

## **Appendix C – Proposed new version of Part I6**

Part I6 -Contract Procedure Rules and Standing Orders

For the Supply of Goods, Provision of Services and Execution of Works

Part 1 – non-Public Health Services

Effective from 24<sup>th</sup> February 2024 under Section 135 of the Local Government Act 1972

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### Contract Procedure Rules and Standing Orders for the Supply of Goods, Provision of Service and Execution of Works

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### SECTION A: PRELIMINARY

#### 1 Definitions

1.1 In this document the following terms and phrases are defined as follows:

Defined term	Definition
Act	the Procurement Act 2023 and the regulations made thereunder as the same may be amended from time to time
Assessment Summary and Assessment Summaries	<p>For Procurement Exercises, at or above Threshold Value, the information to be provided to each Candidate, whether successful or not), via email or via the Councils Electronic Tendering System, prior to the Council publishing the Contract Award Notice that:</p> <p>(i) in the case of the successful Candidate, compares that Candidates tender against the Award Criteria and</p> <p>(ii) in the case of Candidates that was excluded at an earlier stage of a Procurement Exercise for any reason and who did not provide a tender, an appropriate level of detail to explain the Candidates scores and the reasons for exclusion relevant to the point in the Procurement Exercise at which the Candidate was excluded.</p> <p>(iii) in the case of an unsuccessful Candidate who did provide a tender, compares that Candidates tender against the successful Candidates tender as assessed against the Award Criteria applicable to the Procurement Exercise to enable each Candidate to understand why its tender was unsuccessful</p>
Award Criteria	the criteria by which the Contract is to be evaluated and awarded to the successful Supplier
Award Decision	the decision that authorises the award of a Contract to a particular Supplier/s following compliance with the relevant Scheme of Delegation, (as determined by the overall value of a Contract), that is to be observed and where appropriate published as a Key Decision, to enable a lawful award of a Contract to be made to a particular Supplier/s
Below Threshold	A Total Contract Value that is below the Procurement Thresholds that does not require full compliance with the Act and is to be procured in accordance with these Rules

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Best Value	The Council's duty to comply with Part I of the Local Government Act 1999 and the statutory guidance made thereunder, to secure continuous improvement, having regard to a combination of economy, efficiency, and effectiveness. In procurement terms this is demonstrated by the requirement to seek the MAT, to undertake Procurement Exercises fairly, openly and in a proportionate, lawful, and transparent way, to manage and review contractual performance and by compliance with relevant Council policies
Call-off Contract/s	a Contract awarded under a Framework Agreement, Dynamic Market or Dynamic Purchasing System
Candidate/s	any and all suppliers participating in or expressing an interest in participating in a Contract, regardless of value
Competitive Tendering Procedure	as referred to in section 20 of the Act
Concession Contract	a Contract concluded in writing where the consideration for the Contract is the concessionaires right to profit from the Works/Services that are the subject of the Contract
Conditions of Participation	the Council's minimum requirements for a procurement process, details of the proposed requirement and the criteria by which a Candidate is to be assessed as being suitable to deliver the requirements of the Contract
Constitution	the constitution of the Council that includes provision for the: <ul style="list-style-type: none"> <li>• Processes required to enable a Contract to be let including compliance with Financial Instructions, procedures, codes and protocols</li> <li>• The delegation of decision-making powers and responsibilities through the Council and Executive Scheme of Delegation</li> </ul>
Contract	a legally binding agreement for the hire, rental lease or purchase of Goods, the provision of Works or the delivery of Services including consultancy services and the deliverables (as approved by Legal Services) under which the Council engages a Supplier in accordance with: <p>(i) a purchase order endorsed with the Council's Purchase Order terms and conditions; or</p> <p>(ii) a written contract which term shall include Framework Agreements, Call-Off Contracts and the documentation required to secure a requirement resulting from a Dynamic Markets exercise.</p>
Contracts Register	the Council's repository of Contracts as held on the Council's Electronic Tendering System

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Council	Somerset Council
Dynamic Markets	as referred to in section 34-40 of the Procurement Act 2023
Electronic Signing Software	software for the electronic completion of Contracts which complies with the requirements of the Electronic Communications Act 2000
Electronic Tendering System	the Councils e-tendering system, that provides an interface into Find a Tender Service for the purposes of conducting procurement activities electronically
Financial Instructions	the Financial Regulations and Financial Procedures, and any subsequent guidance, outlining the Officer's responsibilities for financial matters as issued by the Section 151 Officer or their deputies in accordance with the Constitution
Find a Tender Service	the web-based portal provided for the purpose of publicising contract opportunities and associated notices and retaining supplier information.
Framework Agreement	an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (including the terms as to price and, where appropriate, quantity) under which the Candidates/s will enter into one or more Contracts with a Council
Goods	physical products purchased, leased, rented, or manufactured on request
Invitation to Tender (ITT)	the document in the form required by these Rules to seek Tenders from Candidates
Key Decision	a decision to be taken by the Council or the Executive with an associated cost or savings value at or above £500,000 or that is deemed significant in terms of its effect on communities living or working within the area of the Council.
Legal Services	the Council's internal legal department
Light Touch Contracts	the statutory procedure set out in Procurement Act 2023 section 9 and as defined in the Procurement Regulations 2024 at regulation 42 with the Common Procurement Vocabulary codes listed in Schedule 1
Member	any Councillor appointed to the Council for the time being
Most Advantageous Tender or "MAT"	means the tender that the Council considers satisfies its requirements, and best satisfies the award criteria when reaching a Contract Award Decision
Monitoring Officer	The Officer appointed statutory post appointed under section 5 of the Local Government and Housing Act 1989 with responsibility to report on matters they believe to be illegal or amount to maladministration, to be responsible for matters relating to the conduct of Members and Officers and, to be responsible for the operation of the Council's Constitution or

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	their authorised deputies.
National Procurement Policy Statement	the national strategic priorities for public procurement, as the same may be withdrawn, amended or replaced from time to time, that the Council must by law have regard to when preparing for and undertaking Procurement Exercises save for those Procurement Exercises specified in section 13.10 and Schedule 2 of the Act (that include Contracts awarded in accordance with a Framework Agreement or by reference to Suppliers' membership of a dynamic market).
Non-commercial Considerations	<p>Shall mean factors that must not be taken into account at the Award Decision stage, such as the introduction of selection and Award Criteria that have not been disclosed out the outset of the Procurement Exercise or the factors described in section 17(5)(e) of the Local Government Act 1988 that must <u>not</u> be taken into account in establishing the Award Criteria, or in any Invitation to Tender document including the specification and schedule of requirements or as grounds for decision in any Key Decision or Non-key decision, unless disapplied in whole or in part by Section 116 of the Act or any other Relevant Legislation, for example:</p> <p>(i) The Local Government (Exclusion of Non-commercial Considerations) (England) Order 2022; or</p> <p>(ii) Regulation 17 of the Procurement Act 2023 (Miscellaneous Provisions) Regulations 2024 that allows a Below-Threshold requirement to be limited to Suppliers that are either based within the UK or based within a particular County.</p>
Non-Key Decision	a decision to be taken by either Council or, the Executive or by an Officer in accordance with the Scheme of Delegation, for an associated cost or savings value of less than £500,000
Officer	a person employed by the Council with authority to procure requirements in accordance with these Rules or make procurement decisions in accordance with the Scheme of Delegation and/or undertake contract management responsibilities provided that such person has first completed the Passport to Procure training
Passport to Procure	the procurement training available via the Council's electronic training system, The Learning Centre
Predecessor Legislation	the Public Contracts Regulation 2015, the Concession Regulations 2016, the Utilities Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011 that govern procurement exercises commenced prior to 24 <sup>th</sup> February 2024 together and post award processes and procedures for example contract extension and variation



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Procurement	the Procurement Team
Procurement Documents	<p>the documents that must support an ITT where tenders of over £100,000 are being sought, including without limitation, the:</p> <ol style="list-style-type: none"> <li>a. Invitation to Tender and/or Conditions of Participation to include the Award Criteria</li> <li>b. Specification or requirement for works to include, where appropriate, details of proposed Key Performance Indicators and Service Levels and Business Continuity Plans</li> <li>c. Council's terms and conditions of contract or Framework Agreement and/or Call Off conditions of contract to include a payment profile, insurance requirements following consultation with the Insurance Officer and bonds, parent company guarantees and collateral warranties and data sharing, as appropriate</li> <li>d. Form of Tender and Certificate of Non-Collusion</li> <li>e. Pricing schedule</li> <li>f. Commercially confidential information schedule</li> <li>g. Social Value schedule</li> <li>h. Data sharing arrangements where appropriate</li> <li>i. any other requirements as mandated by any Relevant Legislation relating to the requirement, for example a CDM Pre-Construction Health and Safety Plan</li> </ol>
Procurement Exercise	The procurement process authorised by these Rules, by the Act or by other Relevant Legislation to identify a suitable Supplier for a Contract
Procurement Officer	an Officer that has completed the Passport to Procure training and which is employed to Commercial and Procurement
Procurement Sourcing Strategy	The procurement plan referred to in <b>Rule 22</b>
Procurement Thresholds	As determined by the Act or the regulations made thereunder, the monetary values of which are set out in the definition of 'Threshold Value' below
Quote or Quotation	A written communication from a Supplier that sets out the Suppliers offer including the price to fulfil a requirement
Quote or Quotation Documents	<p>the documents that must support any request for Quotation, which as a minimum must include, the:</p> <ol style="list-style-type: none"> <li>a. Specification or requirement for works to include outputs and deliverables as required, timescales for delivery/completion, proposed payment arrangements and where appropriate, phasing and details of proposed Key</li> </ol>

