



## **Part F – Appendices**

### **Section F5:- Finance and Contract Procedure Rules**

#### **F5F:- Contract Procedure Rules**

**In Part F:-**

**Section F1** contains the Member Code of Conduct

**Section F2** contains the Member Planning Protocol

**Section F3** contains the Officer Code of Conduct

**Section F4** contains the Officer/Member Relations Protocol

**This Section (F5)** contains the Finance and Contract Procedure Rules that govern how the council manages its financial affairs. The Rules are split into the following eight parts:-

- **Part F5A** contains an introduction and overview to the principles of good financial management, the roles and responsibilities of Officers and Members and the various documents and processes that form the council's financial management framework.
- **Part F5B** Financial Management
- **Part F5C** Financial Planning
- **Part F5D** Risk Management and Control of Resources
- **Part F5E** Financial Systems and Procedures
- **This Section (F5F)** Contract Procedure Rules
- **Part F5G** Collaborative Working and ASDVs
- **Part F5H** Glossary

## **Part F – Appendices**



**Section F5:- Finance and Contract Procedure Rules**

**F5F:- Contract Procedure Rules**

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## **F1. Basic Principles**

F1.1 The aim of the Contract Procedure Rules (“the Rules”) is to:

- a) ensure compliance with all legal requirements.
- b) achieve best value.
- c) ensure transparency, openness, non-discrimination and fair competition.
- d) demonstrate probity, consistency, accountability and integrity.
- e) ensure compliance with the council’s procurement strategy.

F1.2 The principles of transparency, non-discrimination and equality are obligations that apply to all procurements and must be complied with at all times.

F1.3 These Rules are supplemented by Procurement Procedure Guidance (“PPG”) as indicated. The PPGs will be updated as required so Officers must check the intranet site for the latest version.

## **F2. Statute**

F2.1 The Council is required by s.135 of the Local Government Act 1972 to make standing orders to ensure competition and regulate the procurement process.

F2.2 The Council must also comply with various other statutes when purchasing goods, works or services, including the Procurement Act 2023 (PA2023). The Council must also have regard to the National Procurement Policy Statement (NPPS).<sup>1</sup>

F2.3 The risks of non-compliance are significant and include awards of damages and contracts being set aside.

## **F3. Compliance**

F3.1 These rules apply to the following undertaken by or on behalf of the council:-

- a) the purchase of all goods, services or works.

<sup>1</sup> The NPPS places a statutory obligation on contracting authorities to have regard to its policy priorities and determine how procurements can contribute to the delivery of these wider policy objectives. This means that a contracting authority must consider whether the procurement can contribute to achieving one or more of the policy objectives stated in the NPPS in a manner that is appropriate, proportionate and relevant; and take steps to address this where possible.



b) Concessions.

c) In circumstances where the Council is procuring goods, works or services on behalf of a collaborative working arrangement.

d) In circumstances where the Council is seeking a commercial partner for the purposes of a joint venture.

F3.2 All references in these Rules apply equally to a) to d) above as appropriate and as advised by the procurement team. All Officers are responsible for ensuring compliance with these Rules.

F3.3 Third parties acting on behalf of the council must also comply with the Rules. Officers instructing third parties to procure contracts must supply the third party with a copy of the Rules.

F3.4 Officers and third parties must ensure that any conflicts of interest are avoided. Any conflicts of interest must be declared to appropriate line managers as set out in the Officer Code of Conduct. Legal advice must be obtained by Officers where any conflict has potential to impact on contractual relationships.

F3.5 Corruption is a criminal offence. All Officers who let, manage or supervise contracts must act in accordance with the highest standards of propriety and ensure adequate records are kept.

F3.6 Differences in the interpretation of these rules will be resolved by the Service Director Legal and Governance in consultation with the Section 151 Officer.

F3.7 These Rules do not apply to the sale, leasing or purchase of land or any interest in land or any contract of employment or loans or the sale, issue or purchase of any shares or other similar financial asset.

F3.8 These Rules do not apply to an award of a contract in the following circumstances:

a) any contracts between the council and a company that is controlled by it (sometimes referred to as a Teckal company).

b) any contracts between the council and a company that is jointly controlled by the council with another contracting authority; or



- c) any contract which establishes or implements a co-operation between the council and another contracting authority with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common and where implementation of the co-operation is governed solely by considerations relating to the public interest and participating contracting authorities perform on the open market less than 20% of the activities concerned by that co-operation.
- d) any service contract awarded by the council to another contracting authority based on an exclusive right that the latter enjoys pursuant to a law, regulation or published administrative provision which is compatible with the PA2023.

