

West Lancashire Borough Council

Contract Procedure Rules

Contents

Section 1: Introduction and Priorities	2
1) General Priorities	2
2) Contract Procedure Rules – Background	3
Section 2: Scope of Contract Procedure Rules:	4
3) Application of the Contract Procedure Rules	4
4) Grants	4
5) Procurement of agencies, consultants, professional advisory and training services	5
6) Compliance	5
Section 4: Officer Responsibilities	7
7) Responsibilities	7
Section 5: Third Parties	10
8) Appointment of Third Parties in relation to a Procurement	10
Section 6: Conducting a Procurement	11
9) Pre-Procurement – General and Initial Planning	11
10) Procurement Procedure	17
11) Clarifications and Modifications to Procurement	19
12) Procurement Documentation	20
13) Creation of Framework	23
14) Establishment of Dynamic Markets	24
15) Exclusions	24
16) Debarment	29
Section 7: Contract Management	31
17) Contract Requirements	31
18) Contract Management	32
Section 8: Approval Process	40
19) Approval Process	40
Section 9: Definitions and Interpretation	41
20) Definitions	41
21) Interpretation	44

Section 1: Introduction and Priorities

1) General Priorities

- a) Officers must have regard to the following priorities when conducting a Procurement on behalf of the Council:
- i) **Fair Competition** - the need to demonstrate true and fair competition without unlawful discrimination. To ensure that there is a level playing field for small and medium-sized enterprises, startups and voluntary, community and social enterprises to compete in Procurements.
 - ii) **Value for Money** – Value for money is paramount in fulfilling our commitment to taxpayers and delivering public services efficiently. The Council must place value for money at the forefront of all procurement activities. This means optimising the use of public funds by balancing effectiveness, efficiency and economy over the life-cycle of a product, service or works to achieve the intended outcomes of the Procurement. This includes wider socio-economic and environmental benefits and impacts.
 - iii) **Social Value** – where relevant and proportionate and without overburdening suppliers Officers should have regard to the following outcomes alongside any local priorities:
 - (1) creating resilient business and opportunities for quality employment and skills development,
 - (2) improving innovation, supply chain resilience and security of supply, and
 - (3) tackling climate change and reducing waste.
 - iv) **Council's Financial Regulations** - any Procurement must comply with the Council's financial regulations.
 - v) **Integrity** - acting, and being seen to act, with integrity.
 - vi) **Council Vision** – in carrying out any Procurement Officers should bear in mind the Council's visions and priorities and how the Procurement may help support and sustain those visions and priorities.

2) Contract Procedure Rules – Background

- a) CPRs are a legal requirement and constitute standing orders for the purpose of s135 of the Local Government Act 1972. They are intended to promote good purchasing practice, public accountability and deter corruption.
- b) These CPRs support Officers to:
 - i) meet legislative requirements,
 - ii) meet the Council's ambitions for procurement,
 - iii) meet the Council's Procurement Strategy, and related policies and procedures,
 - iv) deliver effective procurement.
- c) The CPRs form part of the Council's constitution and non-compliance with the CPRs can have serious consequences for the Council. Compliance with the CPRs by all Officers is mandatory. Officers should be aware that any non-compliance with the CPRs may result in disciplinary action.
- d) Further guidance and explanation on the CPRs is given in the Procurement Guidance. All Officers who carry out a Procurement or manage a contract must make themselves conversant with these CPRs and the Procurement Guidance. Any queries should be referred to the Procurement Department in the first instance.
- e) In the event there is a discrepancy between the provisions of the CPRs and Procurement Legislation, the provisions of the Procurement Legislation shall apply.

Section 2: Scope of Contract Procedure Rules:

3) Application of the Contract Procedure Rules

a) **Application of CPR**

- i) The general principle is that:
 - (1) for Procurements commenced before the entry into force of the Procurement Act 2023, the contract procedure rules appended at Annex A to these CPRs shall apply and Rules 18 1)d)i) and 18 1)d)ii) of these CPRs will apply; and
 - (2) for Procurements commenced after the entry into force of the Procurement Act 2023, these CPRs (without Annex A) shall apply.
- ii) The Procurement Manager will have responsibility for determining whether Rule 3a) i)(1) or Rule 3a) i)(2) applies to a Procurement in order to ensure that Procurements are carried out in compliance with the Procurement Act (Commencement No.3 and Transitional and Saving) Regulations and any other transitional and saving arrangements relating to the Procurement Act 2023.

b) **Contracts Within the CPRS**

- i) The CPRs apply to:
 - (1) contracts for the supply of goods, services or works;
 - (2) concession contracts; and
 - (3) such other contracts as may be specified by the Statutory Officer - s151 Officer.

c) **Application of Procurement Guidance**

- i) Procurement Guidance shall not amend and is not intended to amend and shall not be construed as amending these CPRs.
- ii) Officers must comply with the terms of the Procurement Guidance.

4) Grants

- a) The Legal Department should be instructed and their advice obtained before the Council receives grant monies from or awards monies to another party.
- b) Where the Council intends to award a contract which is part or wholly funded by either internal or external grant funding, additional conditions may have been placed on the use and

manner of expenditure of such funding. Authorised Officers must ensure that they are aware of all such additional conditions and that any Supplier complies with those conditions so far as they may be applicable to the contract.

5) Procurement of agencies, consultants, professional advisory and training services

- a) The appointment of agencies, consultants, professional advisory and training services is subject to these CPRs. If the Procurement of any such parties relates to any staffing or human resource matter then the Authorised Officer must consult with the HR department at the Council as early as possible in the Procurement process.
- b) These CPRs do not apply to a contract of employment, a worker's contract or any other contract between the Council and an individual for the remuneration or compensation of that individual where they are appointed to a public office by the Council.
- c) Authorised Officers need to be aware that IR35 legislation stops public authorities using the agency model of day or hourly rates to buy consultancy projects and instead requires the Council to define a specification for the expected work product up front. Therefore, the Authorised Officers must draw up a suitable outcome-based specification for all Procurements for consultancy / professional advisory projects. .

