



# WELWYN HATFIELD

## CONTRACT PROCEDURE RULES

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## 1. Definitions

Assignment means the process when a party transfers their rights or obligations under a contract to another party. The original party is still responsible for fulfilling the terms of the contract, but the other party now has the right to receive the benefits or perform the obligations of the contract.

**Council** shall mean Welwyn Hatfield Borough Council

**Conflict of Interest** shall mean a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.

**Contracting Authority** means the State, regional or local authorities, bodies governed by public law

**Contractor** means an organisation undertaking work on behalf of the Council following a procurement competition.

Competitive Flexible Procedure means the procedure designed by the council which the Council considers appropriate for the purpose of awarding a public contract.

**Contracts Finder** is the electronic portal that lets you search for information about contracts with the government and its agencies

**E Tendering Portal** means the Supply Hertfordshire procurement portal operated by In Tend Limited

**Find a Tender Threshold** means the financial Threshold where a notice must be published on the governments Find a Tender website

~~GDPR means the General Data Protection Regulations in force at the relevant time~~

**JCT Contract** means The Joint Contracts Tribunal, an organisation that, produces standard forms of contract for construction.

Novation means the process of substituting the original party to the new contract with a new party who take on all the obligations of the contract.

**Open Procedure** means a one stage tender process ~~where one submission is made without a restriction on who can submit tenders~~. As well as price and quality criteria there maybe criteria that is used in the selection stage (such as minimum financial requirements)

**Parent Company Guarantee** is a form of security that is obtained from a parent (or holding) company of a contractor, to protect ~~a client~~the council in the event of default on a contract by the Contractor.

~~PCR2015 means the Public Contracts Regulations 2015~~

**Performance Bond** is a surety bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor.

Procurement Act means the Procurement Act 2023

**Procurement Manager** shall mean the Procurement Manager of the Council

~~Restricted Procedure means a two-stage process. The first stage is the selection stage. This considers the capability of tenders to undertake the services and is backward looking. From the selection stage a minimum of five bidders are taken through to the tender stage where they are scores against a mix of price and quality.~~ **Responsible Officer** means the council officer responsible for the delivery of the service.

**Service Manager – someone who reports to an Assistant Director and is of least a band L**

**Social Values** means taking account of the wider economic, social and environmental effects.

**Threshold** ~~above~~ means the financial ~~threshold when~~ level at/above which a regulated procurement is required ~~and referred to~~ be undertaken.

**(UK) GDPR** means the UK General Data Protection Regulations in ~~Regulation 5 of PCR2015~~ force at the relevant time

## 2. Introduction

- 2.1 Section 135 of the Local Government Act 1972 (the 1972 Act) requires the Council to have standing orders for how it enters into contracts- for the supply of goods or materials or for the execution of works. These Contract Procedure Rules (“Rules”) are the standing orders required by the 1972 Act. They form part of the Council's Constitution and are, in effect, the instructions of the Council, to officers and elected members, for entering into contracts on behalf of the Council.
- 2.2 These Rules govern ALL purchases of works, goods and services across the whole Council; they cover UK legislative requirements as well as good practice. Should there be any discrepancies between these Rules and legislation, legislation is the dominant authority and MUST be followed.
- 2.3 All Council procurements MUST demonstrate; true and fair competition, public accountability, an open, fair and transparent process, seek to prevent bribery and corruption, whilst ensuring probity. All procurements MUST demonstrate a full audit trail.
- 2.4 Complying with the Contract Procedure Rules will also help to ensure that the Council obtains best value when it buys works, goods or services.
- 2.5 These Contract Procedure Rules are to protect the interests of the Council, its officers and elected Members and the public.
- 2.6 These Rules have been substantially updated to reflect the Procurement Act 2023.

## 3. Basic principles and Objectives

The procurement of supplies, services and works of any value must always:

- 3.1 ~~3.1~~ — Provide value for money;
- ~~3.2~~ ~~3.2~~ — Maximise public benefit
- ~~3.2~~ ~~3.3~~ — Be undertaken with integrity in a fair, transparent, equal and non-discriminatory manner;
- 3.4 Treat suppliers the same unless a difference between suppliers justifies

different treatment

### 3.5 Identify and manage conflicts of interest

- 3.3 Not involve fraud or corruption;
- 3.4. Adhere to ethical and sustainable procurement principles;
- 3.5 Receive the appropriate approval to commence and award a contract;
- 3.6. Have a written signed / sealed contract / purchase order in place (the contract must be sealed if its value is over the requisite value amount specified within these Rules)
- 3.7 Have appropriate contract management performance measures in the contract;
- 3.8. Ensure the delivery of any Social Value requirements.

