

G CONTRACTS PROCEDURE RULES

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A: Questions to ask before you get started

Is the procurement legal ?



Does the Council have legal power to do what you are proposing ?
Does the procurement relate to the Council's statutory powers and duties ?
If you are unsure, check with Legal Services

Do I have the authority to proceed ?



Do you have either :

- Delegated power under the scheme of delegation; or
- Cabinet or committee approval
- Emergency power approval

How will the procurement be paid for ?



Do not proceed until you have identified a sufficient budget and got approval from the budget holder.
If a virement is necessary you must follow Rule E6 of the Budget and Policy Framework Procedure Rules

B: Getting started

Have you estimated the total contract value ?



See Procedure Rule G3.7

This is the essential first step as it enables you to:

- identify your budget requirements
- check whether the Procurement Act 2023 applies – see the threshold levels in Schedule 1
- select the procurement routes available to you

Have you decided what you want to procure ?



You should specify your requirements in writing at the outset – see procedure Rule G3.4

Is it an exempt contract ?



See Procedure Rule G2.2

What procurement options are available to you ?



See Flowchart C

C: Summary of procurement options

Contracts under £10, 000	Contracts between £10, 000 - £75, 000	Contracts over £75, 000 but under Procurement Act 2023 threshold	Contracts over the Procurement Act 2023 threshold (see Schedule 1 for threshold levels)
<p>Value for money requirement – Procedure Rule G5</p>	<p>Three written quotations – Procedure Rule G6</p> <p>NB: If s/he considers it appropriate the relevant Chief Officer may also chose a tendering procedure or a framework – Procedure Rules G7 to G10</p> <p>NB: see paragraph 3 of Schedule 1 for the Procurement Act 2023 rules which apply to contracts over £30k if they are openly advertised</p>	<p>Open tendering – Procedure Rule G7</p> <p>Selective tendering (contracts under £30,000 only) – Procedure Rule G8</p> <p>Standing list / Government approved list - Procedure Rule G9</p> <p>Framework Agreement – Procedure Rule G10</p> <p>NB: see paragraph 3 of Schedule 1 for the Procurement Act 2023 rules which apply to contracts over £30k if they are openly advertised</p>	<p>You must follow a procurement procedure and timescale that complies with the Procurement Act 2023 – see Schedule 1 for a summary</p> <p>Please seek legal advice before proceeding</p>
<p>NB: appointment of consultants covered by Procedure Rule G11</p>			

G1. Principles and legal framework

Note 1: *a contract is made whenever the Council accepts an offer from a third party to provide works, goods or services to the Council (whether the offer is contained in a tender, quotation or otherwise). A contract can be created verbally or in writing, but please refer to Rule G18, which sets out the Council's rules relating to written contracts.*

Note 2: *in these Procedure Rules "Chief Officer" means the Chief Executive, the Executive Director (Resources), the Executive Director (Legal & Democratic), the Executive Director (Environment), the Head of Regeneration and Housing and the Chief Planning & Transportation Officer*

Principles

1.1 These Procedure Rules have four main purposes:

- to ensure that we comply with UK legal requirements relating to procurement;
- to ensure that we obtain best value from procurement
- to ensure that our procurement activities promote competition and are fair and transparent
- to avoid corruption and ensure high ethical standards

Policy Framework

1.2 The Council recognises that its procurement activities can have a direct effect on the quality of life in the Borough and on society generally. You must therefore have regard to the following when making procurement decisions:

Council's Procurement Strategy

This contains guidance on:

- sustainability and environmental impact
- contracting with the third sector and social value

Procurement Act 2023 requirements If the contract is above the public contract threshold levels you must have regard to a range of policy considerations required by the Public Procurement Act 2023. Please see paragraph 1.2 of Schedule 1 for further details.

Legal Framework

1.4 Council contracts must comply with:

- the rules in the Procurement Act 2023 for contracts with a value above the public contracts threshold level and for “below threshold regulated contracts” (see Schedule 1 for details);
- the Council’s constitution (particularly these Contract Procedure Rules, the Finance Procedure Rules and the Scheme of Delegation)

Probity and non-compliance

1.5 A very high standard of probity is required of all officers involved in the procurement, award and management of Council contracts. A failure to comply with these Procedure Rules may result in disciplinary action against the officer concerned.

1.6 You must comply with the Council’s code of conduct for employees in respect of the procurement process. If you have a conflict of interest in respect of a procurement you must declare it to the relevant Chief Officer and take no part in the procurement process.

1.7 In addition, the Procurement Act 2023 Act imposes specific requirements in respect of the identification and treatment of conflicts' of interest in respect of above threshold procurement (please see Schedule 1)

1.7 Any breach of these Rules which is regarded as significant by the Council's Chief Executive or a Chief Officer will be referred to the Council's internal audit team for investigation.

G2. Application of Procedure Rules and exempt contracts

2.1 These Procedure Rules apply:

- To contracts for the purchase or works, services, goods and supplies
- To contracts which involve payment being made by the Council
- To contracts for the disposal of surplus Council goods
- Where somebody else has been appointed to carry out a procurement process on the Council's behalf

2.2 The following are exempt contracts to which the procurement procedures set out in Rules G5 to G11 do not apply but the relevant Chief Officer must be satisfied that the procurement procedure adopted secures best value for the Council and where practicable two or more contractors should be invited to submit quotations:

2.2.1 the contract is an extension of an existing contract or the works to be executed or the goods or materials to be supplied consist of repairs to or parts for existing plant or machinery and the contract has been approved by the relevant Chief Officer;

2.2.2 the goods, materials or works desired are of a proprietary or special character or are supplied by only one person or firm and no reasonably satisfactory alternative is available;

- 2.2.3 employment contracts and agency contracts for the provision of temporary staff;
- 2.2.4 the contract is for the engagement of an artiste or performing company;
- 2.2.5 the contract is for the purchase or production of a work of art or museum specimen;
- 2.2.6 the contract is for goods purchased or sold in a public market or fair or at an auction sale
- 2.2.7 the contract is for the borrowing or lending of money
- 2.2.8 the contract is for purchase of an interest in land or buildings
- 2.2.9 the price of the goods to be purchased is controlled by a trade organisation and there would be no genuine competition

G3 Preparing for procurement

Who has authority to carry out procurement on behalf of the Council ?