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	<p>Performance Indicators and Service Levels and Business Continuity Plans</p> <p>b. Council’s purchase order terms and conditions or other Contract approved by Legal Services</p> <p>c. Appropriate levels of insurance cover required following consultation with the Insurance Officer</p> <p>d. Bonds, parent company guarantees and collateral warranties, as appropriate</p> <p>e. A pricing schedule and a request for a detailed breakdown of costs</p> <p>f. any other requirements as mandated by any Relevant Legislation relating to the requirement, for example a CDM Pre-Construction Health and Safety Plan</p> <p>g. Data sharing arrangements, and/or commercially confidential information schedules, where appropriate</p>
Relevant Legislation	all or any law, regulation, and statutory guidance applicable within England and Wales, as the same may be amended from time to time, relating to a Procurement Exercise, regardless of value, or its subject matter including the Act and the Health Care Services (Provider Selection Regime) Regulations 2023
Relevant Policy	A policy of the Council relating to a Procurement Exercise or its subject matter
Rule/s	Shall be a direct reference to a particular paragraph of these Contract Procedure Rules and Standing Orders
Scheme of Delegation	The Council and Executive Scheme of Delegation and The Officer Scheme of Delegation as set out in Part 12 of the Constitution)
Section 151 Officer	the Officer employed in the position of chief finance officer or such Officer as they may duly authorise to act on their behalf
Services	the supply of expertise and/or deliverables, e.g. reports excluding Goods
SME	<p>As defined by the UK Government based on the EU Commission Recommendation of 6 May 2003 (2003/361), as the same may be amended from time to time, being:</p> <p>A medium sized company with a staff headcount of under 500, an annual turnover of under 50m Euro’s and a balance sheet total of under 43m Euros or UK equivalent</p> <p>A small sized company with a staff headcount of under 50, an annual turnover of under 10m Euro’s and a balance sheet total of under 10m Euros or UK equivalent</p>

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	<p>A micro sized company with a staff headcount of under 10, an annual turnover of under 2m Euro's and a balance sheet total of under 2m Euros or UK equivalent</p> <p>And for the purpose of these Rules shall include Voluntary, Community Faith, Social Enterprise sectors</p>
Social Value	additional economic, social, and environmental benefits generated in the performance of a contract beyond the goods, services or works being procured
Standstill Period	<p>the minimum 8 working day mandatory standstill period, (excluding bank and public holidays) commencing on the publication of the Contract Award notice that apply to above Threshold Value Procurement Exercises, during which time the Council is not permitted to enter into the Contract, regardless of whether awarded following a Competitive Tendering Procedure or by reason of a direct award unless the requirement to comply with the standstill period for direct awards only, (pursuant to 51(3) of the Act), is exempted from this requirement to by reason of:</p> <ul style="list-style-type: none"> <li>i. Schedule 5, paragraph 13 of the Act (extreme and unavoidable urgency);</li> <li>ii. regulations made under section 42 of the Act (Direct award to protect life, etc.); and</li> <li>iii. call-off contracts awarded under a Framework Agreement.</li> <li>iv. contracts awarded under a dynamic market; and</li> <li>v. light touch contracts.</li> </ul>
Statutory Officers Board	a Council Officer meeting which oversees the annual governance statement and keeps the Constitution and democratic arrangements fit for purpose.
Supplier	the successful Candidate who may be a service provider, a consultant, a contractor, or a supplier
Sustainable Procurement	the adoption of social, economic, and environmental factors and policy requirements relating to the procurement of a requirement
Tender	the Candidate's response in the form required by the Invitation to Tender issued by the Council
Threshold Value	<p>The financial value of a proposed requirement based on the Total Contract Value which if met or exceeded requires the Procurement Exercise to be undertaken in accordance with the Act, or such other Relevant Legislation as may apply. These Thresholds Values are</p> <p>Goods and Services Contracts £213,477 (inc. VAT)</p> <p>Works Contracts £5,336,937 (inc. VAT)</p> <p>Light Touch Contracts £663,540 (inc. VAT)</p>

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	<p>Concession Contracts £5,336,937 (inc. VAT)</p> <p>Utilities Contract £426,955 (inc. VAT)</p>
Total Contract Value	<p>the calculation of the overall estimated value of a requirement, inclusive of VAT where applicable, any proposed extensions to a proposed Contract, recurring requirements and any directly associated requirements, for example, the ongoing maintenance and/or support for a proposed requirement</p>
Transfer of Undertaking (Protection of Employment) (“TUPE”)	<p>the legislation and regulations made thereunder, as the same may be amended from time to time, to protect the rights of UK employees where a Procurement Exercise results in either a business transfer or a service provision change</p>
Transparency Code	<p>The Local Government Transparency Code 2015</p>
Works	<p>the construction of structures of all kinds, such as buildings, highways, bridges, as well as renovations, extensions, and repairs and other building works as defined in the Procurement Regulations 2024 at regulation 45 with Common Procurement Vocabulary codes listed in Schedule 3</p>

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### SECTION B: GENERAL BINDING PRINCIPLES

#### 2 Introduction

- 2.1 These Contract Procedure Rules and Standing Orders set out the framework within which all the procurement activity in the Council is undertaken from identifying a requirement to contract award and contract management. They relate to procuring and/or entering into Contracts for the supply of all Goods (supplies and materials), Services (including consultancy appointments) and Works and promote both the delivery of Best Value for the Council's taxpayers and excellent outcomes for its service and end users. The Rules also provide a basis for fair competition by providing transparent and auditable procedures to protect the Council's reputation from any suggestion of dishonesty or corruption.
- 2.2 The observance of these Rules is mandatory, governs and regulates the procurement activity of all Officers and any companies or organisations within the Council's control and applies to any persons or organisations who are supporting the Council in relation to any Procurement Exercise.
- 2.3 A breach of these Rules, regardless of the Total Contract Value of the requirement, shall be regarded as a 'Breach' and shall be reported and recorded by Procurement and may additionally be regarded as gross misconduct and may result in disciplinary action. A failure on the part of an Officer to seek Procurement and/or Legal advice may additionally be regarded as gross misconduct and may result in disciplinary action.
- 2.4 Officers and to the extent appropriate Members:
- 2.4.1 Shall seek advice as required from Procurement and from Legal Services relating to a Below Threshold Procurement Exercise; and
- 2.4.2 Must refer to and work with Procurement and with Legal Services for more detailed guidance throughout any above Threshold Value Procurement Exercise and must take account of all necessary legal, financial, procurement, HR, ICT and technical and any other professional advice;
- 2.4.3 Shall comply with the Rules relating to Predecessor Legislation in relation to any procurement exercise, regardless of value that was commenced or

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awarded prior to 24th February 2025; and

- 2.4.4 Must have regard to any temporary spending requirements and processes that the Council may additionally from time to time impose.
- 2.5 These Rules shall be reviewed and updated annually jointly by Procurement and Legal Services. Amendments to these Rules shall be agreed and adopted by Full Council.

### 3 Key Principles

- 3.1 In relation to above Threshold Value Procurement Exercises, where either a new requirement is to be procured and at least six months prior to the natural expiry of a Contract, the Officer shall liaise with Procurement in order to agree a Procurement Strategy for the letting, extension or renewal of a Contract.
- 3.2 All commissioning, contracting activity and contract management activity must:
- 3.2.1 Comply with the Procurement Objectives as set out in section 12 of the Act, namely:
- 3.2.1.1 the delivery of Best Value;
- 3.2.1.2 the maximisation of public benefit;
- 3.2.1.3 the sharing information for the purpose of allowing Candidates and others to understand the Council's procurement policies and decisions;
- 3.2.1.4 acting, and being seen to act, with integrity;
- 3.2.1.5 treating all Suppliers the same unless in exceptional circumstances the Act otherwise permits; and
- 3.2.1.6 having regard to the fact that SMEs may face barriers to participation, consider whether such barriers can be removed or reduced. This will include exercising the duty to consider dividing the Procurement Exercise into lots.
- 3.2.2 Comply with both these Rules and Financial Regulations:
- 3.2.3 Comply with the Relevant Legislation (including the Council's statutory duties and powers):
- 3.2.4 Comply with any relevant Council policies including those set out in **Rule 8** (Relevant Policy):

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- 3.2.5 Support the Council's corporate and departmental aims:
- 3.2.6 Ensure that Non-Commercial Considerations do not influence the Award Decision: and
- 3.2.7 Have due regard to the National Procurement Policy Statement.
- 3.3 Where a procurement exercise, regardless of value, commenced prior to 24<sup>th</sup> February 2025, in accordance with any Predecessor Legislation, the general principle is that Predecessor Legislation shall, subject to compliance with the Procurement Act (Commencement No. 3 and Transitional and Saving) Regulations 2024, (as the same may be amended from time to time), continue to govern these ongoing procurement exercise, post contract awards, variations and contract management. All Officers must have regard to and seek advice from Procurement and/or Legal Services as required to ensure that the correct law and process is applied.

### **4 Passport to Procure**

- 4.1 Any officer proposing to engage in a Procurement Exercise for Goods, Services or Works above £100,000 shall complete the Passport to Procure training, before being permitted to participate in any procurement activity.

### **5 Purchase Orders**

- 5.1 Officers shall observe the requirements of Section 12 – 'Ordering and Paying for Works, Goods & Services' of the Financial Regulations and in particular:
  - 5.1.1 Officers must issue official Purchase Orders for all goods and services unless there is a specific exemption agreed as part of the Purchase Order Policy by the Service Director for Finance and Procurement prior to the commencement of the works/services or delivery of goods and prior to the receipt of an invoice.
  - 5.1.2 All Purchase Orders must (unless specifically exempted) be raised through the Council's Financial Management System.
  - 5.1.3 There must be a separation of duties between the officer raising the Purchase Requisition and the officer authorising the Requisition to enable a Purchase

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Order to be generated.