6) Compliance

- a) Every Procurement undertaken by or on behalf of the Council and every contract entered into by the Council must comply with all Procurement Legislation and the Procurement Guidance.
- b) In carrying out a Procurement Officers must have regard to:
 - i) any guidance issued by central government including the National Procurement Policy Statement,
 - ii) the Council's strategic objectives, priorities and visions, and policies as may be published from time to time, and
 - iii) the Procurement Strategy.
- c) **Valid Exemption to the Contract Procedure Rules**
 - i) There are some contracts that are categorised as an Exempt Contract and therefore not subject to competitive tendering procedures specified within the Procurement Legislation.

- ii) An Exempt Contract does not amount to a waiver to the CPRs however, the record of decision should note that the proposed contract is an Exempt Contract within the scope of the Procurement Legislation.

d) Waiver of the CPR –Circumstances

- i) A waiver of the CPRs is only permitted:
 - (1) in special circumstances,
 - (2) in accordance with Rule 6 e), and
 - (3) provided that the waiver is not unlawful and could not reasonably be construed as being unlawful.

e) Waiver of the CPR – Procedure

- i) In order to waive any part or parts of the CPR the relevant Officers must take the following steps:
 - (1) The Authorised Officer must produce a Waiver Report. The Waiver Report must set out the financial, legal, risk, equality and any other relevant implications of the waiver sought. The Authorised Officer must consult with the Procurement Manager before finalising the Waiver Report.
 - (2) The Procurement Manager sends the Waiver Report to the relevant member of EMT and the Statutory Officer – Head of Paid Service for their Approval.
 - (3) If Approved the Authorised Officer must ensure that the Waiver Report is referred to and annexed to the relevant record of decision relating to the contract.
 - (4) Copies of all completed Waiver Reports and the relevant records of decision to which a Waiver Report has been attached must be sent by the Authorised Officer to the Procurement Manager in a timely fashion.

ii) Best Value

- (1) Authorised Officers must have regard to Rule 1)a)ii) and conduct Procurements and award contracts in a manner that supports the Council's responsibility to secure continuous improvement in the way in which its functions are exercised, having regard to economy, efficiency and effectiveness.

Section 3: Officer Responsibilities

7) Responsibilities

- a) The responsibilities listed in this Section 3 are in addition to any other responsibilities of the relevant Officer detailed in other sections of these CPRs or which may otherwise be applicable to their role at the Council.

- b) A Statutory Officer may delegate any of their responsibilities or powers as set out in these CPRs provided that delegation is recorded in writing and copy of that record is sent to the Statutory Officer – Monitoring Officer before the delegation takes effect. The Statutory Officer may only delegate their power and / or responsibilities to an Officer provided that that Officer is suitably qualified and reports directly or indirectly to that Statutory Officer and that appropriate administrative procedures are in place to record and monitor decisions taken under that delegation.

- c) **Members of EMT and CMT**
 - i) Members of EMT will work with the Statutory Officer – s151 Officer via consultation with the Procurement Manager to identify the anticipated activity relating to all Procurements and spend in their service area for each 12-month period starting on the first day of the relevant financial year (a "Procurement Pipeline"). The Procurement Pipeline shall be agreed and published for a financial year no later than the 26 May in that financial year. Members of EMT shall keep their Procurement Pipeline up to date and review it periodically at least once every 6 months.

 - ii) Members of CMT will be responsible for ensuring compliance with the CPRs by their department.

 - iii) Members of CMT will ensure that contracts for which their department is responsible for are monitored and managed appropriately.

 - iv) Members of CMT will report all breaches of the CPRs and lessons learned to the Statutory Officer – s151 Officer in a timely fashion.

- v) Where a member of CMT is responsible for a Procurement that may be used by more than one directorate, they must ensure that the other members of CMT and any relevant Officers are consulted in order to ascertain whether that Procurement can be utilised for other directorates. If so, the relevant directorates must work together in carrying out the Procurement.

d) Authorised Officers

- i) Authorised Officers will ensure that each Procurement for which they have responsibility complies with the following requirements:
 - (1) all Procurements must be undertaken by suitably skilled and experienced staff. Prior to undertaking any procurement activity advice and assistance must be sought from the Procurement Department in relation to the procurement process to follow and the outcomes required, and
 - (2) before seeking to undertake a Procurement, the Authorised Officer must liaise with the Procurement Manager to check whether a suitable contract for the goods, works and/or services exists. Where a suitable contract exists, this must be used unless otherwise approved by the Procurement Manager.
- ii) Authorised Officers must ensure that the Statutory Officer - s151 Officer is provided with all the information that is required to allow them to comply with their duties including those relating to publishing information, Notices, and statistical returns.
- iii) The Authorised Officer will consider all aspects of the tender and contract lifecycle with reference to the Procurement Strategy.

e) Responsibilities of Statutory Officer –s151 Officer

- i) At the beginning of each financial year and if required under the Procurement Legislation, the Statutory Officer – s151 Officer must publish a Pipeline Notice for the whole Council on the prescribed electronic platform listing the contracts which the Council expects to procure for the coming financial year, based on the information supplied by each relevant member of CMT.

- ii) The Statutory Officer – s151 Officer will be responsible for publication on behalf of the Council of all advertisements, awards, Notices, statistical returns and all other documents required by the Procurement Legislation in the manner and form prescribed by the Procurement Legislation and otherwise in a manner and form as the Statutory Officer – s151 Officer may prescribe.

- iii) The Statutory Officer – s151 Officer will review these CPRs and the Council’s procurement processes annually in consultation with the members of EMT.

- iv) The Statutory Officer – s151 Officer is responsible for publication of all contracts and maintenance of all registers as may be required further to any legislation or guidance relating to the transparency obligations of the Council.

- v) The Statutory Officer – s151 Officer is responsible for the production of the Procurement Guidance and updating and amending the Procurement Guidance and associated documents as may be required.

- vi) The Statutory Officer – s151 Officer is responsible for determining which records the Council should keep further to Rule 18 f).