F3.9 For contracts falling within the exceptions at F3.8, written advice from the Service Director Legal and Governance must be obtained to ensure that the specific rules relating to the exceptions apply and to ensure that the award does fall outside of the scope of these Rules.

F3.10 Additional goods, services or works within the scope of a contract with a company that is wholly or jointly owned by the Council may be permitted but shall comply with the general provisions for authority to vary as found in paragraphs F12.10 to F12.12. It may be possible to increase the scope of a contract falling within F3.8 a) or b) above, but before seeking to do so, the Officer shall prepare a business case demonstrating value for money. Increasing the scope of such a contract shall comply with the general change principles stated in paragraphs F12.7 and F12.8 below, shall be recorded in writing by ODN and shall be authorised by the relevant Service Director and the Service Director Legal and Governance.

F3.11 In calculating the total value of a contract, the following principles shall apply to determine the total value:

- a) the total amount payable over the term of the contract plus any extension period, net of VAT, including any form of option and any renewal of the contract by all council services utilising the contract.
- b) where the award of a contract involves lots, the total amount payable for all of the lots, net of VAT, including any form of option and any renewal of the contract by all council services utilising the contract.



- c) for joint purchasing arrangements, the contract value shall be the aggregate of both parties spend under the contract.

F3.12 No Officer shall take any steps or omit to do something in order to seek to subdivide procurements or payments to avoid the application of the Rules or any part of the Rules or the PA2023.

F3.13 Rules relating to grants and collaborative working arrangements are dealt with in Sections F5G and F5H of the Rules respectively.

#### **F4. Consequence of Breach**

F4.1 Failure to comply with any of these rules may be considered a breach of the Officer Code of Conduct and may result in disciplinary action and legal proceedings against the Officer or third parties concerned. No Officer shall take any steps or omit to do something amounting to a knowing or reckless attempt to avoid the Rules.

F4.2 Any Officer who fails to follow the Rules may lose the protection of the indemnity given to Officers by the Council and therefore may have personal liability for a contract or any losses.

F4.3 Where it becomes apparent that a service has failed to comply with the Rules the Service Director must immediately notify the Monitoring Officer and Section 151 Officer. The Service Director must complete a Waiver And Record of Non-Adherence (WARN) form outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence.

F4.4 The content of WARN forms must be approved by the Section 151 Officer and the Monitoring Officer. The Audit and Standards Committee will receive periodic reports on the WARN process and significant single occurrences will be reported to the next available meeting of the Audit and Standards Committee. Service Directors may be required to attend Audit and Standards Committee to explain the circumstance leading to the WARN.

#### **F5. Review**

F5.1 The Service Director Legal and Governance will keep the Rules under review and shall have authority to make minor amendments and updates as required. Any significant changes require the consent of full Council.



F5.2 The Service Director Legal and Governance will report to the Audit and Standards Committee who will make recommendations to Council.

F5.3 The Service Director Legal and Governance and the Section 151 Officer will keep the procurement strategy and procurement procedure guidance under review and have authority to make such amendments and updates as required.

**F6. Corporate Contracts**

F6.1 Officers must always check if there is an existing council contract in place before starting a new procurement activity.

F6.2 If a council contract exists, it must be used unless the contract allows for, and the council's procurement team authorise, another course of action.

**F7. Frameworks**

F7.1 A framework contract is an agreement with suppliers which establishes the terms governing contracts from which orders for goods, services or works may be placed or 'called off'.

F7.2 Frameworks may only be used when: -

- a) the works, goods or services required are clearly identified within the framework.
- b) the framework allows the Council to participate.
- c) the framework adheres to the aims of the Rules.

F7.3 Officers must ensure that they follow the rules applicable to the framework that set out how individual contracts can be called off. Often this will involve a further procurement activity, referred to as a mini or further competition. Even where not a requirement, a mini/further competition should be considered to adhere to the aims of the Rules. Advice must be sought from the procurement team. Advice must be sought from Legal Services in accordance with rule F13 below concerning contract terms, to ensure contract terms are acceptable.

F7.4 Authority to establish a new framework agreement must be evidenced in an Officer Decision Notice (ODN) signed by the Service Director Legal and Governance and Section 151 Officer before procurement activity is started and must be supported by a business case. The business case must clearly state the type of framework, the





maximum value of the framework agreement, the range of contracting authorities able to call-off from it and monitoring arrangements, in particular relating to the total spend under the framework and compliance with call-off procedures.