### **6 Prevention of corruption and collusion**

- 6.1 Officers must only use Council approved budgets for the purchase of Works, Goods and Services which are for the express use of the Council. Elected Members, officers or others engaged with the Council must not use the Council's ordering or payments systems for personal use or benefit.
- 6.2 Members, Officers, and individuals engaged to work for the Council must declare any links or personal interests that they may have with purchasers, suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council, in accordance with these Rules, the Financial Regulations and the relevant Council's Code of Conduct concerning the issue or receipt of gifts, rewards or hospitality.
- 6.3 All Officers:
  - 6.3.1 Have a duty in law to avoid any form of behaviour that might distort or restrict competition or call into question the award of a Contract:
  - 6.3.2 Have a duty to avoid any form of behaviour that might be perceived to restrict competition or call into question the award of a Contract:
  - 6.3.3 Shall identify and investigate suspicious bidding patterns: and
  - 6.3.4 Shall keep notes of all discussions with Candidates.
- 6.4 All Procurement Exercises must as a minimum:
  - 6.4.1 include non-collusion clauses; and
  - 6.4.2 ensure an appropriate number of credible Candidates are invited to take part in a Procurement Exercise to comply with these Rules and to allow a level of competition appropriate to the value of the proposed Contract, where practicable.
- 6.5 Officers are advised that any inappropriate behaviour that is deemed contrary to the Bribery Act 2010, the Fraud Act 2006, the Economic Crime and Corporate Transparency Act 2023, any amending legislation all legislation relating to money laundering and the Council's relevant policies may be dealt



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with as a breach of the Council's standards of conduct. This may be treated as gross misconduct and give rise to action under the Council's disciplinary policy and procedure, such as dismissal. Such activity may also be reported to the Police.

### **7 Conflicts of interest**

- 7.1 All Officers, Members and key stakeholders involved in a Procurement Exercise or the management of the resulting Contract must declare in writing to the Procurement Officer any conflicts of interests, or perceived conflicts of interest relating to the procurement activity where they, or their spouse or civil partner, friend or business associate, have a vested interest that could conflict with the best interests of the Council as soon as it is identified.
- 7.2 Where a conflict, or perceived conflict of interest exists, the Procurement Officer, in consultation with Legal Services, shall consider any appropriate mitigation(s) to be put in place to ensure that such conflicts do not compromise the outcome of the Procurement Exercise, or whether such Officer, Member or key stakeholder must excuse themselves from the procurement.
- 7.3 The Procurement Officer shall maintain a conflict assessment of all declarations of interest and mitigations in a Procurement Exercise as notified by Officers, Members and key stakeholders and shall share the declarations of interest record with Legal Services and Democratic Services. Further advice and guidance can be obtained from Procurement.

### **8 Relevant Policy**

- 8.1 When planning and preparing all procurement and contracting activities the Officer shall have regard to the Council's Relevant Policy and duties including, but not limited to, the following:
  - 8.1.1 The Council Plan:
  - 8.1.2 Sustainable Procurement:
  - 8.1.3 Social Value Policy:
  - 8.1.4 Medium Term Financial Plan:
  - 8.1.5 the Climate Emergency:

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8.1.6 the relevant Service Plan(s):

8.1.7 Health & Safety Managing Contractors policy.

8.1.8 Relevant Service commissioning strategy.

8.2 The Local Government Transparency Code 2015 sets out the minimum data that local authorities should be publishing, the frequency it should be published and how it should be published. Procurement will ensure that all Contract awards at or over £30,000 are published in accordance with the Transparency Code.

8.3 Purchase Orders of £5,000 and above will only be approved once Procurement and Finance have checked them. Procurement will examine all off-contract spend and target reductions in discretionary areas of spend and challenge those that should be using existing Contracts.

8.4 Purchase Orders will not be approved if the goods, services, or works have not been procured in line with these Rules and the Council's Financial Regulations.

### **9 Community Right to Challenge - Localism Act 2011**

9.1 Under the Localism Act 2011 and any amending legislation, community organisations can submit to local authorities an expression of interest to run local services, commonly known as the Community Right to Challenge.

9.2 If such an expression of interest is accepted by the Council this will trigger procurement or contracting activity, which is subject to these Rules.

### **10 TUPE**

10.1 Where any Procurement Exercise may or will trigger the application of TUPE of Council Staff, the proposed procurement shall be referred to the Executive for permission to Tender. Such Contracts shall be referred for a further decision by the Executive to award the Contract unless the permission to enter into a contract is specifically delegated by the Executive to named Officers

### **11 Sealed Bids**

11.1 Where the Council propose seeking Tenders/Quotations using e-procurement/central government catalogues, the Rules governing the sealed bids/Tender and any consequent terms and conditions shall first be approved

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by Legal Services following consultation with the Procurement Officer and if approved shall be adopted in place of the relevant requirements of these Rules for that particular Procurement Exercise.

11.2 In the case of sealed bids concerning the Community Right to Challenge and disposal of land, **Rule 32** concerning the Submission, Receipt and Opening of Tenders shall be observed

### 12 Confidentiality

12.1 Officers shall ensure security and confidentiality of documentation at all stages of a Procurement Exercise including Tender Evaluation Reports, working papers and minutes of meetings. The Officer must ensure that records in writing are maintained of all minutes of meetings and decisions/actions taken

### 13 Lifecycle and Termination of Contract

13.1 Officers shall:

13.1.1 proactively monitor and manage the lifecycle of a Contract awarded under these Rules including the monitoring of performance; and

13.1.2 inform Procurement of any intention to vary or terminate a Contract to enable Procurement to determine whether it needs to publish notices in accordance with **Rule 17**.

### 14 Exemptions

14.1 Exempted Contracts are:

14.1.1 As defined in Schedule 2 of the Act and include:

14.1.1.1 Various forms of dispute resolution purchased by the Council as such Contracts are generally agreed on or selected by the participating parties to a Contract:

14.1.1.2 Certain 'exempt legal services', including legal representation in judicial proceedings (such as a court) or in a dispute resolution process; pre-litigation advice by a lawyer; services provided by a notary to certify or authenticate documents where that is required legally; or any other legal service where that service is required to be performed by a court or tribunal or by law:

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14.1.1.3 Loans:

14.1.1.4 Certain ‘public service obligations regulations’ which are defined in section 136(11) of the Railways Act 1993:

14.1.1.5 Contracts for ‘research and development services’ that are intended for general public benefit provided the Contract does not generate goods or works that might otherwise flow from the research and development activity (i.e. pure research and development with no commercial or commercialisation element):

14.1.1.6 Certain land transactions where the Council does not derive additional benefits over and above the price for the purchase, sale, lease, or rental of land:

14.1.1.7 Certain ‘quasi in-house awards’, arising between the Council and an organisation that is connected ‘vertically’ with the Council, i.e. with a body which has a separate legal personality but is under the control of the Council for example between a trading company set up by the Council and the Council or a group of local authorities to fulfil a specific task, such as carrying out waste treatment and collection for the Council:

14.1.1.8 Certain ‘horizontal’ arrangements between two or more contracting authorities only to deliver a service, for example the joint performance of a common task related to their public functions, such as waste disposal across several Council areas:

14.1.1.9 Employment contracts, (but not service contracts for personnel placement and supply services, which are regulated by the Act):

14.2 Grant Funding Arrangements (that are instead subject to the Subsidy Control Act 2022) where:

14.2.1 the funding is provided in order to achieve agreed outcomes:

14.2.2 the recipient will have discretion over the spending of that funding within limits agreed between the Council and the recipient of the funding:

14.2.3 the recipient will be liable to repay any funding spent outside the agreed limits:  
and

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14.2.4 Waivers from the requirement to comply with these Rules, which may be granted for Below Threshold requirements only. Waivers cannot overcome any prevailing statutory requirements and are to be granted in exceptional circumstances only

### **SECTION C: PRE-PROCUREMENT STEPS**

#### **15 Total Contract Value**

15.1 The Officer shall first estimate the Total Contract Value of the proposed requirement as follows:

15.1.1 For single, recurring or related requirements, (and regardless of whether they are to be acquired under a collaborative procurement exercise or otherwise), the Total Contract Value shall be calculated having regard to the value of any similar contracts that have been previously let by the Council and shall include VAT, any directly associated related requirements, e.g. for maintenance and support and any additional options, fees, commissions, lots, renewals and/or extensions together with any estimated costs of decommissioning, disposals or contract exit to be delivered as part of the Contract:

15.1.2 Where the Contract period is indefinite or uncertain, the value shall be calculated on the basis that the Contract will be for a period of four years and be based on the value of contracts of the same or similar type awarded during the preceding period:

15.1.3 The estimated value of a Framework Agreement, Dynamic Market or Dynamic Purchasing System shall be the total value of all of the Contracts inclusive of VAT that may be awarded against that Framework Agreement, Dynamic Market or Dynamic Purchasing System:

15.1.4 The value of a Concession Contract shall be the best estimate of the financial value to the Contractor that shall be made over the life of the arrangement.

15.2 The general rules when calculating the Total Contract Value are as follows:

15.2.1 purchases of the same or similar type must be aggregated wherever practicable;

15.2.2 where there is a common requirement across the Council, the Total Contract

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Value shall be the aggregate of all purchases across the Council;

15.2.3 a Contract shall not be sub-divided with the effect of preventing it from falling within the scope of these Rules or the Act;

15.2.4 the Total Contract Value shall be calculated in advance of the date on which the advertisement is sent or when the Council commences the procurement procedure, whichever is the latter.