Section 4: Third Parties

8) Appointment of Third Parties in relation to a Procurement

- a) Authorised Officers must not appoint third parties to carry out or assist the Council in carrying out a Procurement without the authorisation of the Statutory Officer – s151 Officer.
- b) The Authorised Officer must ensure that the appointment of any third party to carry out or assist the Council in carrying out a Procurement must include obligations to:
 - i) comply with these CPRs as if they were an employee of the Council so far as reasonably practicable,
 - ii) provide to any Officer nominated by the Council all information and records required in relation to that Procurement or management of the Contract, and
 - iii) report any conflict of interest that arises to the Authorised Officer and Statutory Officer – Monitoring Officer immediately.
- c) The Authorised Officer must ensure that third parties appointed to carry out or assist the Council in carrying out a Procurement do so in accordance with these CPRs and the Authorised Officer must use all reasonable endeavours to ensure that no conflict of interest arises.
- d) Third parties must not make any decision on whether to award a contract or to whom a contract should be awarded but may assist the Authorised Officer in making such a decision for instance by evaluating bids.

Section 5: Conducting a Procurement

9) Pre-Procurement – General and Initial Planning

a) **Conflict of Interest Check**

- i) Authorised Officers must comply with the provisions of Rule 181)a) during any Procurement.

b) **Engaging Procurement**

- i) Unless otherwise advised by the Procurement Manager the Procurement Department must be engaged at the earliest possible opportunity in relation to every spending decision which is not already covered by a contract. The instructions to the Procurement Department must be made by the Authorised Officer and in the manner or form required by the Statutory Officer – s151.
- ii) At the start of every Procurement the relevant member of CMT will nominate the Authorised Officer(s) for that Procurement and this must be notified to the Procurement Department.

c) **Engaging Legal**

- i) Unless otherwise advised by the Procurement Manager the Legal Department must be engaged at the start of every Procurement. The instructions to the Legal Department must be made by the Authorised Officer and in the manner or form required by the Statutory Officer - Monitoring Officer.

d) **Engaging Other Departments**

- i) The Authorised Officer must consult with other departments at the Council as may be appropriate for the Procurement.
- ii) Where a Procurement contains, or is likely to contain, any ICT component the Authorised Officer must consult with the ICT Manager prior to the commencement of the Procurement to agree the written specification and also before contract award to ensure that appropriate skilled resource is engaged and that the proposed contract is fit for purpose from an ICT perspective. For the avoidance of doubt, this includes Procurements where the ICT element may not be the primary objective of the Procurement but needs to be incorporated into the Council's ICT infrastructure or needs to be delivered or supported by an external provider.

e) **Preliminary Market Engagement**

i) Before proceeding with a Procurement, the Authorised Officer must liaise with the Procurement Department and consider whether to engage with suppliers and other persons for the purpose of:

- (1) developing the Council's requirements and approach to the procurement,
- (2) designing a procedure, conditions for participation or award criteria,
- (3) preparing the Tender Notice and Associated Tender Documents,
- (4) identifying suppliers that may be able to supply the goods, services or works required,
- (5) identifying likely contractual terms, or
- (6) building capacity among suppliers in relation to the contract being awarded.

f) **Setting Time Limits**

i) In setting time limits in relation to a Procurement the Authorised Officer must, where relevant, have regard to:

- (1) the nature and complexity of the contract being awarded,
- (2) the need for site visits, physical inspections and other practical steps,
- (3) the need for sub-contracting,
- (4) the nature and complexity of any modification of the Tender Notice and any Associated Tender Documents, and
- (5) the importance of avoiding unnecessary delay.

ii) Any time limits set in relation to a Procurement must be the same for each supplier.

iii) The time limits set out in s54 of the Procurement Act 2024 and any Procurement Guidance must be followed where applicable.

g) **Estimating Contract Value**

i) Estimated contract values should be calculated prior to undertaking a Procurement, as this will help inform the procurement route to market.

- ii) Authorised Officers must estimate the value of a contract as the maximum amount it could expect to pay under the contract, including but not limited to, where applicable:
 - (1) amounts already paid,
 - (2) mobilisation and set up costs,
 - (3) ongoing annual service and maintenance costs,
 - (4) an extension to the term of the contract,
 - (5) value of any goods, services or works provided by the Council other than for payment,
and
 - (6) variations to the contract to provide additional goods, services or works.

- iii) In estimating the value of a contract, Authorised Officers must consider any facts that are material to the estimate and available to the Authorised Officers at the time it makes the estimate.

- iv) The value of a contract must not be purposefully underestimated, split or packaged with the intention of avoiding the application of the CPRs. This includes dividing a contract into two or more contracts or adding services to a works contract for the purpose of affecting the contract value.

- v) In estimating the value of a contract, the Authorised Officer must include VAT as part of its estimation.

- vi) For the avoidance of doubt, this Rule 9 g) applies to both Above Threshold and Below Threshold Contracts.

- vii) If the Authorised Officer is unable to estimate the value of a contract or is uncertain as to whether the estimated value may result in an Above Threshold Contract, the contract is to be treated as being an Above Threshold Contract.

- h) **Mixed Procurement**
 - i) A mixed procurement is an award of a contract which comprises of two or more elements, for example the provision of works which includes the purchase of goods to deliver the works.

- ii) For contract awards that may be subject to mixed procurement rules, advice should always be sought from the Procurement Department.

i) Procurement Above Threshold

- i) Where the estimated value of a contract results in the contract being an Above Threshold Contract, the contract will be tendered in accordance with these CPRs. In all such circumstances appropriate advice must be sought from the Procurement Department.
- ii) The current thresholds are as detailed in the Procurement Guidance.
- iii) Advice should always be sought from the Procurement Department to ascertain whether the Procurement needs to be advertised in accordance with the relevant Procurement Legislation and how the Procurement should be conducted.

j) Procurement Below Threshold

- i) Where the estimated value of a contract results in the contract being a Below Threshold Contract, the contract must be tendered in accordance with these CPRs. In all such circumstances appropriate advice must be sought from the Procurement Department.
- ii) Goods and / or services contract restrictions - where the Council invites the submission of tenders in relation to the award of a Below Threshold Contract for goods and / or services, the Authorised Officer may not restrict the submission of tenders by reference to the supplier's suitability to perform the contract with regards to legal and financial capacity and technical ability.
- iii) Works contract restrictions - where the Council invites the submission of tenders in relation to the award of a Below Threshold Contract for works, the Authorised Officer may not restrict the submission of tenders by reference to the supplier's suitability to perform the contract with regards to legal and financial capacity and technical ability where that contract is below the threshold set for contracts for goods and / or services.
- iv) Before inviting the submission of tenders in relation to the award of a Below Threshold Contract, the Authorised Officer must:
 - (1) have regard to the fact that small and medium-sized enterprises may face certain barriers in competing for a contract; and

- (2) consider whether such barriers can be removed or reduced.