F7.5 The PA2023 allows contract authorities to establish its own framework agreements providing two options:

|                                                          | Standard Framework                         | Open-Framework                                                                                                                                                                    |
|----------------------------------------------------------|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Is it a public contract:                                 | Yes.                                       | Yes – the frameworks in the scheme are each public contracts, but the open framework is not a contract.                                                                           |
| Maximum duration:                                        | 4 Years.                                   | Maximum 8 Year term (with minimum reopening periods)<br><br>final framework in the scheme to expire 8 years from the day the first framework was awarded, unless single supplier. |
| Number of Suppliers:                                     | No minimum or maximum of suppliers.        | Minimum of two suppliers to take advantage of maximum 8 year term, no maximum.                                                                                                    |
| Can number of suppliers be limited:                      | Yes.                                       | Yes.                                                                                                                                                                              |
| Ability to add additional suppliers throughout the term: | No.                                        | Yes, when the framework is reopened.                                                                                                                                              |
| Flexibility to operate:                                  | Award with or without further competition. | Award with or without further competition.                                                                                                                                        |

F7.6 No contracting authority shall be entitled to call off from a framework agreement established by the council unless the contracting authority has signed an access





agreement with the council. The Service Director Legal and Governance must advise on the most appropriate form of access agreement.

**F8. In House Suppliers**

F8.1 Various services may be available internally from within the council or by any council controlled companies that the council has established. The procurement team can provide advice on utilising these services.

**F9. Joint Procurement**

F9.1 It is best practice to consider working with others either internally or externally where there may be benefits to a joint procurement with other service areas or public bodies to achieve economies of scale and prevent duplication.

F9.2 Advice from the Service Director Legal and Governance must be sought as to the most appropriate form of agreement for joint procurement activity and the apportionment of risk between the parties.

F9.3 If the Council is responsible for any procurement under such joint arrangements, which result in the Council entering into a contract with a supplier, the Rules must be followed.

**F10. Authority to Proceed**

F10.1 Before beginning a procurement, the service Officer is responsible for ensuring that the appropriate authority and budget is in place. The form of the authority will depend on the value, strategic importance of the proposed contract, budget implications and risks.

F10.2 Member authority to commence a procurement process will not normally be required, even where the decision to ultimately let a contract will be a Key Decision. However, Service Directors should ensure that there is sufficient budget in place to undertake the procurement exercise and let a contract and that doing so will not be contrary to the budget and policy framework.

F10.3 It is prudent to ensure that relevant Members are briefed and content with the proposal to procure, particularly if the ultimate letting of a contract will amount to a Key Decision. This is to avoid wasted resource in running a procurement process in circumstances where Cabinet might ultimately decline to award a contract.



F10.4 Notwithstanding the content of rule F10.3 above, Officers must consider whether the decision to procure is in itself a Key Decision because of the likely cost of the procurement process. If so, a Cabinet decision will be required prior to commencing procurement and notice of the same will need to be given in the Forward Plan.

F10.5 Authority to proceed must be evidenced in writing and include confirmation from the budget holder that budget is available to procure and ultimately let a contract. Acceptable forms of authority include:

- a) minutes of the Cabinet.
- b) an Officer Decision Notice.
- c) a relevant extract from the appropriate scheme of delegation.

#### **F11. Insurance**

F11.1 Officers are responsible for checking that all chosen contractors provide written evidence of adequate insurance to cover public liability, employers' liability and if necessary professional indemnity for the full duration of the contract.

F11.2 Indemnity levels must reflect the risk to the Council which typically will be for each and every contract: -

- a) £5 million for public liability.
- b) £10 million for employer's liability.
- c) £2 million for professional indemnity.

F11.3 The levels required may be reduced following the written consent of the Service Director Legal and Governance either as a one off in respect of a particular contract or, where other arrangements have been agreed, for particular types of contract(s). The service Officer shall consider insurance risks and issues before commencing a procurement and shall seek any necessary approvals prior to issue of the invitation to tender.

F11.4 In some circumstances, it may be necessary to obtain specialist insurance. Service Officers shall be responsible for making enquiries with Insurance Team.