15.3 In relation to a concession contract, the value of a concession contract is the maximum amount the Supplier could expect to receive under or in connection with the Contract including, where applicable, amounts already received, for example:

15.3.1 amounts representing revenue (whether monetary or non-monetary) receivable due to the exploitation of the works or services to which the Contract relates (whether from the Council or otherwise):

15.3.2 the value of any goods, services or works provided by the Council under the Contract other than for payment:

15.3.3 amounts that would be receivable if an option in the Contract to supply additional services or works were exercised:

15.3.4 amounts that would be receivable if an option in the Contract to extend or renew the term of the contract were exercised:

15.3.5 amounts representing premiums, fees, commissions, or interest that could be receivable under the Contract:

15.3.6 amounts received on the sale of assets held by the supplier under the Contract.

15.4 If it the value of a concession contract cannot be estimated in accordance with **Rule 15.3** above (for example because the duration of the Contract is unknown), the estimated the value of the Contract is to be treated as an above Threshold Value Contract.

15.5 When calculating the Total Contract Value, the VAT is to be included irrespective of any VAT exemptions or recovery of VAT.

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15.6 Where it is not possible to estimate the value of a Contract in accordance with the above, the value must be treated as being above Threshold Value.

15.7 Officers shall also consider whether IR35 may apply and should note that a failure to apply appropriate IR35 employment status checks in line with HM Revenue & Customs requirements may result in the Council additionally becoming responsible for the payment of additional taxes.

### **16 Preparation for a Procurement Exercise**

16.1 Prior to commencing a Procurement Exercise regardless of value, the Officer must:

16.1.1 establish the Total Contract Value in accordance with Rule 15 above:

16.1.2 wherever possible, ensure sufficient approved appropriate budgetary provision in place within the Council's approved revenue budget or capital programme and that such expenditure continues to be available in accordance with the Financial Regulation:

16.1.3 ensure that the appropriate governance process for spending approval is followed. Please refer to the Officer Decision Making guidance on the Council's intranet for the latest advice. If appropriate authorisation is not in place this may delay the processing of any relevant Purchase Order and subsequent payment to Suppliers:

16.1.4 For all Below Threshold Contracts seek to establish whether an existing Framework Agreement or Contract may be used to procure the requirement:

16.1.5 For all Contracts having a Total Contract Value at or above £100,000 for Goods and Services or £500,000 for Works, consider all options for sourcing the relevant requirement for Goods, Services or Works in consultation with the Procurement Officer:

16.1.6 or all Contracts having a Total Contract Value at or above £100,000 for Goods and Services or £500,000 for Works, consider, in consultation with the Procurement Officer whether the Goods, Services or Works to be supplied could be sensibly delivered under more than one Contract, (without deliberately splitting a Contract to avoid a particular procedure, or

## Appendix C – Proposed new version of Part I6

disregarding these Rules) or could be awarded in lots:

- 16.1.7 identify the size, scope, commercial principles, term and specification of the Goods, Services and Works required:
- 16.1.8 ensure that there is appropriate delegated authority to procure
- 16.1.9 ensure that any consultants, comply with these Rules:
- 16.1.10 check whether any employee, either of the Council or of a service provider, may be affected by any transfer arrangement and ensure that any Transfer of Undertaking (Protection of Employment) (“TUPE”) issues are considered, and obtain legal and HR advice, as required:
- 16.1.11 In consultation with Procurement prepare a conflicts assessment in relation to the proposed Procurement Exercise:
- 16.1.12 generate a risk register including, know risks, which need to be included within the Contract and consider the need for a guarantee, bond, and collateral warranties as appropriate in accordance with Rule 16.3 below (Security):
- 16.1.13 Prepare all Quotation Documents (less than £100,000 inc. VAT for Goods and Services and less than £500,000 incl. VAT for Works), unless the seeking of Tenders is preferred in consultation with Legal Services and Procurement as required) or the Procurement Documents (in consultation with Procurement), (for Contracts with a Total Contract Value of £100,000 inc. VAT or above):
- 16.1.14 For Procurement Exercises with a Total Contract Value above £100,000 incl. VAT for Goods and Services or £500,000 incl. VAT for Works the Officer must formulate and agree in consultation with the Procurement Officer, an accompanying Procurement Sourcing Strategy (Rule 22) and must conduct the procurement activity in conjunction with a Procurement Officer and Legal Services:
- 16.2 Officers shall also consider whether IR35 may apply and should note that appropriate IR35 employment status checks in line with HM Revenue & Customs requirements may need to be undertaken.



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16.3 (Security): Based on the Council's exposure to risk and regardless of the Total Contract Value, the Officer in consultation with the Procurement Officer, Finance and Legal Services shall determine whether requirements for a bond or a parent company guarantee are appropriate. For Works contracts, Officers shall also consider whether collateral warranties that confer rights on first purchasers, first lessees and funders should additionally be sought. The advice of Legal Services must be obtained.

### **17 Notice Requirements and provision of information under the Act**

17.1 Where a Contract is to be awarded with a Contract Value above £30,000 including VAT officers must immediately notify Procurement to ensure that a Below Threshold Contract Notice is issued, if required.

17.2 Where the Total Contract Value is at or above Threshold Value, the Act introduces different notices and publication requirements. Procurement must comply with the Act and issue compliant transparency notices, as required, including a:

17.2.1 Planned Procurement Notice:

17.2.2 Preliminary Market Engagement Notice:

17.2.3 Tender Notice:

17.2.4 Transparency Notice:

17.2.5 Dynamic Market Notice:

17.2.6 Assessment Summaries:

17.2.7 Contract Award Notice:

17.2.8 Contract Details Notice:

17.2.9 Procurement Termination Notice:

17.2.10 Contract Performance Notice:

17.2.11 Contract Change Notice:

17.2.12 Contract Termination Notice:

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- 17.2.13 Payments Compliance Notice:
- 17.2.14 Information about any payment over £30,000:
- 17.2.15 Pipeline Notice.

### **18 Preliminary Market Engagement**

- 18.1 For Below Value Procurement Exercises, the Officer may, prior to commencing the procurement process, consult potential Candidates in general terms about the nature, level and standard of the supply and Contract and seek market views and intelligence that can be used in the planning and conduct of the procurement process provided that this does not result in either non-compliance with the principles set out in the Act, prejudice any other interested supplier/s that is/are not consulted, and/or have the effect of distorting competition. Written records shall be taken and kept by the Officer and the Officer shall observe any advice provided by Procurement and/or Legal Services.
- 18.2 Where the anticipated Contract is at or above £100,000 incl. VAT for Goods and Services and £500,000 incl. VAT for Works the Officer must inform Procurement of the proposed Preliminary Market Engagement exercise and shall have regard to any advice or requirement of Procurement
- 18.3 The Officer shall take advice from Procurement to ensure that the proposed method of engaging the market or potential Candidates does not preclude them from participating in any subsequent procurement activity to ensure that the approach does not undermine Best Value, lead to the award of a dissatisfactory Contract or increase the risk of a procurement legal challenge. The proposed method of engaging the market or potential Candidates must also not prevent the Council from choosing a Supplier that offers the best balance between the whole life cost (from acquisition to disposal) of goods and services against predefined requirements.
- 18.4 Suppliers consulted during market engagement activities shall only be excluded from the procurement process where there are no other means to ensure compliance with this section in its entirety. Potential Candidates must be given the opportunity to prove that their involvement in market engagement activities

## **Appendix C – Proposed new version of Part I6**

is not capable of distorting competition.

18.5 All potential Candidates must identify what they consider to be commercially confidential information. However, the Council in its sole discretion shall determine whether such information is to be regarded as confidential with reference to the Freedom of Information Act 2000.

### **19 Collaborative procurement**

19.1 Where the Council takes the lead procurement role in a collaborative procurement these Rules shall apply, as a minimum. Where another public body takes the lead procurement role the Rules of the lead organisation and any Relevant Legislation shall apply.

19.2 Where the Council enters or establishes any formal collaborative procurement arrangements:

19.2.1 The risks associated with the collaboration any related collaboration agreement must be considered and documented in the Councils Risk Register; and

19.2.2 A collaboration agreement must be formalised in writing and shall be subject to the written approval of Legal Services.

19.3 As a minimum the collaboration agreement should clearly state:

19.3.1 the nature, extent, and term of the arrangement,

19.3.2 roles and responsibilities including those relating to evaluation;

19.3.3 arrangements for governance, accountability, and dispute resolution,

19.3.4 the exit and termination strategy,

19.3.5 the auditing arrangements,

19.3.6 the cost sharing mechanisms,

19.3.7 the process for the induction of new partners.