- v) The Authorised Officer may only restrict the submission of tenders in relation to the award of a Below Threshold Contract to a geographic location where and to the extent permitted by the Procurement Legislation.

- k) **Social Value**
 - i) In carrying out any Procurement, Authorised Officers must have regard to Rule 1)a)iii).

- l) **Lots**
 - i) Lots allow for a larger single Procurement to be split into smaller elements, which are then procured under separate contracts with different suppliers. Lots are used to aid risk reduction in a supply chain and to encourage small and medium-sized enterprises to bid.

 - ii) Before publishing a Tender Notice, the Authorised Officer must consider:
 - (1) whether the goods, services or works to be supplied under the contract could reasonably be supplied under more than one contract, and
 - (2) whether such contracts could appropriately be awarded by reference to lots.

 - iii) If the Authorised Officer considers a contract could be supplied under more than one contract and such contracts could be appropriately awarded by reference to lots, the Authorised Officer must arrange for the award of the contract or contracts by reference to lots, or provide reasons for not doing so in the Tender Notice.

 - iv) Advice should always be sought from the Procurement Department to ascertain whether the proposed Procurement could be appropriately awarded by reference to lots and to ensure the proposed Procurement is advertised in accordance with the Procurement Act 2023.

- m) **Joint Procurement**
 - i) The Council may undertake a joint procurement activity for the benefit of the Council together with one or more Contracting Authorities.

- ii) A Procurement undertaken on behalf of the Council and one or more other Contracting Authorities shall be conducted in accordance with these CPRs and the Authorised Officer must ensure the other Contracting Authorities that are included in that Procurement are listed in the relevant Notice(s) and contract documents where required.
 - iii) Where the Council participates in a Procurement that is conducted by another Contracting Authority the Procurement must be carried out in accordance with the procuring body's procurement rules and Procurement Legislation.
 - iv) The Council may execute contracts that another local authority may benefit from where:
 - (1) the relevant Contracting Authority has given authority to do so, and
 - (2) having taken legal advice, it has been Approved by a member of EMT.
- n) **Data protection**
- i) If the Procurement involves the transfer of personal data or the Authorised Officer does not know whether it will involve the transfer of personal data then the Authorised Officer must bring this to the attention of the DPO at the earliest opportunity.
 - ii) Authorised Officers must ensure that any contract entered into further to a Procurement includes appropriate data protection clauses.
 - iii) The Authorised Officer must complete any documentation required by the DPO in relation to the Procurement before a contract is entered into.
- o) **Conditions of Participation**
- i) This Rule 9 o) only applies to Above Threshold Contracts.
 - ii) Conditions of Participation are conditions set by the Council that a supplier must satisfy if it is to be awarded a contract.
 - iii) The Council may only set conditions of participation for an Above Threshold Contract if it is satisfied that the conditions are a proportionate ensuring that suppliers have:
 - (1) the legal and financial capacity to perform the contract, or
 - (2) the technical ability to perform the contract.

- iv) A condition of participation may not:
 - (1) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent, or
 - (2) require insurance relating to the performance of the contract to be in place before the award of the contract.

- v) A condition or participation may relate to suppliers' qualifications, experience or technical ability, but may not:
 - (1) require suppliers to have been awarded a contract by a particular contracting authority,
 - (2) break the rules on technical specifications as set out in s56 of the Procurement Act 2023, or
 - (3) require particular qualifications without allowing for their equivalent.

- vi) When considering whether a condition is proportionate for the purposes of this Rule 11 n), the Authorised Officer must have regard to the nature, complexity and cost of the Public Contract.

- vii) A condition of participation may require the provision of evidence that is verifiable by a person other than the supplier.

- viii) If a supplier does not satisfy a condition of participation, the Authorised Officer may with the approval of the Statutory Officer – s151 Officer exclude the supplier from participating in, or progressing as part of, the Competitive Tendering Procedure.

- ix) A supplier is to be treated as satisfying a condition of participation to the extent that a supplier associated with the supplier satisfies the condition. Please see s22(9) of the Procurement Act for rules on whether a supplier is or is not associated with the supplier.

10) Procurement Procedures

- a) **Above Threshold Procurement:**

- i) **Competitive Tendering Procedure**
 - (1) Subject to Rule 10 b) and unless otherwise Approved, Authorised Officers must use a Competitive Tendering Procedure for all Above Threshold Contracts.
 - (2) Competitive Tendering Procedure includes the award of a contract by reference to a Dynamic Market or Framework.

- b) **Direct Award**
 - i) The Council can award an Above Threshold Contract by Direct Award provided that any of the justifications set out in Schedule 5 of the Procurement Act 2023 are met and provided that the Direct Award has been Approved by the Statutory Officer - s151 Officer.

- c) **Frameworks**
 - i) The Council may award a call-off a contract under a valid framework in accordance with the terms of that framework.

- d) **Below Threshold Procurement**
 - i) Subject to Rule 10 d)ii), for a Below Threshold Contract, an Authorised Officer must use:
 - (1) a single-stage tendering procedure,
 - (2) such other tendering procedure as detailed in the Procurement Guidance, or
 - (3) such other tendering procedure as Approved by Statutory Officer – s151.

 - ii) To award a Below Threshold Contract via a Direct Award, the relevant Officers must take the following steps:
 - (1) The Authorised Officer must produce a Direct Award Report. The Direct Award Report must set out any appropriate financial, legal, and equality information, any risks associated with the Direct Award and any other relevant implications of the proposed Direct Award. The Authorised Officer must consult with the Procurement Manager before finalising the Direct Award Report.
 - (2) The Procurement Manager must send the Direct Award Report to the relevant member of EMT and the Statutory Officer – Head of Paid Service for their authorisation.
 - (3) If authorised, the Authorised Officer must ensure that the Direct Award Report is referred to and annexed to any relevant record of decision relating to the contract.