- 3.1 Procurement may only be undertaken by officers with the appropriate delegated authority either from Cabinet or the relevant committee or under the Council's scheme of delegation. Officers with delegated authority may delegate responsibility for a procurement to other officers who have the skills and knowledge appropriate to the task but must inform them of the extent of their delegated authority and any applicable financial thresholds for the procurement.

Pre-procurement procedure

Identification of need

- 3.2 Before starting procurement you must identify the need and fully assess the options for meeting those needs. Consideration should be given to the Council's procurement strategy as appropriate and the relevant Chief Officer must:

- (a) consider all other means of satisfying the need, including recycling and reuse where appropriate
- (b) consider whether there is an appropriate framework agreement (see Rule G10) or standing list (see Rule G9) that should be used.

3.3 Before starting procurement you must identify the amount and specification of the supplies, services or works required, together with the procurement timetable. You must also ensure that you have a budget available to pay for them.

Specifications

3.4 Specifications:

- (a) must state the Council's requirements in a clear and concise way, using outcome performance measures where possible.
- (b) must not include requirements that are discriminatory or may distort competition or consist of non-commercial matters
- (c) must not specify specific products or processes unless this is essential to meet the Council's requirements and the use or provision of an equivalent is permitted
- (d) must specify quality requirements by reference to any relevant British Standards Institute, EU or international standards current at the date of the tender unless the relevant Chief Officer is satisfied that an alternative standard is appropriate

Award criteria

3.5 Before starting procurement you must record the award criteria for the contract. The award criteria must be either:

- (a) lowest price (where payment is made by the Council) or highest price (where payment is received by the Council); or
- (b) most advantageous offer (where considerations other than purchase price apply)

3.6 Where the most advantageous offer is chosen you must document the criteria to be applied and any weighting to be given to them. Relevant criteria may include: price, service, quality, social value benefits, running costs, whole life cycle cost, experience of contractor, delivery date, cost-effectiveness, environmental considerations, aesthetic and functional characteristics, safety, after-sales service, technical support and partnering.

Estimating the contract value

3.7 Before starting procurement, you must calculate the estimated contract value as this will decide the procurement procedure(s) available under these Rules and determine whether you have to follow the rules in the Procurement Act 2023 (which apply for contracts above the public contracts procurement threshold – see Schedule 1 for details). When deciding the estimated contract value you must comply with the following:

- (a) estimates of value and methods of calculation must be genuine and not designed to avoid exceeding any threshold in these Rules or under the Procurement Act 2023 public contracts procurement regime. You must not artificially split contracts to lower their value.
- (b) The value of a contract should be taken to be the expected amount of consideration (in money or money's worth and inclusive of VAT) that will be received by the person or organisation that carries out the works or provides the supplies or services over the expected lifetime of the contract (not the annual value) and taking account of any form of option to extend or renew the contract.
- (c) If the contract is of indeterminate length you should estimate the value of the contract over a period of 4 years.

- (d) Where some or all of the contract price is funded by a third party (such as a government agency) this funding should be included in the estimated contract value.
- (e) For service contracts (such as design, insurance, banking) you should include the premium or fees, commission, interest and other forms of remuneration payable

Pre-tender market research and consultation

3.8 Prior to issue of the invitation to tender / provide a quotation the relevant Chief Officer:

- (a) may consult potential suppliers in general terms about the nature, level and standard of the item required and other relevant matters provided this does not prejudice any potential candidate
- (b) must not seek or accept technical advice on the preparation of an invitation to tender / provide a quotation from anyone who may have a commercial interest in the procurement if this may prejudice equal treatment of all potential candidates or distort competition
- (c) must not discuss prices

Reserving contracts to bidders in the UK or local area only

This is something you need to think about before starting the procurement process.

Please see Rule G21 for details.

G4. Choice of procurement procedure

- 4.1 All contracts will be dealt with under one of the procedures set out in Rules G5 to G12 unless the contract is exempt (see Rule G2.2). Flowchart C illustrates the options available.
- 4.2 Where a contract could be dealt with under more than one of the procedures, the relevant Chief Officer will decide which one of the procedures to use.

G5. Contracts up to £10, 000

- 5.1 This procedure applies to contracts where the estimated value of works, goods and services to be supplied is less than £10 000;
- 5.2 The relevant Chief Officer must be satisfied that the procedure adopted secures the best value for money for the Council and where practicable at least two quotations should be obtained. E-mailed quotations are acceptable but a copy of each quotation received must be retained on file.
- 5.3 A quotation and purchase order will create a legally binding contract between the Council and supplier. Every purchase order should contain an appropriate set of written conditions or industry standard form of contract

G6. Contracts between £ 10 000 and £75 000

- 6.1 This procedure applies to contracts where the estimated value of works, goods and services to be supplied is between £10, 000 and £75,000.
- 6.2 The relevant Chief Officer must invite at least three written quotations. Rule G14 sets out the Council's requirements for invitations to provide a quotation.
- 6.3 E-mailed quotations are acceptable but a copy of each quotation must be retained on file.
- 6.4 The Chief Officer should normally accept the lowest quotation if payment is to be made by the Council or the highest quotation if payment is to be received by the Council. Any other quotation may be accepted only if the Executive Director (Resources) is satisfied that to do so secures best value for the Council.
- 6.5 A quotation and purchase order will create a legally binding contract between the Council and supplier. Every purchase order should contain an appropriate set of written conditions or industry standard form of contract.

