity networks, drinking water networks and supply, public transport services, ports and airports, fuel extraction.
VCSE	Voluntary, Community or Social Enterprise organisations.
Works contract	The main purpose of the contract is to carry out works under the contract, even if those works are not completed; or to facilitate the carrying out of works whereby those works result in the completion of works as specified in the contract e.g. maintenance checks that result in repairs.
YPO	The Yorkshire Purchasing Organisation