- (4) Copies of all completed Direct Award Report and any records of decision to which a Direct Award Report has been attached must be sent by the Authorised Officer to the Procurement Manager in a timely fashion.
- iii) An Authorised Officer must not award a Below Threshold Contract via a Direct Award unless authorisation has been obtained further to Rule 10 d)ii).

11) Clarifications and Modifications to Procurement

a) **Clarifications Process**

- i) The Council may receive, request and respond to clarifications in relation to a Procurement during or after the Participation Period provided this is done in accordance with:
 - (1) any timescales given by the Council in relation to the Procurement,
 - (2) the provisions of the Procurement Documents, and
 - (3) the Procurement Guidance.

b) **Modifications to Procurement Documents– Above Threshold Contracts**

- i) This Rule 11 b) relates to contracts following a Competitive Tendering Procedure.
- ii) **Open Procedure**
 - (1) In the case of an Open Procedure for an Above Threshold Contract the Authorised Officer may modify the Procurement Documents before the deadline for submitting tenders.
- iii) **Competitive Flexible Procedure**
 - (1) In the case of a Competitive Flexible Procedure for an Above Threshold Contract the Authorised Officer may modify the Procurement Documents before:
 - (a) the deadline for submitting a request to participate in the procedure,
 - (b) where there has been no invitation to submit such requests, the deadline for submitting a first or only tender, or
 - (c) before the deadline for submitting a tender for assessment under s19 of the Procurement Act 2023 has passed if:
 - (i) the modification is not substantial, or
 - (ii) the Procurement relates to the award of a Light Touch Contract.

- iv) **Timescales** - if a Procurement is modified the Authorised Officer must liaise with the Procurement Manager and consider revising any applicable tender deadlines or other time limits having regard to the nature and complexity of the any modification of the tender notice or any associated tender documents.
 - v) **Revisions** – If a Procurement is modified further to Rule 11)b)ii)(1) or Rules 11)b)iii)(1)(a) 11)b)iii)(1)(b) the Authorised Officer must revise and republish or provide again the Tender Notice and any Associated Tender Documents affected by the modifications and any time limit revisions.
 - vi) **Notification** - If a Procurement is modified further to Rule 11)b)iii)(1)(c) the Authorised Officer must notify each supplier participating in the Procurement of the modification.
- c) **Modifications to Procurement Documents - Below Threshold Contracts**
- i) Any modifications to the terms of Procurement for a Below Threshold Contract must be made in accordance with the terms of the Procurement Documents relating to the Procurement and the Procurement Guidance. Unless otherwise advised by the Procurement Manager, if there are no such terms or guidance then the provisions of Rule 11)b) will apply.

12) Procurement Documentation and Process

a) **Provision of Documentation**

- i) The Authorised Officer must provide to the Procurement Department such information and documentation as the Procurement Department requires in relation to the Procurement in a timely manner including where appropriate the following:

(1) **Statement of Requirements (Specification)**

- (a) Unless otherwise Approved by the Statutory Officer - s151 Officer (and the Statutory Officer - s151 Officer may only give such Approval in relation to Below Threshold Contracts) the Authorised Officer must for each Procurement provide a Statement of Requirements to the Procurement Department in a timely fashion.
- (b) Any Statement of Requirements must be unambiguous and sufficiently clear and specific.

(2) **Procurement Documents**

- (a) In producing Procurement Documents for a Procurement using a Competitive Tendering Procedure, Framework or Dynamic Market, the Authorised Officer must comply with the following rules:
 - (i) Procurement Documents may not refer to design, a particular licensing model or a description of characteristics in circumstances where they could appropriately refer to performance or functional requirements,
 - (ii) the Procurement Documents may not refer to a UK standard unless that standard adopts an internationally recognised equivalent or there is no such equivalent, and
 - (iii) unless necessary to make the Council's requirements understood the Procurement Documents may not refer to a trade mark, trade name, patent, design or type, place of origin or producer or supplier. If such a referral is made, the Procurement Documents must state that tenders, proposals or applications demonstrating equivalent quality or performance will not be disadvantaged.

(3) Short Description

- (a) Authorised Officers must provide a clear and sufficiently detailed description of the goods, works or services to be purchased to the Procurement Manager for insertion into any relevant Notices or other documents required under Procurement Legislation.

b) Submission of Tenders

- i) All tenders must be submitted by the supplier in an electronic format via the e-tendering portal or as otherwise directed by the Procurement Manager. All submissions must be in accordance with the relevant requirements of the Procurement Legislation.

c) Award Criteria

i) Following a Competitive Tendering Procedure – Above Threshold Contract

- (1) Unless otherwise approved by the Procurement Manager, the Authorised Officer must award an Above Threshold Contract to the supplier that submits the most advantageous tender.

- (2) The most advantageous tender has the meaning given to it in s19(1) of the Procurement Act 2023 and in summary is the tender that the Authorised Officer considers:
- (a) satisfies the Council's requirements, and
 - (b) best satisfies the award criteria when assessed by reference to the assessment methodology, and (if there is more than one criterion) their relative importance.
- (3) In setting the award criteria, the Authorised Officer must be satisfied that they:
- (a) relate to the subject-matter of the contract,
 - (b) are sufficiently clear, measurable and specific,
 - (c) adhere to Procurement Legislation relating to technical specifications, and
 - (d) are a proportionate means of assessing tenders having regard to the nature, complexity and cost of the contract.

ii) **Following a Procurement for a Below Threshold Contract**

- (1) The award criteria must be proportionate and relevant to the contract subject matter and sets in accordance with Procurement Guidance or as otherwise approved by the Procurement Manager.

e) **Evaluators**

- i) Where possible Authorised Officers / any person evaluating on behalf of the Council must be technically competent in the contract subject matter if they are to be involved in the tender evaluation.
- ii) Where possible, an Authorised Officer / any person evaluating on behalf of the Council must have completed any training required by the Procurement Manager within the period falling 12 months prior to the date of the evaluation.

f) **Errors in Tender Submissions**

- i) Any errors in tender submissions must be considered by the Procurement Manager in line with relevant Procurement Legislation and the clarification process detailed at Rule 11 a).

g) **Tender Summaries**

- i) **Summaries for Below Threshold Procurement**

(1) If required by the Procurement Manager, before awarding a contract and after completion of the relevant tendering procedure Authorised Officers must provide a summary to each supplier that submitted a tender.