G7. Open tendering

- 7.1 This procedure may be followed for contracts of any value provided they are under the EU threshold. All those responding to the Council's public notice may submit a tender as there is no pre-selection process.
- 7.2 The relevant Chief Officer must give at least ten days public notice in one or more local newspapers and in one or more appropriate trade journals (if they exist).
- 7.3 The notice must set out the nature and purpose of the contract, invite tenders, give instructions on how to submit a tender and state the closing date for tenders (including reference to the fact that tenders will not be accepted after 2.00 p.m. on that date).
- 7.4 Within 24 hours of the Council advertising or giving public notice in any way of a contract with a value of £30,000 or more, the relevant Chief Officer must also advertise the contract on the Government's Central Digital Platform ("Find A Tender") and make the procurement documentation (such as the specification, invitation to tender etc) available on the Council's website. A contract award notice must also be published on Central Digital Platform as soon as possible following the award of such contracts.
- 7.5 The procedure for inviting, receiving and opening tenders will be as set out in Rules G14 and G15 and the procedure for evaluating and accepting tenders will be as set out in Rule G16. The requirements reserving the contract to bidders in the UK or local area only are set out in Rule G21.

G8. Selective tendering (contracts up to £25,000 only)

- 8.1 This procedure applies to contracts for works, goods and services provided the estimated contact value does not exceed £30,000.
- 8.2 Under this procedure the Council pre-selects those it wishes to submit a tender by requesting applicants to submit an expression of interest using a pre-qualification

questionnaire. This enables the Council to satisfy itself of the applicants eligibility, economic and financial standing and technical or professional capacity.

- 8.3 The relevant Chief Officer must give at least ten days public notice requesting expressions of interest in inclusion on the shortlist of persons to be invited to tender in one or more local newspapers and in one or more appropriate trade journals (if they exist)
- 8.4 The notice must set out the nature and purpose of the contract and state the closing date for applications to be included in the shortlist of persons to be invited to tender.
- 8.5 Only applicants who have satisfactorily completed an application form / pre-qualification questionnaire can be considered for inclusion on the shortlist. The relevant Chief Officer will compile a shortlist of those to be invited to tender using shortlisting criteria.
- 8.6 At least four of the applicants included on the shortlist must be invited to tender, except where the shortlist comprises three or less applicants, in which case all must be invited to tender;
- 8.7 The invitation to tender must give instructions on how to submit a tender and state the closing date for tenders (including reference to the fact that tenders will not be accepted after 2.00 p.m. on that date).
- 7.6 8.8 The procedure for inviting, receiving and opening tenders will be as set out in Rules G14 and G15 and the procedure for evaluating and accepting tenders will be as set out in Rule G16. The requirements reserving the contract to bidders in the UK or local area only are set out in Rule G21.

G9 Tendering from standing lists or Government approved lists

- 9.1 This procedure applies to contracts of any value provided they are under the public procurement threshold (see Schedule 1).

- 9.2 If the Council has a standing list of contractors or has access to a Government approved list of contractors (e.g. Construction line) for
- the execution of specified categories or value of work or services,
 - the supply of specified categories, values or amounts of works,
- and the Chief Officer considers the list is appropriate to a contract, invitations to tender may be limited to persons included in that list.
- 9.3 At least three of the persons included in the list must be invited to tender.
- 9.4 The invitation to tender must give instructions on how to submit a tender and state the closing date for tenders (including reference to the fact that tenders will not be accepted after 2.00 p.m. on that date).
- 9.5 When compiling a tender list from the standing list, or Government approved list, the relevant Chief Officer shall:
- have regard to the need to secure reasonable competition
 - ensure that those on the list are given a reasonable opportunity to tender for work and wherever possible a system of rotation should be applied to demonstrate fairness
 - take account of the trading position of contractors and where appropriate include at least one contractor with a proven record of competitiveness in the type of work concerned
 - give a proper opportunity to local contractors to tender.
- 9.6 The procedure for inviting, receiving and opening tenders will be as set out in Rules G14 and G15 and the procedure for evaluating and accepting tenders will be as set out in Rule G16.

Compiling and maintaining standing lists

- 9.7 Council standing lists:

9.7.1 shall:

- (a) be compiled and maintained by the relevant Chief Officer
- (b) contain the names of all persons who wish to be included and who are approved by the Cabinet or the relevant Chief Officer
- (c) indicate in respect of a person whose name is so included, the categories of contract and the values, in respect of those categories, for which approval has been given.

9.7.2 At least 4 weeks before a list is first compiled, notices inviting applications for inclusion in it shall be published:

- (a) in at least one local newspaper, and
- (b) in at least one newspaper or journal circulating among such persons as undertake such contracts of the specified values or categories, and
- (c) an appropriate website and
- (d) sent, in the case of a review, to each person whose name appears on the list then existing, asking such persons whether they wish their name to be reconsidered for inclusion.

9.7.3 Each list shall be reviewed at regular intervals, (being not less than 4 years).

9.7.4 Any person included in any list maintained under this Procedure Rule may be removed from or excluded from inclusion in any such list for a period of up to 4 years if he has failed to comply with the requirements of the Council in respect of any procedural or operational matter.