## **F12. Form of Contract**

- F12.1 The form of contract must be identified in advance. Every request/invitation for a quote ("ITQ") or invitation to tender ("ITT") must be accompanied by the appropriate form of contract. The Council's standard form of contract must be used. In exceptional cases, an alternative form of contract may be used such as the supplier's form of contract or a varied form of the council's standard contract, but with the prior written agreement of the Service Director Legal and Governance.
- F12.2 F12.1 does not apply to call-off contracts from frameworks. In addition, in appropriate circumstances, industry standards such as PCSA, NEC, JCT, JClI, ACE, RIBA & ICE may be used with the Council's additional standard clauses covering freedom of information and other local government specific issues. These additional clauses are available from Legal Services. Officers must ensure that the published ITQ/ITT includes the correct form of contract or refers to the correct industry standard.
- F12.3 Letters of Intent will only be used in exceptional circumstances and with the written consent of the Service Director Legal and Governance.
- F12.4 Advice need not be taken from legal services on the final draft of a contract with a value of up to £50,000 where the council's standard form of contract has been used with no amendments, additions or deletions to the council's standard clauses.
- F12.5 The final draft of all contracts over £50,000, contracts that must be executed as a deed (irrespective of value) or any other contract (whether specifically or by type) stipulated by the Service Director Legal and Governance must be approved by legal services (or in some other manner agreed by the Service Director Legal and Governance) before they are executed.
- F12.6 When selecting the form of contract, be sure to consider whether it will need to be executed "under hand" (signed) or as a deed. See rule F22 below.
- F12.7 A change to a contract, such as an extension of the contract period (in addition to any extension period included in the original contract), or a change to any of the terms or adding in scope to the goods, works or services, is known as a variation to the contract.
- F12.8 When drafting the specification for the ITQ or ITT, it is good practice to provide for a variation in clear, precise and unequivocal words that state the scope of the



variation(s) permitted and the conditions under which the variation(s) shall apply, provided that such variation(s) do not alter the overall nature of the contract. For example, the ITQ or ITT may state additional goods, works or services that may be included in the contract in the future, or an extension in time of the contract period.

- F12.9 In relation to PA2023 procurements, variations to contracts are covered in Sections 74-77 and Schedule 8 of the Act and regulation 40 regulate contract modifications. Variations to such contracts shall be recorded in writing by Officer Decision Notice and shall be authorised by the Service Director and the Service Director Legal and Governance. The procurement team shall ensure that appropriate notices are issued to comply with Section 75 which provides that before modifying a contract, contracting authorities must publish a contract change notice, unless an exemption applies. The information that must be included in a contract change notice is set out in regulation 40.
- F12.10 For below threshold non PA2023 procurements, Officers shall not enter into variations which would extend the contract beyond the original scope or which would increase the contract price by more than an additional 20% of the original contract price, without the approval of the Section 151 Officer and Service Director Legal and Governance. Such approval shall be evidenced by ODN signed by the Section 151 Officer and Service Director Legal and Governance. A business case will be required to obtain this approval. The procurement team will keep a record of such approvals. Any variation pursuant to this paragraph 12.7 shall comply with the principles in paragraphs F12.7 and F12.8 above.
- F12.11 In all cases, any variation shall be agreed between the parties to the contract and as a minimum shall be recorded in writing and signed by the parties.
- F12.12 In no circumstances shall a variation be made to a contract which has ended, or which has been terminated. If there is no provision within the contract terms for a variation of the type required, legal advice shall be sought.
- F12.13 Contracts must be effectively monitored throughout the period of the contract by the relevant contract manager/client officer and appropriate records kept in accordance with the council's document retention scheme.
- F12.14 Contracts shall not permit payment in advance except in respect of software licences, hardware or software support, HP leases, deposits, warranties or new or additional water, electricity and gas connections instigated by a new build or



refurbishment project, unless the Service Director and Section 151 Officer agree otherwise, such agreement to be recorded in writing.

F12.15 Part payments may be made during the contract period after the completion of a stage of work provided that the services, goods or works have been completed or delivered to the satisfaction of the council. The contract shall include a clear payment schedule which identifies milestones and payment dates or shall identify the events and performance indicators which will trigger a part payment. No part payment shall be made unless the contract precisely sets out the payment schedule and the circumstances in which the part payment shall be made.

F12.16 Payments made under a contract shall be made in accordance with the relevant scheme of delegation and these Rules.

### **F13. Bonds and Security**

F13.1 A performance bond or adequate security will be required where:

- a) the nature and length of the contract is such that the risk of failure is sufficiently high.
- b) the estimated cost of re-establishing a service if the contract fails is relatively high.
- c) the financial and technical standing of the contractor is such that the risk of the failure is sufficiently high.

F13.2 Contracts with a value of up to £250,000 and which appropriately mitigate risk through staged payments or retentions will not typically require a bond or other security (though security may still be sought if any of F13.1 a) to c) apply). In all cases of contracts with a value of more than £250,000, a decision of the Section 151 Officer should be sought.

F13.3 The amount of the bond will be 10% of the total contract value unless otherwise agreed by the Section 151 Officer.

F13.4 Where the contractor is a limited company which is part of a larger group, the ultimate holding company may be required to provide a parent company indemnity or guarantee in addition to or instead of a performance bond or other security.