19.4 In relation to joint procurement arrangements including membership of purchasing consortia, in excess of £500,000, Executive Approval is required. Approval shall only be given where the joint procurement arrangement assures

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compliance with the Act and offers Best Value for the Council

### 20 Procurement Process Values

20.1 The table below sets out the Council's competition requirements.

Contract type	Total Contract Value inc. VAT	Procurement process
Goods, and Services	Up to £30,000	Seek three written quotes, minimum 1 written quote to be obtained that demonstrates Best Value  <i>See Rule 21</i>
Works	Up to £50,000	
Goods and Services	Over £30,000 up to £100,000	Seek Minimum of four written quotes, one of which is from a Supplier that the Officer has not awarded a contract to in the last 2 years, (minimum 2 written quotes to be obtained that demonstrates Best Value)  <i>See Rule 21</i>
Works	Over £50,000 up to £500,000	
Goods and Services	Over £100,000 and Below Threshold Values	Invitation to tender via the Council's Electronic Tendering System <i>See Section E and in particular Rule 23</i>
Works	Over £500,000 up to Threshold Value applicable to the Act	Invitation to tender via the Council's Electronic Tendering System <i>See Section E and in particular Rule 23</i>
Goods, Services and Works	At and above the Threshold Values	Competitive Tendering Procedure as per the Relevant Legislation and via the Council's Electronic Tendering System  <i>See Section E and in particular Rule 26</i>

### SECTION D: TOTAL CONTRACT VALUE OF LESS THAN £100,000 FOR GOODS AND SERVICE AND LESS THAN £500,000 FOR WORKS (QUOTATIONS)

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### 21 Procurement process for Goods and Services contracts with a Total Contract Value less than £100,000, and Works contracts less than £500,000

- 21.1 The Officer may seek support and advice from Procurement and Legal Services to determine whether to seek Quotations or whether a tendering exercise is preferred based on factors including the complexity of the requirement and the risk attaching to the requirement or its delivery or performance and the source of the funding for the requirement where external funders have prescribed specific procurement procedures.
- 21.2 Where a tendering exercise is preferred, the Officer shall comply with the provisions set out in Section E and in particular with **Rule 23** (Procurement processes for Goods, Services and Works Contracts over £100,000 and below relevant Threshold Values) and Procurement shall where required by the Act, issue a Below Threshold Tender Notice.
- 21.3 Prior to seeking Quotations, the Officer:
- 21.3.1 shall prepare the Quotation Documents and shall, as required, seek advice from Procurement and from Legal Services and from such other departments of the Council as are appropriate to the requirement including the Insurance Officer and ICT where appropriate. For Contracts that either expose the Council to potentially high risks of consequential financial exposure, the requirement to consult is mandatory, and
- 21.3.2 shall observe and reflect **Rule 28** (Most Advantageous Tender), **Rule 29** (Terms and Conditions of Contract), **Rule 30** (Protection of Personal Data) and **Rule 31** (Confidentiality), and
- 21.3.3 shall ensure that the Quotation Documents clearly set out the Contract that is to be used as approved in advance by Legal Services, to ensure that all Suppliers are aware from the outset of the terms and conditions that shall govern the Procurement Exercise. In no circumstances, unless specifically agreed by Legal Services, may the terms and conditions of a Supplier, form the basis of a Contract between a Supplier and the Council, and
- 21.3.4 shall have regard to how the proposed request for Quotations process can support SME's.

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- 21.4 There is no requirement to publish a Below-Threshold Tender Notice where Officers invite Quotations from a closed group of pre-selected suppliers, (i.e. Suppliers on a Framework Agreement) or from one or more targeted individual Suppliers, provided it does not advertise the Procurement Exercise in any other way (for example in a newspaper or on a local website or portal). Where Officers propose any form of advertising, they must first seek the written approval of Procurement as any additional advertising may have the effect of converting the request for Quotations into a 'notifiable below-threshold contract' for which a 'below-threshold tender notice' must first be published and to which tendering procedures apply.
- 21.5 The request for Quotation must be accompanied by the Quotation Documents together with any other information that the Officer deems appropriate
- 21.6 Other than where an Officer decides to use an appropriate Framework Agreement, a minimum of four written Quotations must be sought.
- 21.7 All Suppliers shall be treated equally in the request for Quotation process and be supplied with the same information and documentation to enable, to the extent possible, like for like Quotations to be received.
- 21.8 Where during the Procurement Exercise, further requirements are identified or amended, these must be communicated in writing to all Candidates who shall be given the opportunity to requote during the defined and reasonable timescales.
- 21.9 The Officer shall maintain a written record of all conversations with Candidates and all decisions made.
- 21.10 Save in the case of emergency being imminent danger to life or property, the timescales for responding to a request for Quotation shall be clearly set out in the request for Quotation and shall be at least 10 working days from the date on which requests for Quotation are sought or advertised unless a shorter period is agreed with Procurement.
- 21.11 Officers may seek confirmation of insurance cover or other matters relating to the Quotation prior to acceptance on a subject to contract basis so as not to suggest to any Supplier that their Quotation has been accepted.

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- 21.12 Where only one compliant Quotation is received, the Officer shall in consultation with Procurement determine whether the Quotation may be accepted or whether further Quotations should be sought in the interests of demonstrating Best Value.
- 21.13 The evaluation of all Quotations shall be undertaken fairly and in compliance with any evaluation or award criteria, if any, previously published and no new criteria or sub criteria may be introduced. No Non-Commercial Considerations, other than those approved by Legal Services in advance of the commencement of the Procurement Exercise, may be considered.
- 21.14 Acceptance of any Quotation is subject to:
- 21.14.1 The Officer first observing the process for Key Decisions applicable to the Contract and where relevant the expiry of the publication period together with any other internal controls that the Council may impose from time to time.
- 21.14.2 Other than where the Councils Purchase Order terms and conditions are being relied upon without amendment, the written Contract executed by the Supplier and the Council
- 21.15 Acceptance will be notified to the successful Supplier by the execution of a standard or bespoke contract, where used, or the issue of a Purchase Order. The Purchase Order must refer to the Council's standard terms and conditions of contract, except for where the complexity of the Contract requires more bespoke terms, for example a specific stand-alone contract in which case the Purchase Order shall make specific reference to the bespoke terms that were issued as part of the Quotation Documents.
- 21.16 The Officer shall inform unsuccessful Suppliers that their Quotation has been unsuccessful at the same time and within reasonable timescales. The reasons for why they were unsuccessful will be provided on request.
- 21.17 The Officer must inform Procurement in a timely manner of the Contract details for any Contract made in excess of £30,000 incl. VAT, such that a record can be made on the Council's Contracts Register, in line with the Transparency Code.

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### SECTION E: TOTAL CONTRACT VALUE OF £100,000 OR MORE (TENDERS)

#### 22 The Procurement Sourcing Strategy

22.1 For procurement processes with a Total Contract Value incl. VAT at or above £100,000 for Goods and Services or £500,000 for Works, the Officer must consult with Procurement Officer, to develop the Sourcing Strategy for the intended procurement.

22.2 The Procurement Sourcing Strategy must, as a minimum, appraise a proposed procurement in a manner commensurate with its complexity, risk, and value, by:

22.2.1 considering the requirements from any relevant Best Value review,

22.2.2 considering the Social Value sought,

22.2.3 considering the analysis of the market and SME's,

22.2.4 taking into account any lessons learned from any market engagement activities and/or audit findings and existing contracts,

22.2.5 defining the key commercial principles, objectives of the procurement, taking into account user requirements and all Relevant Policy and Relevant Legislation,

22.2.6 considering the Key Performance Indicators and measures required to ensure effective supplier performance,

22.2.7 considering any related risks and impacts,

22.2.8 considering the need to obtain specific assurances regarding any incumbent contractors' business continuity plans and arrangements,

22.2.9 appraising the need for the expenditure and its priority,

22.2.10 considering all the associated costs, to include initial purchase costs, operating and maintenance costs, costs of associated consumables, any associated training costs, the cost of disposal and the costs of exiting the contract,

22.2.11 taking in to account any tax or VAT issues that may arise,



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- 22.2.12 when the purchase of new Goods is proposed, assessing the alternative options for repair, re-use, or recycling,
- 22.2.13 considering all means of achieving the anticipated outcomes, and
- 22.3 The procurement Sourcing Strategy shall result in clear recommendations, as follows:
- 22.3.1 the proposed scope, key commercial principles, and the procurement route to be followed.
- 22.3.2 the relevant evaluation criteria, including the MAT.
- 22.3.3 the indicative procurement timetable that allows for both the notices required by **Rule 17.2** above, the Standstill Period and the internal approval requirements of the Council.
- 22.3.4 the means by which the Contract shall be monitored and managed.
- 22.3.5 the resources required
- 22.3.6 the steps to be taken following Contract award where variations or early termination are proposed.
- 22.4 The Procurement Sourcing Strategy shall be signed off by the Officer and a Procurement Officer. Where a change is required to a Procurement Sourcing Strategy that has already been signed off, such changes shall be incorporated in as a variation to the original, agreed between the parties and signed off by the Officer and Procurement.
- 22.5 A template Procurement Sourcing Strategy can be obtained from Procurement.
- 22.6 For those procurements falling within the Light Touch Regime, the Officer must consult with Procurement to agree the most appropriate procurement approach, and if a procurement strategy is required.
- 23 Procurement processes for Goods and Services Contracts over £100,000 and below relevant Threshold Values, and Works contracts over £500,000 up to the relevant Threshold Value**
- 23.1 The Officer in consultation with the Procurement Officer shall prepare a Procurement Sourcing Strategy in accordance with **Rule 22** above

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- 23.2 Where the Officer following consultation with the Procurement Officer concludes that the Council has no suitable existing Contract, Framework Agreement, Dynamic Market or Dynamic Purchasing System from which the requirement can be procured, the Officer shall in consultation with the Procurement Officer prepare the Procurement Documents and the proposed Contract terms and conditions shall be approved in advance of the commencement of the Procurement Exercise by the Legal Department
- 23.3 The Procurement Documents shall reflect and comply with the following Rules:
- 23.3.1 **Rule 17** (Notices)
  - 23.3.2 **Rule 26** (Conditions of Participation)
  - 23.3.3 **Rule 27** (Award Criteria for Contracts Over £100,000)
  - 23.3.4 **Rule 28** (Most Advantageous Tender)
  - 23.3.5 **Rule 29** (Terms and Conditions of Contract)
  - 23.3.6 **Rule 30** (Protection of Personal Data)
  - 23.3.7 **Rule 31** (Confidentiality)
- 23.4 Tenders shall be sought by advertising the ITT and accompanying documents on Find a Tender and Officers may refer potential Suppliers to the advertisement
- 23.5 Pre-tender clarifications shall be issued in accordance with **Rule 35**
- 23.6 Tenders shall be opened in accordance with **Rule 32** (Submission, Receipt and Opening of Tenders) and shall be evaluated on the basis of the Award Criteria and in accordance with **Rule 33** (Evaluation of Tenders)
- 23.7 Following the evaluation of the tender responses, and moderation, a preferred Supplier shall be identified.
- 23.8 Post Tender clarification is permitted provided the Act is not breached, shall be managed by the Procurement Officer on behalf of the Officer and must be recorded in writing
- 23.9 The Officer must follow the Council's decision-making process as defined by

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the Constitution.