9.7.5 Copies of any standing list of persons maintained under this Standing Order shall be available for public inspection

G10 Framework Agreements

10.1 Framework agreements should be considered where the Council wishes to make repeat purchases of (usually) lower value items without conducting a new procurement exercise each time. They are agreements with suppliers for the

provision of supplies, works or services on agreed terms for a specific period and enable the Council to place orders as and when required at an agreed price.

- 10.2 These Contract Procedure Rules apply when the Council wishes to set up a framework agreement.
- 10.3 You should consider whether a framework agreement already exists in respect of the works, goods or services you wish to procure, as use of a framework agreement may offer better value for money for the Council. If a Council framework agreement already exists you must use this, regardless of value. The Council may also be able to place orders using framework agreements procured by central government or its agencies or other local authorities, but legal advice should be sought before awarding a contract to a supplier using a framework agreement not procured by the Council.
- 10.4 A framework agreement may require you to hold a “mini –competition” with some or all of the suppliers within the framework agreement and you must always check the terms of the framework agreement to ensure that you comply with its terms in full.

G11 Consultants

- 11.1 This Procedure Rule shall apply to the appointment of consultants.
- 11.2 Consultancy work shall be advertised unless the relevant Chief Officer considers this to be inappropriate.
- 11.3 Where the consultancy appointment:
- has an estimated contract value of less than £10 000; or
 - will be an exempt contract in accordance with Procedure Rule G2.2
- the relevant Chief Officer must be satisfied that the procedure adopted secures the best value for money for the Council and where practicable at least two quotations should be obtained

- 11.4 Where the consultancy appointment has an estimated contract value of £10, 000 or more the relevant Chief Officer must invite at least three written quotations
- 11.5 Prior to accepting a quotation the relevant Chief Officer shall assess the experience and technical competence of each consultant and references shall be sought for consultants who have not previously been employed by the Council for the type of service in question

G12 Contracts subject to the Procurement Act 2023 (i.e those over the public procurement threshold level)

- 12.1 The Procurement Act 2023 applies to contracts for works goods and services over a specified value. If a contract has an estimated value above the threshold levels then the procurement process **must** comply with the rules and procedures in the Procurement Act 2023 which take precedence over these Procedure Rules.
- 12.2 The requirements of the Procurement Act 2023 are lengthy and fairly complex. A summary of the timescales and procurement procedures is set out at Schedule 1 but you **must** always take legal advice before you start the procurement process if you consider that these rules may apply.

G13 E-procurement

- 13.1 Documents required for a procurement including invitations to tender and invitations to negotiate may be transmitted by electronic means with the agreement of the relevant Chief Officer
- 13.2 Responses to an invitation to tender or an invitation to negotiate may be submitted by electronic means provided that:
- (a) evidence that the transmission was successfully completed is obtained and recorded
 - (b) each tender submitted electronically is supplemented by an identical signed hard copy original submitted in the manner prescribed in the advertisement or the invitation to tender or invitation to negotiate before the tender return date

- (c) electronic tenders are kept in a separate secure electronic folder under the control of the relevant Chief Officer which is not opened until the deadline has passed for receipt of tenders; and
- (d) the procedures to be used have been agreed in advance of the issuing of the request for quotations, invitation to tender or invitation to negotiate by the Executive Director (Resources).

13.3 It may be appropriate in certain circumstances to evaluate tenders by use of an electronic auction provided that

- (a) where the Procurement Act 2023 applies, the relevant Chief Officer shall comply with those Regulations
- (b) where a decision to use an electronic auction is made, notice of the fact shall be stated in the notice required by Procedure Rule G7 or G8
- (c) before proceeding with an electronic auction, the relevant Chief Officer shall make a full initial evaluation of the tenders in accordance with the agreed contract award criterion/evaluation criteria and with the weighting fixed for them to determine which are admissible tenders
- (d) all tenderers who submit admissible tenders shall be invited simultaneously by electronic means to offer new prices and/or new values
- (e) the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used, stating the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than five working days after the date on which invitations are sent out
- (f) the invitation to tender shall state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the

weighting of all the evaluation criteria fixed to determine the most economically advantageous offer, as indicated in the contract notice or in the specification

- (g) the invitation to tender shall specify the manner in which the electronic auction is to close
- (h) after closing an electronic auction the relevant Chief Officer shall award the contract on the basis of the results of the electronic auction
- (i) the means and procedures for carrying out the electronic auction have been agreed in advance of the issuing of the notice required by Procedure Rule G7 or G8 by the Executive Director (Resources)

G14 Invitation to tender / Invitation to quote

14.1 An invitation to tender shall be prepared in accordance with Rule G14.3 for all contracts with an estimated value over £75 000.

14.2 Where quotations are sought under Rule G6 (for contracts with an estimated value between £10 000 and £75 000) the invitation to provide a quotation shall include such matters as the relevant Chief Officer considers reasonable having regard to the value and importance of the procurement but shall as a minimum include the matters specified in paragraphs (a), (b), (e) and (i) of Rule 14.3

14.3 The invitation to tender shall include details of the Council's requirements for the particular contract including:

- (a) a specification of the services, supplies or works being procured and instructions on whether any variants are permissible
- (b) the procurement timetable including the tender return date and time which shall allow a reasonable period for the applicants to prepare their tenders
- (c) the Council's terms and conditions of contract

- (d) the evaluation criteria including any weightings where considerations other than price apply
- (e) pricing mechanism and instructions for completion
- (f) whether the Council is of the view that the Transfer of Undertakings (Protection of Employment) Regulations 1981 or any succeeding legislation may apply
- (g) form and content of method statements to be provided
- (h) rules for submitting of tenders; and
- (i) notice that the Council will require information relating to health and safety and equalities
- (j) notice that the Council will require the contractor to comply with the Construction (Design and Management) Regulations 2015 where applicable
- (k) any further information which will inform or assist tenderers in preparing tenders

14.4 If the contract is to be reserved for bidders in the UK or local area only then the advert and (if the total contract value exceeds £30,000, the below threshold tender notice) must contain certain information – please refer to Rule G21 for details.