## 4. Scope of the Contract Procedure Rules

- 4.1 These rules apply to all procurements for the provision of supplies, services or works, except where stated in 4.3.
- 4.2 A contract is any verbal or written agreement where a party (the Supplier) agrees to provide supplies, services or works to the Council in return for a form of consideration (usually payment). These contracts include but are not limited to:

- 4.2.1 Service Contracts
- 4.2.2 Construction Contracts
- 4.2.3 Supplies Contracts (purchase of goods)
- 4.2.4 Framework agreements
- 4.2.5 Purchase orders
- 4.2.6 Leasing / licensing / Financing arrangements (e.g. software)
- 4.2.7 Quotations
- 4.2.8 Concession contracts

- 4.3 The following contracts are exempt from these regulations:

- 4.3.1 Employment Contracts
- 4.3.2 Contracts for the acquisition, transfer, or disposal of any interest in land or property (including leasehold interest)
- 4.3.3 Instruction of —legal counsel/barristers - Where it is in the best interests of the Council to directly instruct a particular legal counsel/barrister because they are one of only a few suppliers who have expertise or specialist knowledge or substantial experience or skills in a relevant area.
- 4.3.4 For loans arrangements
- 4.3.5 For the open market purchase of housing ———
- 4.3.6 Certain 'contractual' arrangements with other Public Bodies

## 5. Conflicts of Interest

- 5.1 All members of staff must avoid any conflict between their own interests and the

interests of the Council as detailed in the Council's Officers' Code of Conduct, this includes: but is not limited to

- 5.1.1 not accepting gifts or hospitality from organisations or suppliers that the Council has dealings with
  - 5.1.2 not working for, or having a pecuniary shareholding in organisations or suppliers that the Council has dealings with;
  - 5.1.3 notifying the Procurement Manager if an officer has links with (e.g. they previously worked for, or a family member or close friend works for) an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council.
- 5.2 All consultants engaged to act on behalf of the Council must declare that:
- 5.2.1 they will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council; and
  - 5.2.2 they will notify the Procurement Manager if they have any links with (e.g. a family member or close friend works for) an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council, subject to that Consultant being involved in that particular project.
- 5.3 Before commencing an above Threshold procurement a conflicts assessment must be prepared (in accordance with section 83 of the Procurement Act). This conflicts assessment must include details of any actual or potential conflicts of interest that have been identified and any steps that have been undertaken to mitigate such conflicts.
- 5.4 For any project over £1,010,000.00 in value all officers must sign a project specific conflict of interest form and return this to the Procurement Manager

## 6. Pre- Commencement Requirements.

- 6.1 Before any procurement commences, the following approvals are required to commence the procurement and to agree the evaluation criteria:
- Up to £10,000.00 : ~~No specific~~ Service Managers approval required ~~to commence.~~
  - Over £10,000 and less than £100,000 – the Assistant Director's approval is required (by means of an email)
  - Over £100,000.00 and less than £999,999: The Director / Chief Executive's approval is ~~required~~ required (by means of an Officer Decision Taken Under Delegated Authority' notice ("Officer Decision Notice")).
  - Over £1,000,000.00. The Executive Member by means of ~~an~~ Executive Member Decision Notice- ("EMDN").  
Note that EMDNs and Officer Delegated Decision Notices are published on the council's website.
- 6.2 Where there is a recommendation to make a direct award through a compliant framework, there is no need to get agreement to commence the procurement, as long as the approval to award the contract is made in accordance with section 22.1 of these rules.

## 7. ~~Pre-tender~~ Preliminary Market Research and Engagement.

7.1 Officers may consult potential tenderers prior to the placing of the contract advert in general terms about the nature, level and standard of the requirement and other relevant matters, provided this does not prejudice any potential tenderer or tenderer.

### When undertaking this Preliminary Market Engagement, the Officer

7.1.1 Must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in it, this may prejudice the equal treatment of all potential tenderers or distort competition;

7.1.2 Must notarise the meeting/ event, share the information presented as and when requested, unless the information is commercially sensitive.

7.1.3 Must conduct the Preliminary Market Engagement in accordance with section 16 of the Procurement Act

7.2 If a preliminary market engagement is to be carried out a Preliminary Market Engagement Notice must be published in accordance with section 17 of the Procurement Act. If for any reason this is not done, and an engagement is carried out, reasons for not publishing a Preliminary Market Engagement Notice must be given in the tender notice.

## 8. Pre- Procurement

8.1 Prior to the publication of any procurement the Responsible Officer must:

8.1.1 Make a genuine estimate of the whole life cost of the required supplies, services or works ~~being supplied during.~~ The estimate must be based on the entire term (including any extension period) of the contract. [see paragraph ~~14 below~~15below]

8.1.2 Contracts must not be artificially divided into two or more contracts to avoid Procurement Regulations or the Council's Contract Procedure Rules;

8.1.2 Have regard to the fact that small and medium-sized enterprises may face particular barriers to participation and consider whether such barriers can be removed or reduced.