(2) The summary must provide such information as required by the Procurement Manager.

ii) Summaries for Above Threshold Procurement

(1) Before publishing a Contract Award Notice in respect of a contract award following a Competitive Tendering Procedure, Authorised Officers must provide the requisite Assessment Summaries to each supplier that submitted an assessed tender. The Assessment Summaries must be submitted to each supplier at the same time.

(2) For this Rule 12 g)ii)(2), an assessed tender is a tender which:

- (a) was submitted in respect of the contract and assessed for the purposes of determining the most advantageous tender under s19(1) of the Procurement Act 2023, and
- (b) was not disregarded in the assessment of tenders.

13) Creation of Framework

- a) A framework is a contract between a Contracting Authority and one or more suppliers that provides for the future award of contracts by a Contracting Authority to the supplier or suppliers. A framework sets out the provisions under which future contracts are to be awarded.
- b) The Council may establish frameworks.
- c) No framework shall be established without the Approval of the Statutory Officer – s151 Officer.
- d) Any framework which is established shall be governed and run by the Procurement Manager with such assistance from Officers as the Procurement Manager requires.

14) Establishment of Dynamic Markets

- a) The Council may under s35 of the Procurement Act 2024 establish arrangements for the purpose of a contracting authority awarding Public Contracts by reference to suppliers' participation in the arrangement ("**Dynamic Market**").
- b) No Dynamic Market shall be established without the Approval of the Statutory Officer – s151 Officer.
- c) Any Dynamic Market which is established shall be governed and run by the Procurement Manager with such assistance from Officers as the Procurement Manager requires.

15) Exclusions

a) **General**

- i) Exclusion is a broad term used to describe different circumstances where suppliers are not permitted to:
 - (1) participate in an Above Threshold Contract,
 - (2) have their tender bid considered, or
 - (3) be awarded a contract.
- ii) In instances where the Authorised Officer considers that the supplier is Excludable or should be Excluded, the Authorised Officer shall inform the Procurement Manager as soon as possible.
- iii) Unless otherwise stated in the Procurement Guidance, the Procurement Manager will be responsible for determining whether a supplier or sub-contractor is on the debarment list or is Excluded or Excludable under this Rule 15). Any determination by the Procurement Manager that a supplier is Excluded or Excludable must be Approved by the Statutory Officer – s151 Officer.

b) **Excluding suppliers from a competitive award**

- i) In assessing tenders following a Competitive Tendering Procedure under to s19 Procurement Act 2023, the Procurement Manager must disregard from any tender a supplier that is an Excluded supplier.

- ii) Before assessing which tender best satisfies the award criteria for a Competitive Tender Procedure, the Procurement Manager:
 - (1) must consider whether a supplier is an Excludable supplier, and
 - (2) may disregard any tender from an Excludable supplier.

- iii) If the supplier is an Excluded supplier or Excludable supplier only by virtue of an Associated Person being an Excluded supplier or Excludable supplier, the Procurement Manager must, before disregarding a tender:
 - (1) notify the supplier of its intention to disregard, and
 - (2) give the supplier reasonable opportunity to replace the Associated Person.

- c) **Excluding suppliers from a Competitive Flexible Procedure**
 - i) For this Rule 15c), a reference to a supplier participating in a Competitive Flexible Procedure is a reference to a supplier participating beyond the initial submission of tender or requests to participate.

 - ii) Before permitting a supplier to participate in a Competitive Flexible Procedure, the Procurement Manager must determine whether the supplier is:
 - (1) an Excluded supplier, or
 - (2) an Excludable supplier.

 - iii) The Procurement Manager must exclude an Excluded supplier from participating in, or progressing as part of, the Competitive Flexible Procedure.

 - iv) The Procurement Manager may exclude an Excludable supplier from participating in, or progressing as part of, the Competitive Flexible Procedure

 - v) Before excluding a supplier that is an Excluded or Excludable supplier only by virtue of an Associated Person, the Procurement Manager must:
 - (1) notify the supplier of its intention, and
 - (2) provide the supplier with reasonable opportunity to replace the Associated Person.

- d) **Excluding suppliers by reference to subcontractors as part of a Competitive Tendering Procedure**

- i) The Procurement Manager must as part of a Competitive Tendering Procedure:
 - (1) request information about whether the supplier intends to sub-contract the performance of all or part of the Above Threshold Contract, and
 - (2) seek to determine whether any intended sub-contractor is on the debarment list.

- ii) The Procurement Manager may request information for the purpose of determining whether any intended sub-contractor is an Excluded supplier or Excludable supplier.

- iii) For this Rule 15d), a reference to a supplier participating in a Competitive Flexible Procedure is a reference to a supplier participating beyond the initial submission of tender or requests to participate.

- iv) **Subcontracting to an Excluded Supplier:**
 - (1) If, after requesting information under Rule 15ii), the Procurement Manager considers that a supplier intends to sub-contract to a supplier that is an Excluded supplier, the Procurement Manager must:
 - (a) treat the supplier as an Excluded supplier for the purpose of assessing tenders under s19 Procurement Act 2023, and
 - (b) exclude the supplier from participating in, or progressing as part of, the Competitive Tendering Procedure.

- v) **Subcontracting to an Excludable Supplier:**
 - (1) If, after requesting information under Rule 15d)ii), the Procurement Manager considers that a supplier intends to sub-contract to a supplier that is an Excludable supplier, the Procurement Manager:
 - (a) must treat the supplier as an Excludable Supplier for the purpose of assessing tenders under s19 Procurement Act 2023, and
 - (b) may exclude the supplier from participating in, or progressing as part of, the Competitive Tendering Procedure.