G15. Submission and Opening of Tenders

15.1 This Rule applies where tenders have been invited using any of the procedures set out in Rules G7 to G10. Rules

15.2 Invitations to tender should be sent out using the “two envelope” system. The first envelope should have space for the name of the tenderer and the second should state the Council’s return address. Tenders should then be returned in envelope 1, which is placed inside envelope 2. Envelope 2 should be stamped with the time of its receipt by the Council.

15.3 No tender can be considered unless it:

15.3.1 has been recorded as having been received no later than 2.00 p.m. on the closing date for the receipt of tenders; and

15.3.2 has been received in a sealed envelope marked “tender for [name of contract]” and has no marking identifying the sender.

15.4 All tenders must be opened together in the same place. Tenders received electronically must be opened first.

15.5 Tenders may be submitted:

(a) in hard copy

(b) on CD ROM

(c) in PDF or Word format if submitted electronically

15.6 Tenders submitted electronically must be stored in a dedicated extranet site or other location secured electronically by the relevant Chief Officer and the system used must identify by unique password the person opening the tenders and time stamp the opening of the tenders

15.7 The following people must be present when tenders are opened:

15.7.1 the relevant cabinet portfolio holder, or some other member nominated by the portfolio holder;

15.7.2 the relevant Chief Officer or, if it is impracticable for him or her to attend, another senior officer of the same section;

15.7.3 the Executive Director (Resources) or his/ her nominee

15.8 Without prejudice to Rule 15.7 above, each of the political groups represented on the Council must be notified of tender openings and one member from each political group may attend tender openings

15.9 At the time of opening, the relevant Chief Officer or his/her representative must ensure that a record is made of all tenders received and their values.

15.10 Any tender received later than 2.00 p.m. on the closing date for the receipt of tenders must be returned as soon as practicable to the sender. A record must be kept of the receipt of the tender and of its return under this Rule. If the “two envelope” system has not been adopted, the tender may be opened to ascertain the name and address of the sender but no details of the tender may be disclosed.

G16. Tender Evaluation and Accepting Tenders

16.1 Tenders shall be evaluated strictly in accordance with the evaluation criteria set out in the invitation to tender / invitation to provide a quotation.

16.2 Subject to Rule G16.8 (use of local labour) the Council shall award a contract where at the time of award this represents the most advantageous offer or is the lowest price depending on the contract award criteria chosen pursuant to Rule G3

16.3 In the event of the lowest tender being less than £10 000 or 10% (whichever is the lower) above the approved estimate the decision on acceptance may be made by the relevant Chief Officer provided the extra cost can be fully accommodated within existing budgets and, if it cannot, the decision on acceptance shall be made by the Cabinet

16.4 In the event of the lowest tender being either £10,000 or 10% (whichever is the lower) above the approved estimate the decision on acceptance shall be made by the Cabinet

16.5 All tenders must be examined for errors and discrepancies. Where examination reveals errors or discrepancies which would affect the tender figure, the chief officer must give details of the errors or discrepancies to the tenderer and invite the tenderer to confirm his tender as submitted, correct the error or discrepancy or withdraw the tender. If the tender is withdrawn, consideration of tenders will then proceed as if that tender had not been submitted. If the tender is corrected the tender will be considered as corrected.

Post tender negotiation

16.6 This Rule applies to situations where a formal post tender negotiation process is required (rather than to the clarification of errors and discrepancies to which Rule G16.5 applies). The relevant Chief Officer may, with the consent of the Executive Director (Resources) enter into formal negotiations with a tenderer after the receipt and opening of tenders, but prior to acceptance, in the following circumstances:

- (a) the existence of a sole supplier, or the receipt of only one tender
- (b) when tendered prices vary significantly from the Councils estimate for the contract
- (c) when tenders cannot readily be evaluated and compared without discussion with the tenderers
- (d) if issues such as the availability of spares or the quality of the after sales service are important considerations, where tenderers differ significantly in their offers concerning these matters
- (e) where the Executive Director (Resources) and the Executive Director (Legal & Democratic) are satisfied that better prices could be obtainable
- (f) where the Executive Director (Resources) and the Executive Director (Legal & Democratic) are satisfied that it would be in the best interests of the Council

16.7 Where negotiations are carried out with tenderers in accordance with Rule 16.6 the following rules shall apply

- (a) the relevant Chief Officer shall ensure that negotiations are carried out by officers with the relevant technical and professional expertise
- (b) negotiations shall be attended by at least two officers from the relevant service

- (c) the Executive Director (Resources) and the Executive Director (Legal & Democratic shall be given the opportunity to nominate their own representative to attend negotiations
- (d) prices and negotiated conditions shall be regarded as strictly confidential
- (e) negotiations shall take place at pre-determined times and places on Council premises unless there are good reasons for holding the negotiations elsewhere
- (f) a comprehensive written record of all negotiations shall be made, signed by all officers of the Council present and retained by the relevant Chief Officer
- (g) all documentation relating to negotiations shall be placed in sealed envelopes when transferred from one service to another to maintain confidentiality
- (h) where meetings are to be held with more than one contractor this shall be indicated to contractors and meetings shall be held separately and in confidence
- (i) details of the outcome of all negotiations shall be submitted to the Executive Director (Resources) and the Executive Director (Legal & Democratic) for approval
- (j) where tenders are close (ie within 5% of the contract estimate) negotiations shall be held with more than one tenderer as shall be agreed with the Executive Director (Resources) and the Executive Director Legal & Democratic Services)

G17. Nominating sub-contractors

17.1 Where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions will have effect:

17.1.1 where the estimated amount of a sub-contract exceeds £75,000 then, unless the relevant Chief Officer considers that it is not reasonably

practicable to obtain competitive tenders, tenders for the nomination must be invited and dealt with in accordance with these Procedure Rules as if they were for a contract with the Council.