~~8.1.2~~8.1.3 Consult with Finance prior to commencing a procurement to ensure that budget for the total estimated value identified above will be available for the contract;

## 9. Choice of Procedure

9.1 The route to market for all tenders must be determined in conjunction with the Procurement Manager and consider the following elements:

9.1.1. Whether there are collaboration, Shared Services or inter-authority opportunities; available.

9.1.2. Stimulation of the local Small and Medium Sized Enterprises (SME) supplier market.

- 9.1.3. Whole life costs and affordability of the contract;
- 9.1.4. The size of the market;
- 9.1.5. The complexity of the requirements;
- 9.1.6. The value of the contract.

9.1.7. Whether the requirements can be broken into Lots in accordance with section 18 of the Procurement Act.

9.2 The decision to utilise frameworks as a route to market must be approved by the Procurement Manager prior to engagement with the framework provider. Further information can be found in section 10.4 and 10.5.

## 10. Collaborative Procurement

10.1 Each collaborative procurement will have a lead ~~or~~ Contracting Authority. This is the body that will be responsible for letting ~~and awarding~~ the contract. The procurement process will usually be undertaken in accordance with that body's contracting regulations/standing orders.

10.2 Each participating Council's role and responsibilities in any collaborative procurement must be clearly outlined and understood at the beginning of the procurement.

10.3 Where Welwyn Hatfield Borough Council will be the lead Contracting Authority for the procurement:

- 10.3.1 Authorisation to commence the procurement process must be obtained and undertaken in accordance with these rules;
- 10.3.2 A Service Level Agreement must be entered into with all other participants, outlining the ~~rules~~roles and responsibilities of both parties and ensuring ~~that~~ any risk ~~that~~which Welwyn Hatfield Borough Council is taking is ~~passed through to~~shared with the other participants;
- 10.3.3 The Procurement Manager must lead the procurement element of the project;
- 10.3.4 The procurement timetable should allow for the participating authorities to obtain the necessary approvals in accordance with their respective constitution(s);
- 10.3.5 Authorisation to award the contract must be obtained in accordance with these rules.

10.4 Officers are also permitted to use a framework contract that has been tendered by a central purchasing body as long as there is provision in the contract notice for this council to call off from the framework ~~and there is sufficient 'headroom' in the framework to support the contract.~~

10.5 Where a framework contract (mentioned in 10.4) is being used the preferred method should be a mini competition. A direct award should only be made after consultation with the Procurement Manager. .



## 11. Specifications

- 11.1 Specifications must set out a clear and comprehensive description of the Council's requirements with regard to the supplies, services or works to be procured. The specification should include the defined outputs/ outcomes expected.
- 11.2 All supplies, services or works must be specified by reference to ~~European standards or national standards, if no European standards are set~~ international standards.
- 11.3 If no international standard exists a United Kingdom standard can only be specified if the procurement documents also provide that tenders, proposals or applications, which the council considers satisfy an equivalent standard from another state, territory or organisation of states or territories, will be treated as having satisfied the United Kingdom standard. When considering whether a standard from another state, territory or organisation of states or territories is equivalent to the UK standard the council may have regard to its purpose in referring to the standard. The council may require certification, or other evidence, for the purpose of satisfying itself that a standard is equivalent.
- ~~11.3~~ 11.4 Named products or manufacturers must not be specified for above Threshold procurements.
- ~~11.4~~ 11.4 ~~Specifications must contain measurable objectives to enable the Council to ascertain whether requirements are being met. This should include Key Performance Indicators for measurable purposes.~~
- 11.5 Specifications must incorporate the relevant requirements in respect of:
- 11.5.1 Professional or Industry accreditations to be held by the service providers;
  - 11.5.2 Consultation with service users
  - 11.5.3 Reporting to the Council on key service metrics/ Key Performance Indicators
  - 11.5.4 Equalities analysis
  - 11.5.5 GDPR (Responsibility for the management, safeguarding and ownership of any data to be used)
- 11.6 Due regard for the Councils Climate Change strategy should be made.

## 12. Key Performance Indicators

- 12.1 Any contract with a value of over £5million must include at least three Key Performance Indicators (unless the council considers that the supplier's performance could not appropriately be assessed by reference to KPIs) which must be published on the council's website

12.2 Where the council has set KPIs in accordance with 12.1 (above), it must: (a) assess performance against these KPIs and publish information as specified in Regulations in relation to that assessment. The council must do this at least once in every period of 12 months during the lifecycle of the contract and on termination of the contract.

## 12.13. Electronic Procurement and Advertising

12.13.1 Procurement at or above £10,000.00 should be undertaken through the Council's E- Tendering portal.

12.213.2 Procurement at or above £5030,000.00 must be advertised on an 'open basis' (i.e. not limited to a certain number of bidders). These opportunities must be published on the E- Tendering portal as well as ~~Contracts Finder~~ the relevant central government portal.