**F14. Procurements of Goods, Services or Works below the Procurement Act 2023 (“PA2023”) Thresholds.**

F14.1 Where the estimated costs of any goods, services or works is less than the PA2023 thresholds, quotes shall be invited as outlined below:

| Value                          | Procedure                                                                                                                                                                                                                                                                                                |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Under £5k                      | Awarding to a contractor from the council's approved list of contractors on a rotational basis where applicable. In other cases, direct awards are permissible but there is a requirement to be able to demonstrate compliance with the principles of Rule F1.1 across a period of time/range of awards. |
| £5k< to £30k                   | At least two written quotations, <b>and where possible from local (within the Borough of Newcastle-under-Lyme) providers.</b>                                                                                                                                                                            |
| £30k< to the PA2023 Thresholds | A minimum of three quotations sought through the appropriate e-tendering portal <b>and offering compliance in the publication of appropriate notices linked to Below Threshold (estimated value of not less than £30,000) requirements under the PA23 .</b>                                              |

F14.2 The PA2023 threshold is reviewed biennially, and advice must be taken from the procurement team as to the threshold at the time of planning a procurement.

F14.3 The procedure for under threshold procurements is explained in PPGs.

**F15. Procurement of Goods, Services or Works above the PA2023 Threshold**

F15.1 The PA2023 apply to above threshold contracts for the supply of goods, services and works. There is a separate procedure (known as the 'light touch contracts') for certain social, health education and other public services contracts specified in Section 9 (Light touch contracts) of the Act.





F15.2 The PA2023 uses only three procedures, not including frameworks and dynamic markets (the new name for dynamic purchasing systems). These are aimed - to create a simpler and more flexible procurement system.

The new procurement procedures are:

A) Open Procedure

Competitive Flexible procedure

Direct award.

a) Open Procedure

b) Competitive Flexible procedure.

c) Direct award .

F15.3 There is a separate procedure for some types of procurements, known as the light touch contracts, which is explained in the PPGs.

F15.4 Advice shall be taken from the procurement team as to the most appropriate type of procurement procedure. PPGs contain a general guide to the types of procurement procedures.

F15.5 The procedures to be followed for each type of procurement at F15.2 (a) to (c) above are set out in the 2023 regulations and cannot be varied under any circumstances. PPG5 explains the procedure for the Open Procedure. PPGs explain the procedure for the Competitive Flexible procedure. There is a separate procedure for social and health procurements and other contracts specified in Section 9 (Light touch contracts) of the Act. Call-offs under a framework agreement shall follow the procedure set down by the framework authority and in compliance with the PA2023.

F15.6 Before commencing any above PA2023 threshold procurement, advice must be taken from the procurement team.

## **F16. Remedies for Breach of the Regulations**

F16.1 The consequences for breaches of the Regulations for over threshold procurement are significant and Section 102 empowers the court to make a variety of interim orders which include:





- a) automatic suspension.
- b) Pre-contractual remedies.
- c) post-contractual Remedies

F16.2 Officer compliance with these Rules and the Regulations is therefore essential.

#### **F17. Timescales**

F17.1 Procurements over threshold can take a minimum of 4 months and sometimes over 18 months to complete depending on complexity.

F17.2 Section 54 (Time limits) of the PA2023 provides the minimum time limits to be set by contracting authorities in different circumstances. Section 54(3) provides that in most cases a participation period of at least 25 days must be allowed for suppliers to submit requests.

#### **F18. Electronic Tendering**

F18.1 The Council utilises an e-procurement software solution for competitive procurement activities of £25,000 and over.

F18.2 Officers must use the e-procurement solution for all procurements with a value of £25,000 and over unless the Section 151 Officer has provided written consent for the exception or unless the procurement is being conducted through a framework that has its own e-procurement software, when it is permissible to use the e-procurement facility provided by the framework provider.

#### **F19. General Rules for Procurements Involving an Element of Competition**

F19.1 For procurements of £25,000 and over, Service Officers must contact the procurement team before the commencement of procurement activities to agree the appropriate process that will ensure value for money and adequate competition.

F19.2 Service Officers are responsible for drafting a clear and robust specification. The specification must set out exactly what the Council requires and timescales for delivery.



F19.3 Where a variant is permitted, the service Officer must set out the minimum requirement(s) of the variant. Lots must be considered where appropriate and the procurement team will advise on the best use of lots.

F19.4 The tender documentation must as a minimum include:

- a) the time, date and internet address for submission of tenders.
- b) information the supplier must provide.
- c) timescales for the project.
- d) the criteria for award and how compliant bids will be assessed.
- e) the contract documents.
- f) method for dealing with queries during the tender period.
- g) where applicable that the council will utilise the supplier 'debarment list' published by the Cabinet Office (a supplier can only be considered for debarment if any of the mandatory or discretionary exclusion grounds, outlined in Schedule 6 and 7 of the PA2023, apply and the circumstances giving rise to the relevant exclusion ground are continuing or are likely to occur again. Following investigation, a supplier might be listed as an "excluded" or an "excludable" supplier.