17.1.2 any invitation for nomination under Rule G17.1.1 must require the tenderer to agree that if he is selected he will enter into a contract with the main contractor which indemnifies the main contractor in relation to the works or goods included in the sub-contract

17.2 Subject to Rules G17.3 – 17.4 below all appointments of:

- sub-contractors for the execution of specialist work; and
- suppliers for the supply of works, goods or services for which a prime cost sum is included in the main contract sum for building or civil engineering works

shall be made in accordance with these Procedure Rules unless the Chief Officer considers that it is not reasonably practicable to obtain competitive tenders .

17.3 Where the Council has already appointed a supplier for works, goods or services of the kind in question the relevant Chief Officer shall be authorised to nominate that supplier if it is considered appropriate.

17.4 Where Rule G17.3 does not apply and the prime cost sum included for any item does not exceed £75,000 the appropriate chief officer shall deal with the nomination under Rule G6.

G18. Written contracts

18.1 Contracts shall be entered into in writing respect of each procurement.

18.2 Every contract (whether resulting from acceptance of a tender, quotation or otherwise) must be in writing and must:

18.2.1 specify the work to be done, or services or goods or materials to be provided, including any appropriate technical specifications;

- 18.2.2 specify the price to be paid with a statement of discounts or other deductions;
 - 18.2.3 specify the time or times within which the contract is to be performed;
 - 18.2.4 specify that all relevant health and safety legislation must be complied with
 - 18.2.5 require the contractor to provide information to enable the Council to fulfil its obligations under the Freedom of Information Act 2000
 - 18.2.6 specify the appropriate level and type (e.g. employee liability, public liability, professional indemnity etc) of insurance required
 - 18.2.7 specify that the contractor must comply with all applicable equality legislation and ensure that appropriate monitoring arrangements are in place to ensure that equality issues are addressed
 - 18.2.8 (where the contractor may come into contact with the public as part of the contract or when performing the contract) specify that the contractor must have a procedure in place for dealing with contact with children and vulnerable adults
- 18.3 Industry standard forms of contract shall be used where these are applicable to the subject matter of the contract and the value of the contract exceeds £10 000 unless the relevant chief officer has agreed prior to the contract being awarded that some other form of written contract would be more appropriate.
- 18.4 Every contract which exceeds £75,000 in value or amounts and is for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.
- 18.5 In every contract for the supply of goods or materials the value of which exceeds £75,000, a clause shall be inserted to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Council, without prejudice to any other remedy for breach of contract,

shall be at liberty to determine the contract either wholly or to the extent of such default.

18.6 In every written contract for the execution of work or the supply of goods or services there shall be a provision that the contractor shall be prohibited from transferring or assigning directly or indirectly any portion of the contract without the written permission of the appropriate Chief Officer which permission may be either withheld or given subject to such terms and conditions as the chief officer may prescribe.

18.7 Every contract which exceeds £75,000 in value must include a clause allowing the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if:

18.7.1 the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything relating to the contract or any other contract with the Council or for favouring or not favouring any person in relation to the contract or any other contract with the Council;

18.7.2 like acts have been done by any person employed by the contractor or acting on his behalf; or

18.7.3 any such person has committed any offence under the Bribery Act 2010

18.8 No tender or quotation which includes or incorporates by reference terms and conditions not incorporated in the invitation to tender or quote shall be accepted unless:

- the other persons submitting tenders or quotations have been given an opportunity to resubmit their tenders or quotations on the same basis; or
- the Executive Director (Legal and Democratic) is satisfied that the changes to the terms and conditions are insignificant.

G19. Bond

19.1 The relevant chief officer shall decide whether a bond shall be required in respect of each contract exceeding £250 000 having regard to:

19.1.1 the potential risk to the Council of dispensing with a bond, having regard to past claims experience and the estimated premium cost

19.1.2 whether there is any exceptional technical difficulty associated with the work or service to be provided

19.1.3 the extent to which selective tendering procedures have been used and enquiries made as to the technical and financial status of the tenderer

19.1.4 the value of the contract in relation to the resources of the Council

19.1.5 the period of the contract

G20. Fraud and Whistleblowing

All contractors must be informed about the Council's Whistleblowing and Anti-fraud and Corruption policies and told where these can be found on the Council's website.

G21. Contracts reserved to bidders in the UK or local area only

21.1 The Local Government (Exclusion of Non-commercial Considerations)(England) Order 2026 ("the Order") enables the Council to limit bidding on contracts to UK or local businesses only, provided the total contract value is below the public procurement threshold. Details of the current threshold levels can be found in Schedule 1.

21.2 The Order gives the Council a discretion to define the "local area" that will apply to the reserved procurement to one of the following:

- businesses based within the UK

- businesses based within Hyndburn
- businesses based within Lancashire
- business based in any of the “county areas” listed in schedule 1 Local Government Act 1972 which border Lancashire. These are Cumbria, Greater Manchester, Merseyside, North Yorkshire and West Yorkshire (and you will need to look at the schedule to the 1972 Act to see what each of these includes).

21.3 For this purpose, “based within” means that in which the “contractor is based or has established substantive business operations, not taking account of the location of the corporate ownership or control of the contractor”.