13.3 Procurement at or above the relevant threshold, set in Regulation 5 of PCR2015 ~~accordance with the Procurement Act,~~ must be advertised on the ~~Find a Tender portal~~ E – Tendering Portal as well as the ~~E-tendering portal and Contracts Finder. All documents relating to an above Find a Tender threshold procurement must be made available at the first point of publication of the contract notice.~~ relevant central government portal

## 13.14. Management of the Procurement Process

13.14.1 All procurements with a value of ~~£10,000~~ £10,000 or more ~~will~~ must be managed by the procurement department.

## ~~14~~ 15. Estimating the value of the Procurement

1415.1 When calculating the value of the procurement the following process should be used:

1415.2 For Capital projects (without maintenance) it should be the Capital Budget approved for the purchase.

1415.3 For Capital projects that include a contractual requirement for maintenance, it should be the cost of the capital budget plus the maintenance costs for the duration of the maintenance agreement (e.g. a capital purchase of £45,000, which includes a maintenance contract for 5 years estimated at £5,000 per annum has a total estimated value of £70,000)

1415.4 For revenue contracts the estimated value should be for either:

- (a) The estimated value of a one- off purchase; or
- (b) For recurring requirements with that supplier, the estimated shall be either the value for the proposed contract length or if it is not known how long the arrangement will be in place then the estimated value should be **4** times the annual expected expenditure.

1415.5 The estimated value must exclude Value Added Tax (VAT) but must include all other taxes and duties.

~~1415.6~~ Where a Contractor is commissioned to undertake more than one order/contract for a specific department in any one financial year period, then the total amount spent with that supplier should not exceed £10,000 without conducting a competitive process in accordance with these Rules.

~~1415.7~~ It is acknowledged that more than one department may utilise the same supplier, without knowledge of the expenditure of the other department. The procurement department will regularly assess the expenditure and should the expenditure on any one supplier exceed £10,000 (in a financial year), then those departments should conduct a joint procurement in accordance with these rules.

~~1415.8~~ Investigatory phases- services are often commissioned where projects are at the investigatory (initial) stage as to project viability, pilots or design etc. Quite often extra resources are required to further re-procure as the project progresses. Consideration should be given at the investigatory (initial) stage to whether it would deliver better value to seek competitive quotes from the outset of the intended project, for each envisaged stage of the project. This may reduce the need for re-procuring as the project progresses and the risk of delaying the project timetable.

~~15.9~~ When considering the value of a contract for a regulated procurement, officers should be aware that the thresholds in the Procurement Act are inclusive of VAT.

## 16. Process to be followed

~~1516.1~~ Dependant on the estimated value, the following table should be followed:

Estimated Value	Minimum No. of Quotations/Tenders
Under £10,000	Obtain a minimum of one written quotation
£10,000 - <del>£49,999</del> <u>29,999</u>	3 quotations
<u>£5030,000</u> – regulated Threshold ( <del>£189,330</del> <u>214,904</u> as of 1 <sup>st</sup> January <del>2022</del> <u>2024</u> )	Advertised using the Open Procedure
-Over the Threshold for a regulated procurement	Advertised using either the Open or <del>Restricted Procedure (unless a more complex process such as the</del> Competitive <del>Dialogue is used.)</del> <u>Flexible Procedure</u>

## 17. Evaluation Criteria

~~All tenders must include evaluation criteria (generally~~

~~16.1~~ 17.1 Dependant on the ~~split between price and quality). This may include up to 95% price (subject to meeting all other minimum criteria).~~

~~For any contract with an estimated value above the Find a Tender Threshold at least 10% of the procurement, the evaluation criteria is allocated to Social Values with an emphasis on using businesses based used must be within the Borough following tolerances:~~

~~16.2 There must be a minimum of 5% of the evaluation criteria allocated to carbon reduction initiatives.~~

~~—17~~

<u>Value</u>	<u>Price</u>	<u>Quality</u>		
		<u>General</u>	<u>Of which minimum Social Value</u>	<u>Of which minimum Climate change *</u>
<u>Up to £100,000</u>	<u>0-100%</u>	<u>0-100%</u>	<u>No minimum</u>	<u>No minimum</u>
<u>Over £100,000</u>	<u>0-90%</u>	<u>10% - 100%</u>	<u>5%</u>	<u>5%</u>

~~\* In exceptional circumstances, this may be decreased, by explicit approval and justification by the appropriate decision maker.~~

## 18. Off Payroll Working and Intermediaries Legislation (IR35)

~~1718.1~~ Since April 2017, the Council has had a legal obligation to ascertain if employment tax and national insurance should be deducted from payments to agency workers or contractors.