23.10 The successful Supplier and unsuccessful Candidates shall be notified at the same time and within reasonable timescales. The reasons for why they were unsuccessful will be provided on request. A voluntary Standstill period shall be applied unless otherwise agreed with Procurement.

23.11 A Purchase Order must be raised by the Officer.

23.12 A Contract award record must be made on the Council's Contracts Register.

23.13 If the value of the contract exceeds £5,000,000 incl. VAT, the Officer must provide Procurement with a redacted version of the Contract for publication within 20 days of the contract signing. Such redaction must be agreed with Legal Services and Procurement and shall redact commercially confidential information

### 24 Procurement processes at or over the Threshold Values

24.1 The Officer in consultation with the Procurement Officer shall prepare a Procurement Sourcing Strategy in accordance with **Rule 22** above and the Act

24.2 Where the Officer following consultation with the Procurement Officer concludes that no suitable existing Contract, Framework Agreement, Dynamic Market or Dynamic Purchasing System is available to satisfy the requirement, the Officer is required by these Rules and in compliance with the Act to invite Tenders through a Competitive Tendering Procedure advertised via the Find a Tender service on the Council's Electronic Tendering System.

24.3 The Procurement Documents shall unless the Act requires otherwise, reflect, and comply with the following Rules:

24.3.1 **Rule 17** (Notices)

24.3.2 **Rule 26** (Conditions of Participation)

24.3.3 **Rule 27** (Award Criteria for Contracts Over £100,000)

24.3.4 **Rule 28** (Most Advantageous Tender)

24.3.5 **Rule 29** (Terms and Conditions of Contract)

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24.3.6 **Rule 30** (Protection of Personal Data)

24.3.7 **Rule 31** (Confidentiality)

24.4 Tenders shall be sought by advertising the ITT and accompanying documents on Find a Tender and Officers may refer potential Suppliers to the advertisement

24.5 Pre-tender clarifications shall be issued in accordance with **Rule 35**

24.6 Tenders shall be opened in accordance with **Rule 32** (Submission, Receipt and Opening of Tenders) and shall be evaluated on the basis of the Award Criteria and in accordance with **Rule 33** (Evaluation of Tenders)

24.7 Following the evaluation of the tender responses, and moderation, (if required), a preferred Supplier shall be identified.

24.8 Post Tender clarification is permitted if authorised by the Act, shall be managed by the Procurement Officer on behalf of the Officer and must be recorded in writing

24.9 Post Tender negotiation is not to be encouraged but if being entertained must relate directly to the subject matter of the original Procurement Documents, must be undertaken within the parameters agreed in writing with the Procurement Officer, must not be undertaken unless more than one Officer is present and must be recorded in writing

24.10 The Officer must follow the Council's decision-making process as defined by the Constitution.

24.11 The successful Supplier and unsuccessful Candidates shall be notified in accordance with the Relevant Legislation and a Standstill Period shall be observed.

24.12 A Purchase Order must be raised by the Officer.

24.13 A Contract award record must be made on the Council's Contracts Register.

24.14 The Officer must redact commercially confidential information of the contract prior to Procurement publishing a redacted copy within 30 days of the contract

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signing. Such redaction must be agreed with Legal Services and Procurement.

### **25 Light Touch Contracts**

25.1 Certain Services Contracts, as defined in the Act as Light Touch Contracts are not subject to its full rigour. However, the Council will remain bound by the requirement to ensure such procurements do not result in non-compliance with the Act.

25.2 **Rule 24** (Procurement processes at or over the Threshold Values) shall apply unless the Act otherwise allows

### **26 Conditions Of Participation**

26.1 The Conditions of Participation shall be used to assess the Candidate's ability to meet the Council's requirements or minimum standards of suitability, legal status, or financial standing and will be included within procurement documentation for all contracts with a Total Contract Value at or above Threshold.

26.2 Conditions of Participation must not include;

26.2.1 Award criteria

26.2.2 Non-commercial considerations

26.2.3 Criteria that are not related and proportionate to the subject matter and value of the contract.

26.3 The selection of Candidates shall only be on the basis of the Conditions of Participation and the requirements of the Act. The Officer may reject Candidates that fail against the mandatory and/or discretionary criteria as detailed within the Conditions of Participation only in conjunction with the advice of the Procurement Officer and Legal Services, where appropriate.

### **27 Award Criteria for contracts over £100,000**

27.1 The Procurement Officer shall include the Award Criteria within the Procurement Documents, using these to assess a Candidate's ability to deliver the Council's requirements under the Contract.

27.2 The Contract shall be awarded to the Candidate whose Tender best meets the Award Criteria. on the basis of Most Advantageous Tender (MAT), taking

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criteria that are proportionate to and linked to the subject matter of the Contract.

27.3 The Officer shall consult with Procurement for advice and guidance on the appropriate use of the Award Criteria

### **28 Most Advantageous Tender**

28.1 In selecting a preferred supplier, the Council must have due regard to the Procurement Objectives as set out in **Rule 3.1** above. In doing so all Contract awards must be based on the Most Advantageous Tender (the "MAT").

28.2 The MAT may be identified by using a price-quality ratio and the default position for such evaluations is a ratio of 60:30:10, 60% price, 30% quality and 10% social value.

28.3 However, in discussion with Procurement, Officers must ensure the approach used to achieve MAT is by the best means, using a methodology which is relevant and proportionate to the particular procurement being undertaken as it is essential to ensure that the methodology used is;

28.3.1 relevant and proportionate for what is being purchased

28.3.2 one that will work within that particular market

28.3.3 modelled before publication to ensure it meets the above requirements and does not result in any anomalies.

28.4 Where the Officer fails to gain agreement with their counterpart in Procurement, on the methodology to be applied, the first point of review is a Strategic Manager in Procurement. If agreement still is not achieved, the Officer must develop a business case justifying their approach detailing how it does comply with the requirements as per 27.1 and 27.3 above and obtain the approval of the Director responsible for Procurement of the approach before proceeding with the procurement.

### **29 Terms and Conditions of Contracts**

29.1 All Contracts, regardless of value, shall be accompanied either by the Council's:

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29.1.1 Standard Purchase Order terms and conditions of contract or

29.1.2 the standard form of contract as approved by Legal Services or

29.1.3 bespoke terms which have been agreed with Legal Services.

29.2 For procurements undertaken using Frameworks or Dynamic Markets, Legal Services must have approved the terms and conditions, and the applicable contract terms must be used.

29.3 Where the Contract provides for the appointment of one or more nominated sub-contractors, the terms and conditions of Contract shall include provisions that

29.3.1 Confirm that the Supplier is responsible for the acts and omissions of its sub-contractors and

29.3.2 Requires the Supplier to ensure that the nominated sub-contractor/s is/are subject to the requirements and conditions of the Supplier terms and conditions

### **30 Protection of Personal Data**

30.1 Where a Contract involves the sharing of personal data, Officers must take all reasonable steps, including incorporation of clauses into Contracts with Suppliers, to ensure that the personal data of individuals is protected in accordance with the General Data Protection Regulation (GDPR), Data Protection Act 2018, allied legislation and Codes of Practice from the Information Commissioner's Office (ICO). Officers must ensure the Councils' obligations and risks, in respect of personal data, are considered and indemnities are sought where appropriate and must seek advice from Legal Services and the Information Governance Team.

### **31 Confidentiality of sensitive commercial information**

31.1 Officers must take all reasonable steps, including incorporation of clauses into the Quotation Documents or the Procurement Documents and Contracts with Suppliers, to ensure that the confidentiality of sensitive business information such as details of pricing and trade secrets are protected in accordance with

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Section 94 of the Act that permits the Council to withhold information to protect national security or if the information is commercially sensitive and there is an overriding public interest in it being withheld, Relevant Legislation and guidance. Officers must ensure the Councils' obligations and risks, in respect of the business information of both the Council and Suppliers, are considered and indemnities are sought where appropriate. More information and guidance can be obtained from Legal Services and the Information Governance Team.

### **32 Submission, receipt and opening of Tenders**

- 32.1 All tenders shall be submitted electronically through the Council's Electronic Tendering System. For the purposes of these Rules the time will be deemed to be at the first stroke, e.g. noon shall be 12:00:00.
- 32.2 Tenders received after the stated date and time shall not be accepted under any circumstances unless caused by a failure within the Councils Electronic Tendering System or other Council cause. In that event, the Monitoring Officer shall agree an extension to the tender return date and the Procurement Officer shall notify all tenderers of this as soon as reasonably practicable via the Councils Electronic Tendering System or by email
- 32.3 A Tender/ sealed bid received after the time specified arising from any default or negligence on the Council's part may be considered as valid provided that the Monitoring Officer is satisfied that the reasons for its treatment as being a valid Tender/ sealed bid are recorded in the Tender register.
- 32.4 Submissions shall be verified and opened at a designated time and date on the Council's Electronic Tendering System by a Procurement Officer and recorded on the Councils Electronic Tendering System

### **33 Evaluation of Quotations and Tenders**

- 33.1 All Quotations shall be evaluated on the basis of the pre-agreed award criteria set out in the Quotation Documents
- 33.2 All Tender submissions received for Contracts above the Total Contract Value inc. VAT of £100,000 for Goods and Services (£500,000 for Works) shall be evaluated in accordance with the pre-determined Conditions of Participation



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and Award Criteria, as set out in the Procurement Documents by an evaluation Panel comprising not less than three Officers.