21.4 The Government’s Guidance on the Order stresses that these powers remain optional, and their use must be considered on a case-by-case basis. When deciding whether to reserve a procurement based on supplier location you should consider:

- Market capacity: assess whether the relevant supplier market possesses sufficient capacity and capability to deliver the required goods, services or works to the necessary standard and value. Early market engagement may be needed to assess local capacity before deciding whether to reserve a procurement, and the Government Guidance indicates that “some level of competition” should be possible if the new powers are invoked.
- Value for money: the best value duty and the wider obligations in the Procurement Act 2023 for below-threshold contracts still apply, such as the procurement objectives under section 12. Accordingly, you must still have regard to the importance of delivering value for money and maximising public benefit.

21.5 If the powers in the Order are used, there are procedural and transparency requirements you must comply with, as follows:

- The contract must be tendered – please see Rules G7 and G8;
- When you invite tenders, the advert must state whether the opportunity is reserved to businesses in the UK or to those in the local area, and if it’s the latter, the “local area” must be defined.

NB: where the contract has a total value over £30k you also need to publish a Below Threshold Tender Notice on Find A Tender, and this will need to include this information as well.

Schedule 1: summary of procurement rules in the Procurement Act 2023 (for contracts above the public contracts threshold and for regulated below threshold contracts)

1. Introduction

1.1 The Procurement Act 2023 (and the supporting regulations, including the Procurement Regulations 2024 and Government guidance) sets out the legal framework for public procurement and the procedures that **must** be followed before awarding a contract the value of which exceeds set thresholds. In most cases the Act requires there to be some form of competition.

1.2 The objectives of the new legislation are:

- Delivering value for money
- Maximising public benefit
- Greater sharing of information about the procurement process and procurement decisions
- Reducing barriers to SME participation
- Treating all suppliers the same unless different treatment can be justified
- Acting and being seen to act with integrity

and section 12 of the Act requires the Council to have regard to these objectives when carrying out above threshold procurement, even when a framework is used. The Council is also required to have regard to the objectives set out in the Government's national procurement policy statement.

1.3 This is only a summary of the main features of the Procurement Act and gives details only of those requirements likely to be of most relevance to the Council. This document does not give advice in respect of specific procurements. If you believe your procurement may exceed the relevant threshold you **must** seek advice from Legal Services as large financial penalties can be awarded against the Council if the legislative requirements are not followed or are followed incorrectly.

2. Threshold Levels

Thresholds applicable from 1st January 2026 to 31st December 2028 are given below. Thresholds are **INCLUSIVE** of VAT (not net of VAT as was the case until 1st January 2022).

Type of contract	SUPPLIES	SERVICES	WORKS
Threshold level	£207,720.000	£207,720.00	£5,193,000.00

3. **Below Threshold Procurement**

The Procurement Act 2023 applies to a limited extent to procurement below the threshold level. In particular:

- It imposes an implied contract term that all amounts due to the supplier will be paid within 30 days of receipt of an undisputed invoice and this payment period cannot be extended contractually;
- It imposes a duty to consider whether there are barriers to participation by SME's and whether reasonable steps could be taken to remove these (but this doesn't apply if procurement is carried out via a framework)
- If the Council chooses to openly advertise a contract with an estimated value over £30k (including VAT):
 - The time periods set for the procurement process must be reasonable
 - The Council must publish a below threshold tender notice on the central digital platform ("Find A Tender") when it advertises the contract opportunity
 - The Council must publish a below threshold contract details notice on the central digital platform ("Find A Tender") as soon as practicable after contract award.

4. **Mixed contracts**

Usually it will be clear how to categorise a contract from its subject matter but there are occasions when contracts contain elements of both supplies and services, for example. In those cases:

- Where a contract covers both services and supplies, its classification should be determined by the respective values of the two elements.
- Where it covers works/supplies or works/services, it should be classified according to its predominant purpose.

- Where a contract provides for the supply of equipment and an operator it should be regarded as a services contract.
- Contracts for software are considered to be for supplies unless they have to be tailored to the purchaser's specification, in which case they are services.

5. Process

5.1 Usually, an above threshold procurement will be carried out using:

- the open procedure
- the competitive flexible procedure
- a framework

5.2 When deciding which procedure to use the Act (section 12) requires the Council to have regard to

- delivering value for money
- sharing more information about procurement activity and decisions
- maximising public benefit (more scope for social value considerations)
- reducing barriers to SME participation
- treating all suppliers the same unless different treatment can be justified
- acting and being seen to act with integrity

5.3 The open procedure is a single stage process. The Council cannot limit number of tenders received and all information and tender documentation must be available at publication of tender notice.

5.4 The competitive flexible process is a multi stage process designed by the Council to suit the circumstances of the particular procurement. The process can include negotiation, demonstrations, presentations, site visits or additional bidding stages. However, the process must be proportionate to the nature, complexity and value of the contract being procured.

In a competitive flexible procedure there may be a separate participation stage to limit the number of suppliers invited to participate further (this is akin to a selection stage in the previous legislation). If this approach is taken, the Council will invite suppliers to submit requests to participate by publishing a tender notice, detailing the conditions of participation and any other criteria by which the number of suppliers may be limited. The Government's guidance suggests that the number of participants should be reduced to no fewer than 5 if the procurement process is simple and no less than 3 if it is complex.

The Council must give a written assessment summary to those unsuccessful at the participation stage

6 Timescales

6.1 The Act sets out the minimum timescales that apply to the procurement process and does not set any maximum times. When setting time limits for the procurement process, the Council must have regard to the factors outlined in Section 54(1) of the Procurement Act 2023, namely:

- i. The nature and complexity of the contract being awarded
- ii. The need for site visits, physical inspections and other practical steps
- iii. The need for sub-contracting
- iv. The nature and complexity of any modification of the tender notice or any associated tender documents
- v. The importance of avoiding unnecessary delay.