~~1718.2~~ Appointment through a recruitment agency: The Council has an obligation to inform the agency of the employment status of the individual, and the agency will then deduct tax and national insurance as appropriate.

~~1718.3~~ Under no circumstances should officers give agencies the view that an engagement is outside of the scope of the legislation, without receiving confirmation from the Assistant Director – Finance or Human Resources Manager.

~~1718.4~~ Award of Contract: If you plan to offer work to an individual who works through their own intermediary (often their own company, but this could also be a partnership or another person), the Council has an obligation to decide whether the off-payroll working rules apply.

~~1718.5~~ The Council will need to conduct an ‘employment status for tax’ assessment before the contract commences. The successful bidder will be required to provide all necessary information for this assessment to take place.

~~1718.6~~ In the event the Council concludes that off-payroll working rules for the public sector apply, then the Council will deduct tax and national insurance from the Contractor at source and no additional payments will be made to the Contractor.

~~1718.7~~ More detailed information on this subject can be obtained from the Procurement Manager, Assistant Director - Finance or Human Resources Manager.

~~17 18.8~~ Under no circumstances should officers make payments to an intermediary without undertaking an employment status check. Should this determine the

engagement is outside of scope, confirmation from the Assistant Director - Finance or Human Resources Manager must be received before proceeding to make payment.

## 19. Form of Contract and Security

~~Unless~~19.1~~Unless~~ a recognised trade or profession contract is to be used (e.g. JCT) then the Council's standard terms and conditions must be used. Legal Services must approve any deviation from these terms and conditions. Consideration should also be given to the use of Liquidated Damages (a fixed or ascertainable sum agreed by the parties as damages for a breach of contract). If Liquidated Damages are not considered appropriate then the reason should be given on the contract file.

19.2 All service or works (construction) contracts with a value of £1,000,000.00 or more should include in the tender ~~document~~documentation the requirement for the successful Contractor to provide a Performance Bond (of at least 10% of the contract value) or, where the successful Contractor is a subsidiary, a Parent Company Guarantee.

19.3 Performance Bonds / Parent Company Guarantees may also be requested where there is considered to be a particular risk to the Council (e.g. where the Contractor pays the Council), or where it is difficult for another company to run the service (where a Parent Company Guarantee should be obtained).

## 20. Submission of Tenders

20.1 All tenders must be submitted electronically through the E Procurement Portal. Tenders submitted in hard copy or by e mail will be rejected.

20.2 Tenders must comply and be submitted in accordance with the rules and instructions set out in the Invitation to Tender.

## 21. Tender clarification

21.1 After tenders have been opened clarification may be necessary to check apparent omissions, arithmetical errors, completeness of documentation etc. In seeking clarification all communications with tenderers should be properly recorded and must be issued through the E-Procurement System. The objective at this stage is to evaluate the tenders as submitted and it follows therefore that under no circumstances should any tenderer be given the opportunity to engage in negotiations with regard to pricing or any other aspects of the tender. Clarification should be obtained solely to the extent necessary ~~for~~to enable a clear evaluation.

21.2 If a tenderer has obviously omitted a document (i.e. a document has been referred to but not supplied), then a request to supply it can only be made if the document would have clearly originated before the tender return date (e.g. a set of accounts, a dated policy document).

21.3 Under no circumstances can a tenderer be allowed to submit a document that would ~~not~~ obviously ~~be~~ not have been available before the tender return date and therefore give them an unfair advantage.

## ~~21~~22. Evaluation of Tenders

21.22.1 Training must be received by officers and others (including external consultants) involved in the evaluation process prior to any tender being returned. If training has not been received the officer / consultant will not be able to participate in the evaluation.

22.2 A training record is maintained by the Procurement Manager

22.3 Abnormally low ~~bids~~ priced tenders must be investigated and only accepted where there is a clear explanation from the bidder to substantiate the pricing in accordance with ~~Regulation 69~~ Section 19 of the ~~Public Contracts Regulations 2015~~ Procurement Act 2023.

22.4 Conflicts of Interest must be declared in advance by those conducting the procurement and forming part of the evaluation panel and updated where a conflict arises once the bidders on a procurement are known.

22.5 Ensure full written notes are made by evaluators and moderators to create an audit of the evaluation process. Notes must not be disposed of until 6 months after expiry of the contract: term, taking account of any contract extension(s).

~~21.5~~ 22.6 To ensure impartiality and in accordance with good procurement practice, the price and quality evaluation of any ~~bid~~ tender must be undertaken independently of each other. Any officer (or consultant working on behalf of the Council), must not have knowledge of any pricing information when undertaking the quality evaluation.