- vi) Before disregarding a tender or excluding a supplier under Rule 15d)iv) and Rule 15d)v), the Procurement Manager must:
 - (1) notify the supplier of its intention, and

(2) give the supplier reasonable opportunity to find an alternative supplier which to sub-contract.

vii) Rule 15d)iv) and Rule 15d)v) do not apply if the intended sub-contractor is an Associated Person.

e) Excluding suppliers for improper behaviour

i) This Rule 15e) shall apply if the Procurement Manager determines that:

(1) a supplier has acted Improperly in relation to the award of an Above Threshold Contract,

(2) in consequence, the supplier is put at an unfair advantage in relation to the award, and

(3) the unfair advantage cannot be avoided other than by excluding the supplier.

ii) Before making a decision of the kind described at Rule 15e)i), the Procurement Manager must give the supplier reasonable opportunity to:

(1) make representations, and

(2) provide relevant evidence.

iii) The Procurement Manager must in relation to the award:

(1) treat the supplier as an Excluded Supplier for the purpose of assessing tenders under a Competitive Tendering Procedure undertaken in accordance with s19 Procurement Act 2023, and

(2) exclude the Supplier from participating in, or progressing as part of, any Competitive Tendering Procedure.

iv) Rule 15e)v) applies if:

(1) the Procurement Manager has in relation to the award of an Above Threshold Contract requested:

(a) information about a supplier's Connected Persons or Associated Persons for the purpose of determining whether the supplier is an excluded or excludable supplier, or

(b) other information under s28(2) of the Procurement Act 2023 (excluding suppliers by reference to sub-contractors), and

- (2) the supplier has:
 - (a) failed to provide the information requested, or
 - (b) provided information that is incomplete, inaccurate or misleading.

- v) The Procurement Manager must in relation to the award:
 - (1) treat the supplier as an Excluded supplier for the purpose of assessing the tenders under a competitive procedure undertaken in accordance with s19 Procurement Act 2023, and
 - (2) exclude the supplier from participating in, or progressing as part of, any Competitive Tendering Procedure.

- f) **Considering whether a supplier is excluded or excludable:**
 - i) In considering, for the purposes of an Excluded supplier or an Excludable supplier, whether the circumstances giving rise to the application of an exclusion ground are continuing or likely to occur again, the Procurement Manager may have regard to the following matters:
 - (1) evidence that the supplier, Associated Person, or Connected Person has taken the circumstances seriously, for example by paying compensation,
 - (2) steps that the supplier, Associated Person, or Connected Person has taken to prevent the circumstances continuing or occurring again, for example by changing staff or management, or putting procedures and training in place,
 - (3) commitments that such steps will be taken, or to provide information or access to allow verification or monitoring of such steps,
 - (4) the time that has elapsed since the circumstances last occurred, and
 - (5) any other evidence, explanation, or factor that the authority considers appropriate.

 - ii) Before determining whether a supplier is an Excluded supplier or an Excludable supplier, the Procurement Manager must give the supplier reasonable opportunity to:
 - (1) make representations, and
 - (2) provide evidence as to whether exclusion grounds apply and whether the circumstances giving rise to any application are likely to occur again (including the information of kind referred to at Rule 15f).

- iii) However, the Council may not require particular evidence or information unless the Council is satisfied that the requirements are proportionate in the circumstances, having regard to:
 - (1) the nature and complexity of the matters being assessed, and
 - (2) where relevant, the preliminary nature of a consideration under s27(3) of the Procurement Act 2023.

16) Debarment

a) Notification of exclusion of supplier

- i) This Rule 16 a) applies where -
 - (1) The Procurement Manager:
 - (a) has disregarded a tender from an Excluded supplier or Excludable supplier under s26 or s28 of the Procurement Act 2023,
 - (b) has excluded an Excluded supplier or Excludable supplier from participating in, or progressing as part of, a Competitive Tendering Procedure under s27 or s28 of the Procurement Act 2023,
 - (c) is aware of an Associated Person or sub-contractor having been replaced under ss 26(3), 27(4) or 28(5) of the Procurement Act 2023 (replacing an excluded or excludable Associated Person or sub-contractor),
 - (d) has rejected an application from a supplier for membership of a dynamic market on the basis that the supplier is an Excluded supplier or Excludable supplier under s36 of the Procurement Act 2023, or
 - (e) has removed an Excluded supplier or Excludable supplier from a dynamic market under s37 of the Procurement Act 2023,
 - and
 - (2) the Supplier was an Excluded Supplier or Excludable Supplier:
 - (a) under s57(1)(a) or (2)(a) of the Procurement Act 2023 by virtue of a Relevant Exclusion Ground, or
 - (b) on the basis of being on the debarment list by virtue of paragraph 35 of Schedule 6 of the Procurement Act 2023 (threat to national security).
- ii) The Procurement Manager must, before the end of the period of 30 days beginning with the day on which the tender was disregarded or the supplier excluded, replaced or removed, give notice of that fact to the relevant Appropriate Authority.

- iii) A notice under Rule 16 a)ii) must set out:
 - (1) any Relevant Exclusion Ground that the Procurement Manager considers applies to the supplier, and
 - (2) any other information specified under s95 of the Procurement Regulations 2024.

- iv) If proceedings are brought under Part 9 of the Procurement Act 2023 in respect of the disregards, exclusion, replacement or removal, the Procurement Manager must give notice to the Relevant Appropriate Authority of:
 - (1) the commencement of those proceedings or any appeal proceedings;
 - (2) the outcome of any proceedings within Rule 16 a)iv)(1).

- v) Notice under Rule 16 a)iv) must be given before the end of the period of 30 days beginning with the day the proceedings concerned are commenced or determined.

Section 6: Contract Management

17) Contract Requirements

- a) **Form of Contract** – every contract must be in writing and in such form as may be required by the Procurement Guidance.

- b) **Execution of Contracts** - unless otherwise Approved by the Statutory Officer - s151 Officer:
 - i) every contract with a value of £100,000 or above must either be:
 - (1) signed as a deed by both a member of EMT who is authorised to sign that contract and the Statutory Officer - Monitoring Officer, or
 - (2) sealed as a deed under the common seal of the Council and signed by the Statutory Officer - Monitoring Officer.
 - ii) every contract with a value below £100,000 must be signed by either a member of EMT who is authorised to sign that contract or the Statutory Officer - Monitoring Officer.

- c) **Terms required in contracts:**
 - i) **Electronic Invoicing terms** – every Above Threshold Contract must contain electronic invoicing terms compliant with s67 of the Procurement Act 2023.