- 33.3 The Officer shall ensure that subject-matter experts or appropriately experienced Officers evaluate all submissions in accordance with the pre-determined Award Criteria.
- 33.4 The Procurement Officer is obliged to check the completeness of the pricing submission. Where errors or omissions are found they must be notified to the Candidate, who must be requested to clarify in writing within an agreed time their submission. For the avoidance of doubt, Candidates may either agree to the price based on correct arithmetical calculations or stand by their tendered price or withdraw their Tender. In no circumstances may tenderers otherwise revise their pricing submission. The process for checking and clarification of pricing submissions must occur prior to evaluation of price. Where doubts arise, these must be referred to the Monitoring Officer for final decision as to whether to admit or reject the Tender
- 33.5 Apart from the debriefing required or permitted by the Act the confidentiality of submissions and the identity of Candidates must be preserved at all times and information about one Candidate's submission must not be supplied to another.
- 33.6 The results of the Tender evaluation must be recorded and retained in accordance with the Council's records management, retention, and disposal requirements.

### **34 Abnormally low bids**

- 34.1 The Officer may reject a Tender as being abnormally low, but only after:
- 34.1.1 The Procurement Officer has requested in writing an explanation from the Candidate for those parts of the Tender considered abnormally low via the Councils Electronic Tendering System.
- 34.1.2 The Officer has been presented with the Candidate's explanation and consulted with the Procurement Officer and, Legal Services, as appropriate.
- 34.2 Where no explanation has been provided or the explanation provided by the Candidate does not satisfactorily account for the low price or costs proposed,

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the matter shall be referred to the Monitoring Officer for final decision.

34.3 Notification of the Candidate's exclusion from the competitive process must be made by the Procurement Officer via the Council's Electronic Tendering System.

34.4 The Procurement Officer shall retain a documented record of the rationale for the decision.

### **35 Clarifications**

35.1 Clarification of Tender responses is only permitted by a member of Procurement and must take place in writing via the Council's Electronic Tendering System. If sufficient clarification cannot be obtained in this manner further means can be:

35.1.1 at a meeting, provided that a written record is made of the meeting and

35.1.2 in a way that is fair, transparent, and equal to all Candidates.

35.2 There must be no significant or material variation of the Quotation Documents or the Procurement Documents or terms and conditions of contract following such clarification.

35.3 Where a clarification would result in a fundamental change to the specification or terms and conditions of contract the Contract must not be awarded but re-tendered or the Candidate should be excluded.

### **36 Electronic Auctions**

36.1 Electronic auctions may be used as part of the procurement process as a means of driving additional commercial benefits.

36.2 The use of electronic auctions must be specified within the Procurement Documents and the Award Criteria associated with the auction must be clearly defined. The auction will be undertaken by Procurement.

36.3 Where the Council uses an electronic auction to enable Candidates to adjust their Tender price in the light of information from the Tender prices submitted by competing Candidates then all such alterations to Candidates' pricing will be accepted as permitted by the auction process.

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### **SECTION F: CONTRACT AWARD**

#### **37 Intention to award a Contract**

37.1 For Quotations, having a value of £30,00 to Threshold Value inc. VAT, Officers may apply a voluntary minimum Standstill Period of eight (8) working Days before entering into a Contract in order to manage the risk of the Contract being set aside at a future date and the Procurement Officer shall issue a Below Threshold notice where a Competitive Tendering Procedure has been used in accordance with **Rule 17.1** above.

37.2 For Contracts at or over the Threshold Value, the Procurement Officer shall

37.2.1 First issue Assessment Summaries to all Candidates in accordance with the Act and the regulations made thereunder

37.2.2 Next publish the Contract Award Notice having first revisited the Procurement Strategy and **Rule 22.2.14**. The publication of the Contract Award Notice shall begin the mandatory Standstill Period of at least 8 full clear working days and

37.2.3 Following the expiry of the Standstill Period publish the Contracts Details Notice.

#### **38 Approval to Award**

38.1 Approval to award a Contract, Framework Agreement or Dynamic Markets Agreement can only be given in line with the Council's Constitution and is subject to first having complied with the Key Decision requirements of the Council

38.2 Where approval is sought to award a Framework Agreement or Dynamic Market, approval may also be sought to award the subsequent Call-off Contracts as part of the same decision report. Where this is not observed, Officers must seek the appropriate approval to award Call-Off Contracts in accordance with the Contract value.

#### **39 Signing of Contracts, Variations, Letters of Intent and Memorandums of Understanding (“MOU’s”)**

39.1 Contracts may not be executed or signed other than by an Officer with delegated authority provided by the Monitoring Officer and may not be signed

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or executed until such time as any relevant Notices as referred to in Rule 17 have been published, any Standstill period has expired and the publication period for a Key Decision Notice has expired

39.2 Only those officers with specific written authority from the Monitoring Officer may sign or execute Contracts having first been supplied with a Sealing/Signing Form duly completed and a copy of the Key Decision

39.3 Contracts may be:

39.3.1 Signed or executed electronically and exchanged by email. Where a Contract is signed and exchanged in this way the Officer responsible for securing signatures must follow guidance on electronic signatures issued by Legal Services and must retain a copy of the email from the Supplier containing the signed Contract and must provide a copy to the Commercial and Procurement team; or

39.3.2 Signed or executed using Electronic Signing Software

39.3.3 may be signed or executed by hand.

39.4 A Contract must be executed under seal.

39.4.1 Where risk is high as advised by Legal Services:

39.4.2 for Works contracts

39.4.3 where the Contract is required to be sealed by law.

39.5 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal and a final completed original copy must be returned to Legal Services for storage. The seal must not be affixed without the appropriate authority in accordance with the Council's Constitution.

## **40 Contract Management**

40.1 Officers must diarise key dates with the lifecycle of a Contract including without limitation the dates of reviews, insurance renewals, any contractual ability to extend a Contract and the notice periods required and the expiry of the Term of a Contract.

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- 40.2 At least six months prior to the natural expiry of a Contract, the Officer shall liaise with Procurement in order to agree a Procurement Strategy for the extension or renewal of a Contract.
- 40.3 Officers are responsible for contract management on a day to day basis and in addition to contract inception meetings and agreed project implementation plans, as required, shall be responsible for the regular review and monitoring of a Contract with the Supplier and on an annual basis for ensuring that all required insurances are renewed as required and that Business Continuity Plans, if used, are reviewed.
- 40.4 For all Contracts at or above Threshold Value, Officers shall, at least annually, consult with and provide to Procurement a 'Contract Performance Notice.' For publication by Procurement on the Councils Electronic Tendering System. Section 71 of the Act requires that at least annually during the lifetime of the Contract and on termination of the contract, the Council shall assess the Supplier's performance against any KPIs determined in accordance with section 52 of the Act and shall publish the information specified in the relevant regulations to the Act in the Contract Performance Notice. The Contract Performance Notice shall also be used to record information relating to particular breaches or failure to perform the Contract except where the breach results in a Contract being terminated in full in which case a Contract Termination Notice must be published.
- 40.5 For all Contracts at or above Threshold Value, Officers shall also consult with and provide details to Procurement of any changes to a Contract that trigger the need to publish a 'Contract Change Notice.'

### **41 Contract Changes, Extension, Assignment and Novation**

- 41.1 Any Below Threshold Contract may be extended in accordance with its Contract terms and provided there is budgetary provision Best Value can be clearly demonstrated. Such variations as are proposed shall be recorded in writing in a deed of variation or such other document as is approved by Legal Services. Where the overall value of a Contract would cause the Contract to be regarded as at or above Threshold Value, the Officer must first seek advice

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from Procurement to establish the requirements of the Act that apply.

41.2 The duration of all Contracts above Threshold Value can only be extended if

41.2.1 the original Contract Award Notice and Contract Details Notice provided for the lawful extension of the term of a Contract and

41.2.2 there is budgetary provision and Best Value can be clearly demonstrated and

41.2.3 such variations as are proposed are recorded in writing in a deed of variation or such other document as is approved by Legal Services and

41.2.4 A Contract Change Notice is published by Procurement for all Contract amendments, except those that do not alter the scope of the Contract and do not result in the specific tolerances defined by the Act, being exceeded.

41.3 Other changes to a Contract that is above Threshold Value may only be authorised.

41.3.1 If the variation is permitted by the Act and includes:

41.3.1.1 Modification provided for in the contract.

41.3.1.2 Unforeseeable circumstances or necessary for reasons of extreme urgency or the protection of life

41.3.1.3 Where a risk has materialised that was known about before the Contract but could not be mitigated in advance

41.3.1.4 Additional goods, services or works (in specific limited circumstances)

41.3.1.5 Transfer on corporate restructuring

41.3.2 there is budgetary provision and Best Value can be clearly demonstrated and

41.3.3 such variations as are proposed are recorded in writing in a deed of variation or such other document as is approved by Legal Services and

41.3.4 A Contract Change Notice is published by Procurement for all Contract amendments, except those that do not alter the scope of the Contract and do not result in the specific tolerances defined by the Act, being exceeded

41.4 Officers shall consider whether to apply a voluntary Standstill Period in order to allow the Council to notify the market of proposed changes, wait a period of no

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less than eight working days, and then, assuming no challenge has been raised, benefit from greater protection against the modification being set aside.