F19.5 The tender documentation must state that the council is not bound to accept the lowest or any tender.

F19.6 The tender documentation must set out how errors in tenders will be dealt with using one of the following two ways: -

- a) the tenderer shall be given details of the error(s) found during the evaluation and shall be given the opportunity to confirm without amendment or withdraw the tender; or
- b) amending the tender to correct genuine error(s) provided that in this case, apart from these genuine errors, no other adjustment, revision or qualification is permitted.



F19.7 The ITT must state that by submitting a tender the tenderer agrees to the council's contract terms. There shall be no discussion or negotiation about the contract terms prior to the tender close date. Once an award has been made, modifications may exceptionally be necessary, for example to address an error, where an issue with consistency with the specification is identified or exceptionally where a condition is at odds with the approach in that sector of the market. Legal advice shall always be obtained to ensure that any modification is appropriately drafted. Such modifications shall comply with the general principles listed below: -

- a) the modifications shall not render the contract materially different from the one forming part of the ITT.
- b) had the modifications been included originally with the ITT, the modification would not have allowed for the admission of bidders other than those initially selected OR for the acceptance of a tender other than that originally accepted OR have attracted additional bidders.
- c) the modifications do not change the economic balance of the contract in favour of the contractor in a way which was not provided for in the original contract.
- d) The modification does not extend the scope of the contract beyond PA2023 prescribed parameters.

F19.8 Any modifications which do not fall within at least one of the conditions listed in (a) to (d) above shall require approval by ODN from the Service Director Legal and Governance. Advice shall always be taken from the Service Director Legal and Governance before agreeing to any modifications of the Council's contract terms.

F19.9 Evaluation criteria are the basis on which scores are given to assess responses. Tender evaluation criteria are assessed on:

- a) price or quality only.
- b) MAT (Most Advantageous Tender) whilst price remains a consideration the PA2023 allows procuring authorities to prioritise other factors such as environmental impact or social and governance standards when awarding and evaluating contracts.
- c) Life cycle costing



d) Fixed price with quality criterion only

e) Community Wealth Building

f) Social Value

F19.10 Guidance on evaluation criteria is contained in the PPGs.

F19.11 A record of all tenders received shall be kept on the e-procurement solution and shall include:

a) service name

b) bidder's names

c) tender value

d) date

e) reasons for any disqualifications for late tenders and

f) name of those who were invited but did not submit a tender

F19.12 Any request for an extension to a tender period must be made no later than the period stated in the ITT and in any event before the tender close date and shall be agreed by the Service Director Legal and Governance or their delegated officer. If an extended date is permitted all tenderers must be advised.

F19.13 Clear written records must be kept of the assessment process. For all PA2023 procurements, a report must be written and retained by the service until the expiry of the contract term. The procurement team shall advise what must be recorded in the procurement report.

F19.14 Negotiation or discussion is generally not permitted except where included as part of a 'Competitive Flexible procedure' where negotiation may be permitted and it is clearly stated in the ITT that negotiation or discussion is part of this tender process. If used, negotiations or discussions must be recorded either contemporaneously or as soon as possible after the negotiation or discussion has concluded.



F19.15 A contract procured under the Regulations cannot be entered into or a framework agreement concluded until the end of the standstill period. Section 51 of the PA2023 (Standstill periods on the award of contracts) provides that the 'mandatory standstill period' is the period of eight (8) working days beginning with the day the contract award notice is published. It also sets out the exemptions to this requirement and makes provision for a voluntary standstill period where these exemptions apply.

F19.16 Where timescales allow, for below threshold PA2023 contracts, a voluntary standstill period of eight (8) working days beginning with the day the contract award notice is published can be implemented. Advice should be taken from the Service Director Legal and Governance on whether or not to apply a voluntary standstill period.

## **F20. Abandonment**

F20.1 If less than three tenders are received, consideration should be given as to whether continuing with the process will achieve a competitive price, value for money and quality of services. A further advertisement may be required.

F20.2 Before abandonment or recommencement of an above threshold procurement, there shall be consultation with the Service Director Legal and Governance to ensure appropriate procedure and risk management.