In addition, the Act requires the Council to have regard to need to be seen to act with integrity, and the requirement to have regard to the fact that small and medium-sized enterprises may face particular barriers to participation.

6.2 Competitive flexible procedure – participation process timescales

The participation period starts the day after the Council invites requests to participate in the competitive flexible procedure and ends on the day by which those requests must be submitted.

The Act provides that in most cases a participation period of at least 25 days must be allowed for suppliers to submit requests. The only exceptions are:

- a. where the contract is a light touch contract: there is no minimum participation period;
- b. where the Council considers there to be a state of urgency meaning a 25 day participation period is impractical: the minimum participation period may be reduced to 10 days.

6.3 Tendering timescales – for open procedure or tendering stages with a competitive flexible procedure

The tendering period starts the day after the Council invites the submission of tenders and ends on the day by which tenders must be submitted.

The table setting out the timescale for each procurement procedure is set out below

Circumstance	Minimum period
Planned Procurement Notice has been issued	10 days
The Council considers there is a 'state of urgency' (see below)	10 days
Tenders are submitted electronically, and the Tender Notice and associated tender documents are provided at the same time	25 days
Tenders are submitted electronically, but the Tender Notice and associated tender documents are not provided at the same time	30 days
Tenders are not submitted electronically, but the Tender Notice and associated tender documents are provided at the same time	30 days
Tenders are not submitted electronically, and the Tender Notice and associated tender documents are provided at the same time	35 days

NB: the time periods are reduced when the Council considers there is a state of urgency. While a 'state of urgency' is not defined in the Act, the guidance state that a decision to reduce the minimum time period must be based on an objective need for urgency and in circumstances where following the usual time scales would have a genuine adverse effect. As such, it should not be used as a way to 'catch up' following delays in the procurement process.

7 Notice requirements

The Act requires the service of a range of notice throughout the procurement process and contract term. These are summarised below:

Preparation Stage

- **Planned Procurement Notice:** this is an optional notice. It is intended to show that the Council intends to publish a tender notice in the future.
- **Preliminary Market Engagement Notice:** the Council is not obliged to carry out Prior Market Engagement but where it does, it has the option to publish a Prior Market Engagement Notice. If the Council doesn't do so it must provide reasons for conducting Prior Market Engagement in the tender notice when it publishes the same.

Tender Stage

- **Tender Notice:** if the Council is planning to award a public contract via a competitive procedure, then tender notice will be mandatory and commences the process. The notice will include a link to the tender documents.
- **Transparency Notice:** this is mandatory if the Council makes a direct contract award without competition. Such awards can be made only in limited circumstances and the notice will demonstrate compliance with the legal requirements.
- **Below Threshold Tender Notice:** this is mandatory if the Council intends to publicly advertise for the purpose of inviting tenders for a below threshold procurement (being a contract with estimated value of £30,000 (inc. VAT) or more. The notice must be published prior to advertising the below threshold contract.
- **Procurement Termination Notice:** mandatory for above threshold contracts where, after publishing a tender or transparency notice, the Council decides not to award the contract.

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Award Stage

- **Contract Award Notice:** this is published at the end of the procurement process to give notice of the Council's intention to enter into a contract. Publication of the notice starts the 8 working days standstill period. In addition, prior to publishing the contract award notice, the Council must give a written assessment summary to each supplier that submitted a tender.
- **Contract Details Notice:** this shows that a contract has been entered into and must be published even when a framework is used. States name of supplier, value of contract, duration etc.

- **Procurement Termination Notice:** published if the Council decides to abandon a procurement. Must be published as soon as reasonably practicable after making the decision.
- **Below-Threshold Contract Details Notice:** for contracts with an estimated value of £30,000 or more (inc. VAT). The Council must publish the notice as soon as reasonably practicable after entering into the contract
- **Publication of contract:** for contracts with a value of more than £5m the Council must also publish a copy of the contract within 90 days of entering into the contract (or 180 days if the contract is light touch).

Performance management stage

Contract Change Notice: mandatory where an above-threshold modification is made to a contract, or a change takes a below threshold contract above threshold level. No contract change notice is required to be published where the modification does not increase or decrease the value of the contract (a) in the case of supply of goods and services contracts, by 10% or less or (b) in the case of works contracts, 15% or less.

Contract Termination Notice: this is mandatory and must be published within 30 days of the contract termination date, (whether termination is due to expiry or otherwise).

Payments Compliance Notes: this is mandatory and must show the Council's compliance with 30-day payment terms. Such notices must be published every 6 months within 30 days of 31 March or 30 September

Contract Performance Notice: where the Council has included KPIs in the contract and the contract has a value of over £5million then it must at least once every year assess the suppliers performance against those KPIs and publish information about the suppliers performance. In addition, the Council is required to share information about breaches of contract or poor performance (including those which result in termination, payment of damages or a settlement agreement) by the supplier within 30 days of the breach or poor performance.

8 Conflicts of interest

The Council has a duty to take reasonable steps to identify conflicts of interest or potential conflicts of interest in respect of the procurement process. Before procurement starts the Council must carry out a conflicts assessment and then keep the same under review during the procurement.

In addition, the Council has a duty to take reasonable steps to ensure no supplier is given an unfair advantage or disadvantage in the procurement process. The Council may need to disallow suppliers with an unfair advantage if they refuse to take steps to remove the same.

9 Light touch procurements

Light touch contracts are contracts for certain social, health, education and other public services and are subject to more flexible procurement rules up to a contract value of £663,540. These services are usually ones provided directly to individuals or groups of people and therefore warrant special treatment and greater flexibility.

Please take legal advice if you think your procurement relates to a light touch service.