41.5 Where the Officer considers that a proposed extension may materially change or exceed the specification, price or duration of a Contract, advice must be obtained from Procurement and Legal Services. Extensions to Contracts must be approved and signed by the relevant officers in accordance with the Council's Officer Scheme of Delegation

41.6 In the event of the Officer becoming aware that a Supplier is entering into a change of control, insolvency, bankruptcy, receivership, or liquidation the Officer must inform Procurement and Legal Services immediately. The Supplier shall only be permitted to assign, novate, or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior written consent of the Council. The Council reserves the right to decline a Supplier that is deemed to be unsuitable. If a suitable alternative is not identified the Contract must be re-tendered

### **42 Contract Termination by Natural Expiry**

42.1 Where a Contract is due to expire naturally, the Officer shall at least six months in advance of the natural expiry date of the Contract, liaise with Procurement and with Legal Services to:

42.1.1 Ensure that a Contract Termination Notice is scheduled for publication by Procurement and

42.1.2 Make arrangements for any future Procurement Exercise and relevant notices to be issued

### **43 Early Termination of Contract**

43.1 The events of default and consequences of breach must be clearly described within the Contract from the outset.

43.2 Early Termination of a Contract should be discussed in advance and agreed with both Procurement and Legal Services following consultation with the relevant Service Director and where appropriate alternative arrangements should be planned so as to minimise risks to the Council and secure ongoing

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delivery of services, where required.

43.3 Procurement shall publish Contract Performance Notices and Contract Termination Notices as required.

### **44 Waiver Procedure and Breach Notices**

44.1 Officers are required to comply with these Rules and the Act at all times.

44.2 Waiver requests shall be approved in exceptional circumstances only and do not have the ability to either overcome the statutory requirements of the Act or the regulations made thereunder. Any waiver that purports to do this is unlawful and of no legal effect.

44.3 In the event of a conflict between the contents of a waiver request and any Relevant Legislation including the Act or these Rules, the Relevant Legislation including the Act shall prevail.

44.4 Other waiver requests that seek either a relaxation or disapplication of one or more Rules or a consideration of the matters referred to in Rule 45 below may be considered and will not constitute a breach of these Rules. For the avoidance of doubt any contract that is simply extended or allowed to run on without reference to Rule 45 is a breach of the Rules and may be subject to disciplinary action

44.5 In order for a waiver to be considered, the Officer must first complete a waiver request and have it approved by the relevant budget holder and submit the completed waiver request to Procurement together with any necessary evidence and information.

44.6 Save in the case of genuine emergency where swift action is required to promptly or immediately protect life or limb, property or where governmental directions or directives are provided in the case of a medical health emergency or pandemic that was not or could not have been reasonably foreseen, the Officer shall submit a waiver request at the earliest opportunity to enable the maximum time possible for waiver requests to be considered and for such action as may be required to be undertaken

44.7 Procurement shall supply a copy of the waiver request and associated



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information and documentation to an authorised Officer within Legal Services.

- 44.8 Procurement and Legal Services shall together consider any waiver request following consultation with the Officer. Where, Procurement and Legal Services, determine that alternative solutions present to satisfy the procurement requirement or need in the short or long term, the Officer shall either modify the waiver request or withdraw it and, the Officer shall comply with the proposed course of action
- 44.9 For waiver requests having a Total Contract Value of under £30,000, Procurement may approve a waiver request following consultation with Legal Services provided that neither the Act or Relevant Legislation are breached. In the event of disagreement between Legal Services and Procurement, Procurement may grant a waiver request
- 44.10 For waiver requests having a Total Contract Value of over £30,000 the waiver request may be approved by Procurement provided that Procurement has first:
- 44.10.1 consulted with and obtained the approval of the Monitoring Officer or their authorised deputy. The Service Director – Finance and Procurement shall also be consulted where an identified budget has not previously been approved for the requirement and their views shall be given heavy weight: and
- 44.10.2 neither the Act or Relevant Legislation are breached.
- 44.11 In the event of a conflict between the Monitoring Officer and The Service Director – Finance and Procurement, the decision of the Monitoring Officer shall prevail
- 44.12 In the event that a waiver request is rejected and cannot be modified in order to avoid a breach of the Act or Relevant Legislation the requirement must be tendered or retendered
- 44.13 Where tendering or retendering is not possible in accordance with Rule 44.12 above the matter shall be considered by the Monitoring Officer and the s.151 Officer who shall consult with Service Director, consider the financial, contractual and reputational risks associated with the proposed course of action set out in the waiver request despite it breaching the Act and/or these

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Rules.

44.14 Procurement shall maintain a register of Waivers and Breaches and shall record all waiver requests and decisions, and shall report to the Audit and Standards Committee on an annual basis and to the Statutory Officers Board on a monthly basis

44.15 Where an approved waiver request:

44.15.1 Is at or above £30,000, Procurement shall update the Contracts Register and Find a Tender Service

44.15.2 Relates to an above Threshold Value Contract variation, Procurement must first publish a Contract Change Notice before a Contract is modified and Legal Services shall prepare the appropriate variation document required to give effect to the Variation in accordance with the terms of the original Contract and Procurement shall publish the modified contract as required.

44.15.3 Where a Contract awarded under a Waiver exceeds £5,000,000 inc. VAT, the Officer must provide Procurement with a copy of the signed contract or variation as approved by Legal Services and a redacted copy suitable for publication within 20 days of the contract signing

44.15.4 Where the Total Value of the Contract with or without variation causes the overall value of the Contract to be above Threshold Value, a standstill period must first be observed prior to any agreement to award or vary a Contract and prior to the publication of any Notices.

### 45 Waiver - Permitted Modifications under the Act

45.1 Unless there is a permitted ground for modification under Part 4 of the Act, (specifically sections 74 to 77 and Schedule 8), or as provided in other Relevant Legislation, any change to an existing Contract shall be treated as a new Contract and undergo a formal Procurement Exercise.

Below Threshold Permitted Modifications

45.2 Below Threshold modifications, (as described in section 74(4) of the Act) are, unless the Act otherwise provides, permitted where:

45.2.1 the modification would not itself increase or decrease the estimated value of

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the contract by more than—

45.2.1.1 in the case of a contract for goods or services, 10 per cent;

45.2.1.2 in the case of a contract for works, 15 per cent,

45.2.2 the aggregated value of the Below Value Contract including the value of the proposed modification does not result in the Contract being at or above Threshold Value

45.2.3 the proposed modification does not materially change the scope of the Contract

45.2.4 the proposed permitted modification is permitted under Schedule 8 of the Act (permitted modifications) and

45.2.5 is not a substantial modification (s74.1(c) of the Act that would have the effect of increasing or decreasing the term of the Contract by more than 10 per cent of the maximum term provided for on award, or materially change the scope of the Contract, or materially change the economic balance of the Contract in favour of the Supplier.

45.3 Where a modification would result in the Total Contract Value exceeding Below Threshold Contract values, the Contract shall be deemed to have converted into a Contract that is at or above Threshold Value

Above Threshold Value Permitted Modifications

45.4 In relation to Contracts that are at or above Threshold Value (including 'convertible contracts, section 74 of the Act shall be complied with and provides that the Council may modify a Contract if the proposed modification

45.4.1 is a permitted modification under Schedule 8 of the Act (permitted modifications),

45.4.2 is not a substantial modification that would have the effect of increasing or decreasing the term of the Contract by more than 10 per cent of the maximum term provided for on award, or materially change the scope of the Contract, or materially change the economic balance of the Contract in favour of the Supplier,

45.5 The Schedule 8 Permitted Variations relate to

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45.5.1 Permitted Contract Variations that are unambiguously provided for in the Contract as awarded, repeated in the Tender or Transparency Notice for the award of that Contract, at the outset and provided that the modification would not change the overall nature of the contract.

45.5.2 Unforeseeable Circumstances namely that the circumstances giving rise to the modification could not reasonably have been foreseen by the Council before the award of the Contract, the modification would not change the overall nature of the Contract, and the modification would not increase the estimated value of the Contract by more than 50 per cent

45.5.3 Urgency and the protection of life, etc A modification is a permitted modification if its purpose could otherwise be achieved by the direct award of a Contract under section 41 of the Act and such an award could be made by reference to (i) paragraph 13 of Schedule 5 of the Act (extreme and unavoidable urgency), or (ii) regulations under section 42 of the Act (direct award to protect life, etc).

45.5.4 Materialisation of a known risk A modification is a permitted modification if the Council considers that (i) a known risk has materialised otherwise than as a result of any act or omission of the Council or the Supplier, or (ii) because of that fact, the contract cannot be performed to the satisfaction of the Council, or (iii) the modification goes no further than necessary to remedy that fact, and (iv) awarding a further contract under Part 3 (instead of modifying the contract) would not be in the public interest in the circumstances, and (b) the modification would not increase the estimated value of the Contract by more than 50 per cent ignoring, for the purpose of estimating the value of the Contract, the fact that the risk has materialised.

45.5.5 Additional goods, services or works A modification is a permitted modification if

45.5.5.1 the modification provides for the supply of Goods, Services or Works in addition to the goods, services or works already provided for in the Contract,

45.5.5.2 using a different supplier would result in the supply of goods, services or works that are different from, or incompatible with, those already provided for in the Contract,

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45.5.5.3 the Council considers that the difference or incompatibility would result in (a) disproportionate technical difficulties in operation or maintenance or other significant inconvenience, and (b) the substantial duplication of costs for the authority, and

45.5.5.4 the modification would not increase the estimated value of the contract by more than 50 per cent.

45.5.6 Transfer on Corporate Restructuring A novation or assignment of a public contract to a supplier that is not an excluded supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance.

### **46 Non-Compliance with the Rules**

46.1 In the event of illegality or maladministration, the Statutory Officers Board will determine that the Officer is also in breach of the Council's standards of conduct, which under certain circumstances may be treated as gross misconduct and give rise to action under the Council's disciplinary policy and procedure.

46.2 Where the breach gives rise to disciplinary action the Statutory Officers Board shall notify the Service Director – Human Resources.

46.3 In the event that these Rules are not complied with, this will not invalidate any Contract entered into by or on behalf of the Council, except where the Relevant Legislation provides to the contrary.