## **F21. Central Digital Platform (CDP)**

F21.1 All relevant procurement opportunities which involve an element of competition over £25,000 shall be advertised on "Central Digital Platform". An element of competition means where the procurement opportunity is put into the public domain for the attention of suppliers generally. It does not include situations where a tender or quote is sought from a limited number of suppliers such as a call-off from a framework agreement or seeking quotes/tenders from selected suppliers.

F21.2 An award of a relevant contract shall be notified on "Central Digital Platform". PPGs explain when an opportunity or award has to be advertised on "Central Digital Platform".

## **F22. Signing and Sealing**



F22.1 Contracts with a value of up to £50,000 that are not required to be executed as a deed may be signed by the Service Director in accordance with a service scheme of delegation.

F22.2 Unless otherwise agreed in writing by the Service Director Legal and Governance, contracts with a value of more than £50,000 and contracts that are required to be executed as a deed (irrespective of value) must be executed by:

- a) The Service Director Legal and Governance or the Section 151 Officer or the Chief Executive; and
- b) An authorised Member signatory

F22.3 Contracts will be executed “under hand” (signed) unless required in law or by the Service Director Legal and Governance to be executed as a deed. Contracts required to be executed as a deed in law typically include:-

- a) Transfers of land or interests in land.
- b) Some Leases.
- c) Mortgages and Charges.
- d) Certain documents in respect of Trusts.
- e) Agreements made without consideration.
- f) Gifts or tangible goods without delivery.
- g) A release or variation of certain rights.

F22.4 In addition to legal requirements to execute some contracts as a deed, there can be advantages to executing other types of contracts as deeds. This will typically occur in respect of high value/risk transactions and/or where contractual relations will be continuing for some time. In these situations, the council may want to execute the contract as a deed to:

- a) be able to take action for breach of contract over a longer period.





- b) prevent the contracting party (or their successor in title) calling into question, at a later date, the validity or effectiveness of the contract or the accuracy of statement of fact made in the contract.

F22.5 Advice should be taken from Legal Services on execution requirements where there is any doubt.

F22.6 Contracts must be executed and completed before work is started to ensure incorporation of terms. Making payments before the contract is sealed or signed may be a breach of the Rules and may result in disciplinary action.

### **F23. Waiving the Rules**

F23.1 Where an Officer intends to seek an exemption to these Rules on the grounds set out below the Officer shall obtain the written consent of the Service Director Legal and Governance and the Section 151 Officer by way of a Waiver And Record of Non-Adherence (WARN) form.

F23.2 The Audit and Standards Committee will receive periodic reports on the WARN process and significant single occurrences will be reported to the next available meeting of the Audit and Standards Committee. Service Directors may be required to attend Audit and Standards Committee to explain the circumstance leading to the WARN.

F23.3 Other than in exceptional circumstances, there shall be no retrospective approval of an exemption and the matter will have to be recorded and reported as a Non-adherence instead, in accordance with rules F4.3 and F4.4 above.

F23.4 Requests to waive these rules for under PA2023 threshold contracts may be authorised in the following circumstances, following a robust audit:

- a) goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative.
- b) compatibility issues such that procurement from another source would be uneconomic given the investment in previous infrastructure.
- c) in cases of genuine urgency or emergency (which shall not include urgency or emergency arising on account of a failure to comply with the Rules when there has been ample opportunity to do so) where it can be clearly demonstrated that the



time required to comply with the Rules would have a significant adverse impact on the council's interests. The Procurement Act 2023 introduces four key sections:

- section 41 – direct award in special cases (“an absence of competition for technical reasons” - “difference or incompatibility” - “disproportionate technical difficulties”).
  - section 42 – direct award to protect life, etc.
  - section 43 – switching to direct award (permits the use of a direct award where there are no suitable tenders/responses in a competitive tendering procedure, and it is not considered possible to award following a competitive process as a result (this is equivalent to the existing ground where there are no tenders/suitable tenders).
  - section 44 – transparency notices – this provision now requires that a transparency notice is required for a direct award.
- d) where a recent, directly analogous and diligently undertaken compliant procurement process evidences a lack of genuine competition.
- e) Other such circumstances as shall be agreed by the Service Director Legal and Governance and the Section 151 Officer.

F23.5 All WARNS signed pursuant to E23.1 shall be held by Legal Services and shall be available for inspection as required.

#### **F24. Payment of Undisputed Invoices**

F24.1 The Council has a duty under the PA2023 for every public contract (whether it is above or below the PA2023 threshold) to pay undisputed invoices within 30 days. PPGs explain the requirements for payment of undisputed invoices.

#### **F25. Public Services (Social Value) Act 2021**

F25.1 The Council must consider the social value of its approach to procurement and whether social or environmental criteria or conditions may be appropriate and permissible. PPGs explain the requirements for social value.