## ~~22~~23 Authority to award contract

22.23.1 All contracts must be awarded in accordance with the table below:

Value of Contract	Authorisation to award contract	Documentation required to confirm authorisation
Under £10,000	Service Manager	An e mail from the Service Manager confirming agreement to award <u>(which should be sent to the procurement team for their records)</u>
£10,000 - £49,999	Assistant Director	An e mail from the Assistant Director confirming agreement to award. <u>(which</u>

Value of Contract	Authorisation to award contract	Documentation required to confirm authorisation
		<u>should be sent to the procurement team for their records)</u>
£50,000 - £ 99,999	<del>Corporate</del> Executive Director / Chief Executive	Officer delegated decision notice
£100,000 - £1,000,000	Executive Member (by use of an Executive Member Decision Notice)	Executive Member Decision Notice
Over £1,000,000	Cabinet	Cabinet report and Cabinet Decision Notice

## 24a. Notification to bidders – Below threshold contracts

24.1 The successful Contractor should be notified promptly in writing, through the E-Procurement Portal that they have been selected to carry out the contract. It should be confirmed with the Contractor that they are available to commence the contract and that they will undertake the work to the terms and conditions of their tender.

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

24.3 In the event that the selected Contractor does not confirm that they are still available to carry out the work to the terms and conditions of the tender then the contract can be offered to the second best tenderer.

24.4 In the event of a potential contractor making a written request for information regarding any contract decision, the appropriate officer must provide a written response detailing the reasons for such decision within 15 days of the receipt of the potential contractor's request.

## 24b. Notification to bidders – Above threshold contracts

24.235 The successful Contractor should be notified promptly in writing, through the E-Procurement Portal that they have been selected to carry out the contract. It should be confirmed with the Contractor that they are available to commence the contract and that they will undertake the work to the terms and conditions of their tender.

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

24.7 In the event that the selected Contractor does not confirm that they are still available to carry out the work to the terms and conditions of the tender then the project must be re-advertised

24.8 In the event of a potential contractor making a written request for information regarding any contract decision, the appropriate officer must provide a written response detailing the reasons for such decision within 3 days of the receipt of the potential contractor's request.

24.9 A contract award notice (in accordance with Section 50 of the Procurement Act) must be completed and published. This notice cannot be published until all bidders have been issued with an assessment summary and will trigger the start of the standstill period

## 25 Letting of Contracts

2325.1 For procurements less than £5030,000 in value, then it is acceptable to issue a purchase order. The purchase order must include:

- (1) The name of the supplier
- (2) The requirements
- (3) The date the order needs to be completed by
- (4) The total value of the order with any payment terms
- (5) The purchase order number
- (6) A link to the Councils standard terms and conditions (unless different terms and conditions apply in which case the Purchase Order must specify: (a) that the Council's standard terms and conditions do not apply to the particular purchase; and (b) the terms and conditions which do apply to the particular purchase)

If a purchase order is being used, the terms of the Purchase Order must be checked, beforehand, to make sure that no term(s) conflicts with any provision of the particular contract.

25.2 Any procurement over £5030,000 must be completed by a formal contract document ~~(which is usually drafted by procurement and completed by the legal department)~~ and must contain:-

- a description of the services, works or goods to be supplied;
- price and payment terms;
- commencement and completion dates including the provision of liquidated damages if appropriate
- delivery date, if appropriate;
- appropriate insurance generally including £10 million cover in respect of public liability, £500,000 cover for professional indemnity liability (where relevant) and employers liability insurance, if applicable, in accordance with the legal requirement. The relevant officer may decide to undertake a risk assessment of the project which may result in the level of insurance increasing or decreasing in accordance with the risks identified



25.3 In addition, the following controls should be present:-

- the contract between the Contractor and the Council must be in writing;
- the contract must be signed by authorised signatory(ies) of the Contractor and the Council and be executed as a deed under seal if its value is £100,000 or over.
- A contract which may be executed by signing only, in accordance with these Contract Procedure Rules, may be signed with wet and/or electronic signature(s) on behalf of the parties to the contract and, on behalf of the Council may be signed by the relevant Assistant Director who shall notify the Legal Services Manager of the signing of the Contract and the Legal Services Manager shall ensure that details of the Contract are entered into the Signing Register.
- In circumstances where a contract is being signed electronically by/on behalf of a Contractor, the Contractor shall, at the same time as providing the Council with the electronically signed contract, provide the Council with a separate statement (signed by the person(s) who has/have signed the contract) certifying that:
  - the person(s) signing the contract has/ve authority to do so;
  - person(s) signing the contract intend/s to authenticate the contract; and
  - and all formalities and legal requirements relating to execution of the contract are satisfied.

25.4 Where a contract or other legal document is required to be executed as a deed the Contractor/other party(ies) may execute the contract electronically provided that the Contractor/other party(ies) shall each do so by signature of two (2) authorised signatories and shall provide to the Council, at the same time as providing the electronically executed deed to the Council, a separate statement certifying that:

- the person(s) executing the contract on behalf of the Contractor/other party(ies) has/ve authority to do so;
- the person(s) executing the contract on behalf of the Contractor/other party(ies) intend/s to authenticate the contract; and
- any and all formalities and legal requirements relating to execution of the contract are satisfied.