#### **F26. Additional Matters**

F26.1 PPGs set out additional matters which might be relevant to a procurement and Officers are advised to refer to PPGs before commencing a procurement.

#### **F27. Consultancy Procedure**

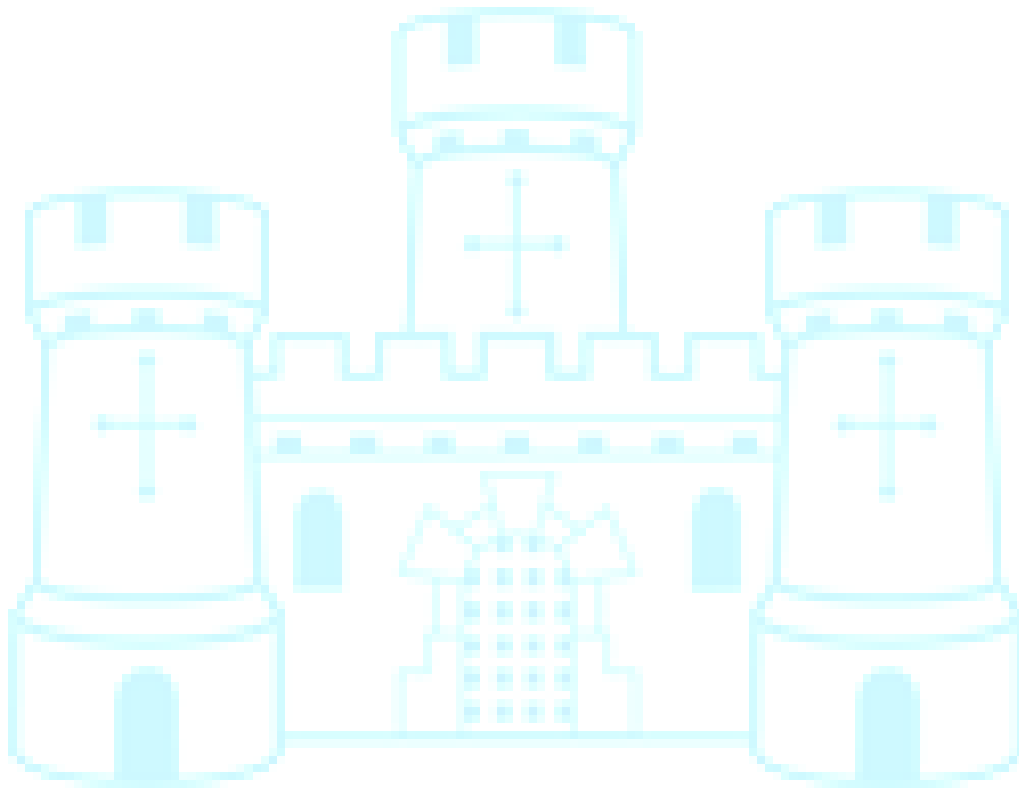
F27.1 Officers shall follow the separate consultancy procedure in addition to the Rules.



- F27.2 External consultants or advisors may only be appointed to provide professional or consulting services if such services are not available within the council or if the Officers providing them do not have the resources to meet what is required. Where such services are available in-house, the appointing Officer must consult with the Service Director Strategy, People and Performance and the Section 151 Officer before taking any decision to make an external appointment.
- F27.3 Consideration should always be given to using approved frameworks, examples include YPO (Yorkshire Purchasing Organisation), ESPO (Eastern Shires Purchasing Organisation, CCS (Crown Commercial Service) and Homes England.
- F27.4 External consultants and technical Officers engaged to supervise contracts must follow these Rules as applicable and their contracts for services must state this requirement.
- F27.5 Procurement plans and/or tenders prepared by external consultants on behalf of the Council must be referred to the procurement team for approval and advice.
- F27.6 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide immediately any, or all documents and records maintained by them relating to the services provided at the request of the appointing Officer, and lodge all such documents and records with the appropriate Officer at the end of the contract.
- F27.7 The appointing Officer shall ensure that any consultant working for the Council has appropriate indemnity insurance.
- F27.8 Any consultant used by the council shall be appointed in accordance with these Rules. Where the council uses consultants to act on its behalf in relation to any procurement, then the appointing Officer shall ensure that the consultants carry out any procurement in accordance with these Rules and using the council's standard terms and conditions of contract in any procurement that the consultant carries out. No consultant shall make any decision on whether to award a contract or whom a contract should be awarded to. The appointing Officer shall ensure that the consultant's performance is monitored.



F27.9 Where the engagement of a consultant is required to support a procurement process or related project, the consultant should sign an appropriately drafted confidentiality agreement.



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