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25.5— ~~For all contracts over the Threshold~~ above threshold procurements, a report contract details notice (in accordance with ~~Regulation 84~~ Section 53 of PCR2015 ~~the Procurement Act~~) must be completed-issued with 30 days of contract award.

#### 24. Notification to bidders

~~24.1 The successful Contractor should be notified promptly in writing, through the E-Procurement Portal that they have been selected to carry out the contract. It should be confirmed with the Contractor that they are available to commence the contract and that they will undertake the work to the terms and conditions of their tender.~~

~~24.2 Unsuccessful contractors should be informed, in writing that they have not been selected to carry out the contract at the same time as the successful Contractor.~~

~~24.3 In the event that the selected Contractor does not confirm that they are still available to carry out the work to the terms and conditions of the tender then the contract can be offered to the second best tenderer unless the Procurement is subject to the regulated part of the PCR2015 when the project must be re-advertised~~

~~25.6 Within 30 days of the end of each reporting period (31 March or 30 September) the council shall publish a payment compliance notice as set out in section 68(2) of the Procurement Act 2023~~

## 26. Modifications to Contracts

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~~24.4 In the event of a potential contractor making a written request for information regarding any contract decision, the appropriate officer must provide a written response detailing the reasons for such decision within 15 days of the receipt of the potential contractor's request (or within 3 days if the procurement is subject to the PCR2015).~~

## 25. Variation to Contract

~~25.1 Any variation to contract for a contract valued above the Threshold can only be varied if the variation is in accordance with Section 72 (Modification of Contracts during their term) of PCR2015 74 (Modifying a Public Contract) of the Procurement Act and following input from Legal Services.~~

~~25.2 The authority to accept a variation to contract is dependent upon the value of the change- (calculated as the estimated value of the change for the remainder of the contract term):~~

- Up to £49,999 – Assistant Director
- Between £50,000 and £99,999 – Director / Chief Executive
- £100,000 up to £1,000,000 – Executive Member (by use of an Executive Member Decision Notice)
- Over £1,000,000 – Cabinet

~~The 26.3 If a variation is to be made, the terms of the variation must be in writing and the completed variation document must be stored with the original contract.~~

~~26.4 Before any modification to a contract can be made, a notice in accordance with section 75 (Contract change notice), must be published.~~

## 27. Extension of Contract

~~26~~27.1 An extension to a contract can only be made if there is provision within the existing contract. The decision to extend the contract is dependent upon the value of the extension and shall be agreed at the following level:

- Up to £49,999 – Assistant Director
- Between £50,000 and £99,999 – Director / Chief Executive
- £100,000 up to £1,000,000 – Executive Member (by use of an Executive Member Decision Notice)
- Over £1,000,000 – Cabinet

~~The~~27.2The terms of the extension must be in writing and stored with the original contract.

## ~~27~~28. Assignment and Novation of Contracts

~~27~~28.1 Assignment or Novation of a contract can only be made if there is provision in the contract to allow this to happen – and it is in accordance with Section 74 (Modifying a Public Contract) of the Procurement Act .

28.2 Any Assignment or Novation must be agreed by the relevant ~~Corporate~~Executive Director or Chief Executive, approved by the Assistant Director – Legal and Governance (or their representative) and checks should be made as to the status of the new contractual party to ensure ~~it~~that such party meets all the original selection criteria and is able to perform the contract. The assignment or novation shall not affect the performance of the contract in any way to the detriment of the Council.

~~27.2~~28.3 The terms of the assignment or novation must be in writing and stored with the original contract.

~~27.3~~28.4 If the remaining value of a contract which is to be assigned or novated is above the Threshold, the Procurement Manager must be consulted before authority is given to assign/novate the contract to a new Contractor.

28.5 Before any modification to a contract can be made, a notice in accordance with section 75 (Contract change notice), must be published.

## 29. Nominated Sub Contractors and Suppliers

~~28~~29.1 Where a sub-contractor or supplier is to be nominated to a main contractor the appropriate officer must invite quotations or tenders in accordance with these Contract Procedure Rules (for the appointment of this subcontractor) and authorise the letting of the sub-contract ~~between~~by the main Contractor to the sub-contractor or supplier ~~and main Contractor..~~

~~28~~29.2 The sub-contractor or supplier must send with their quote or tender an undertaking to work for the main contractor and to indemnify the main contractor for the sub-contracted works or materials and provide a collateral warranty in the Council's favour.

## 2930. Outside Consultants

2930.1 External consultants employed to supervise or to be otherwise involved with the operation of contracts must follow any provision of these Contract Procedural Rules which are relevant to their appointed duties. Their contract for services must stipulate this requirement.

## 3031. Bribery and Fraud

3031.1 Services shall include fraud risks and mitigation measures on their operational risk register, where it is identified potential contractors are considered by the Council to be at high risk from benefit fraud, abuse or misuse in connection with the potential contractor's business and/or its employees, sub-contractors or agents. Any high risks, or material changes in risk, shall be reported to the councils Section 151 Officer.

31.2 The current statutory provisions on bribery and fraud are contained in the Bribery Act 2010 ('the Bribery Act') and the Fraud Act 2006 ('the Fraud Act').

31.3 The offences contained in the Bribery Act carry criminal penalties for individuals and organisations. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for companies, an unlimited fine can be imposed.

31.4 The Council, its employees and contractors/bidders are covered by both the Fraud Act and the Bribery Act. The council's policies in relation to these ~~acts can be found using the following links: (Anti-fraud and Corruption Policy, Antibribery Policy, Anti-money Laundering Policy and Preventing Tax Evasion Policy) were approved by Audit Committee on 25<sup>th</sup> June 2024.~~

- ~~• Fraud and Corruption: [Anti-fraud and Corruption Policy Statement and Strategy \(welhat.gov.uk\)](#)~~
- ~~• Bribery: [Anti-Bribery Policy \(welhat.gov.uk\)](#)~~

31.5 All contracts over £~~5030~~,000 in value must contain a relevant Anti-Bribery Clause.

31.6 Officers should be alert to indicators of potential bribery in procurement which may include:

- Unjustified and unexplained favourable treatment of a particular supplier from a particular contracting employee over a period of time, including number or amount of contracts awarded to a given firm or supplier
- Unjustified high prices and important price increases
- Low quality and late delivery acceptance by procurement official
- Unusually high volume of purchases to a single source
- Unusually high volume of purchases approved by a single purchaser
- Unnecessary or inappropriate purchases
- Recurrent and systematic rejection of firms who ultimately act as subcontractors
- official accepting inappropriate gifts or entertainment
- Close relationship (including social) between the official and the vendor
- Unexplained sudden increase in wealth of the procurement official
- Supplier has a reputation of paying bribes
- Commercial contracts different from the supplier's core business

- Intermediary charges high commission, claims special influence on buyer
- Unnecessary middleman involved in contacts or purchases
- High risk sectors or countries
- official has undisclosed outside business
- Procurement official declining promotions to other non-procurement position
- Procurement official acting beyond or below normal scope of duties in awarding or administering contracts
- Long and unexplained delays between announcement of the winning bidder and the signing of the contract (this may be an indication of the negotiation of the bribe)
- Frequent open or restrictive calls for tender that are inconclusive, ending in negotiated procedures

Any concerns should be discussed with the Procurement Manager, Monitoring Officer or Section 151 Officer.

## 32. Termination of Contracts

32.1 Contracts may only be terminated, before the end of their contractual term, with the agreement of an Executive Director or the Chief Executive.

32.2 If a contract is terminated, a notice of termination must be published, before the end of the 30-day period beginning with the day on which the contract is terminated, in accordance with section 80 of the Procurement Act

## 33. Alternative Procedures in Prescribed Circumstances

33.1 It is acknowledged that the market place does not always allow the procedures which are set out in these Contract Procedure Rules to be followed.

33.2 Contracts can also be entered into by an appropriate officer in the following circumstances (subject to compliance at all times with the PCR2015 Procurement Act and any Regulations made under it):

- (a) For the supply of goods or services where there is only one supplier and no acceptable alternative, following consultation with the Procurement Manager.
- (b) Instruction of legal counsel/barristers - Where it is in the best interests of the Council to directly instruct a particular legal counsel/barrister because they are one of only a few suppliers who have expertise or specialist knowledge or substantial experience or skills in a relevant area.
- (c) Where there is an urgent Health and Safety requirement, subject to the prior approval of the Council's Risk and Resilience Manager.
- (d) By the Chief Executive certifying that there is extreme urgency, after consulting the Leader of the Council and relevant Cabinet portfolio holder. The reasons for extreme urgency must be recorded in writing and placed on the contract file
- (e) For loans arrangements.
- (f) Where there is a requirement to employ an agency member of staff, subject to provided that:

- fi No suitable candidate can be found through the agency that the Council has a contract with; and
  - fii ~~That~~ the total value of the appointment does not exceed £175,000.00.
- (g) Where the Cabinet agrees a report, from ~~a Corporate~~ Executive Director or the Chief Executive, detailing a case where it is to the advantage of the Council that these rules should be waived.
- (h) The Chief Executive also has the authority to enter into a contract up to £5030,000 .00 without competition where they consider that this is in the best interests of the Council.