 - ii) **Payment terms (Above Threshold Contracts)** - every Above Threshold Contract except concession contracts must contain payment terms compliant with s68 of the Procurement Act 2023.

 - iii) **Subcontractor Payment terms** – every Above Threshold Contract must contain terms which oblige the contractor to insert terms compliant with s73 of the Procurement Act 2023 into every public sub-contract (as defined in that section).

 - iv) **Termination terms** – every Above Threshold Contract must contain termination terms compliant with ss78 and 79 of the Procurement Act 2023.

 - v) **Insurance** – the Authorised Officer must liaise with the insurance department to ensure that the contract includes obligations relating to the levels and types of insurance as may be required by the Council for that contract.

- vi) **Payment terms (Below Threshold Contracts)** – every Below Threshold Contract must contain payment terms compliant with s88 of Procurement Act 2023.
- vii) **Sustainability and the environment** – every contract must include such terms relating to sustainability and the environment as the Statutory Officer – Monitoring Officer shall require.
- viii) **Other terms** – every contract must include any other terms as may be required by the Statutory Officer – s151 Officer.
- d) **Contract administration** – the Authorised Officer shall ensure that all contract administration procedures post completion of the contract shall be completed in accordance with the Procurement Guidance or as directed by the Procurement Manager.
- e) **Authority** – the Authorised Officer must consider the authority to enter into the contract at the start of every Procurement and ensure they have the correct authority at time of entering into contract.
- f) **Budget** – the Authorised Officer must ensure the requisite budget is available before entering into the contract.

18) Contract Management

- a) **Conflicts of interest**
 - i) A conflict of interest arises in a procurement context where there is a conflict between the interests of a person acting in relation to a Procurement and those of the Procurement itself.
 - ii) A conflict of interest may arise in relation to:
 - (1) a person acting for or on behalf of the Council, or
 - (2) a person who influences a decision made by or on behalf of the Council.
 - iii) **Duty to identify:**
 - (1) The Authorised Officer and members of CMT must take all reasonable steps to identify, and keep under review, any conflict of interest or potential conflict of interest.

iv) Duty to mitigate:

- (1) The Authorised Officer and members of CMT must take all reasonable steps (which may include requiring a supplier to take reasonable steps) to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage.
- (2) If the conflict of interest puts a supplier at an unfair advantage and that advantage cannot be avoided or the supplier will not take the necessary steps to ensure it is not put at an unfair advantage, then the Authorised Officer must:
 - (a) treat the supplier as an Excluded supplier when assessing tenders under a Competitive Tendering Procedure or directly awarding a contract, and
 - (b) exclude the supplier from participating in or progressing with any Competitive Tendering Procedure.

v) Conflict assessment:

- (1) A conflict assessment is required in the following circumstances:
 - (a) before publishing any relevant Notices in relation to an Above Threshold Procurement,
 - (b) before publishing any relevant Notices in relation to establishing a dynamic market, or
 - (c) as required by the Statutory Officer – s151 Officer.
- (2) The Authorised Officer and members of CMT must keep any conflicts assessment under review and revise the assessment as is necessary until:
 - (a) notice of decision not to award the contract has been given,
 - (b) a contract termination notice is published, or
 - (c) a dynamic market notice is published in relation to the market ceasing to operate.
- (3) All conflict assessments must include the information required by the Procurement Act 2023.

b) Modification of contracts:

- i) If a contract requires modification, Officers must inform the Procurement Department and also instruct the Legal Department to prepare the necessary legal documents. Any modification must only be made if permissible under the Procurement Act 2023.

 - ii) **Notice prior to modification (Contract Change Notice)**
 - (1) Officers shall ensure that any Contract Change Notice required under the Procurement Legislation is published prior to making any modification to a contract.

 - iii) **Publication of modifications**
 - (1) Where required under the Procurement Legislation, the Officer shall ensure the contract as modified or the modification itself is published within 90 days beginning on the date the modification is made.

 - iv) **Modification to Below Threshold Contracts:**
 - (1) Officers may modify contracts that are a Below Threshold Contract and which remain Below Threshold Contract after modification provided that such modification is made in writing, in accordance with the terms of the contract and is authorised in writing by the Procurement Manager.

 - v) **Modification to Above Threshold Contracts:**
 - (1) Officers may modify contracts that are valued as an Above Threshold Contract or Convertible Contracts, if:
 - (a) the modification is a permitted modification (Schedule 8 of the Procurement Act 2023),
 - (b) the modification is not a substantial modification, or
 - (c) the contract is a Light Touch Contract.

 - vi) An Above Threshold Contract or a Convertible Contract may not be modified before the end of any Voluntary Standstill Period provided for in any relevant Contract Change Notice in respect of that contract.

 - vii) Officers may only modify Above Threshold Contracts if that modification has been authorised in writing by the Procurement Manager.
- c) **Terminating a contract:**

i) Serving notice for termination:

(1) If a contract requires termination before its natural expiry and permits early termination by notice, Authorised Officers shall instruct the Legal Department to prepare and serve a notice for termination and inform the Procurement Manager.

ii) Above Threshold Contract – Contract Termination Notice:

(1) For Above Threshold Contracts, Officers shall publish a Contract Termination Notice before the end of the period of 30 days beginning with the day on which the Above Threshold Contract is terminated.

(2) For this Rule 18 c)ii)(2), terminate shall mean:

- (a) discharge,
- (b) expiry,
- (c) termination by a party,
- (d) rescission, or
- (e) being set aside by a court order (whether or not under Part 9 of the Procurement Act 2023).

(3) A Contract Termination Notice does not apply to private utilities or in relation to a contract awarded under s41 of the Procurement Act 2023 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

d) Payments and performance:

i) Information about payments

(1) Statutory Officer – s151 Officer must publish any information required under the Procurement Legislation relating to any payment of £30,000 or more made by the Council further to an Above Threshold Contract.

(2) Statutory Officer – s151 Officer must publish the information required under Rule 18 d)i) (1) before the end of the period of 30 days beginning with the last day of the quarter in which the payment was made. A 'quarter' means a period of three months ending with 31 March, 30 June, 30 September or 31 December in any year.

ii) Payments compliance notices

- (1) Statutory Officer – s151 Officer must publish a Payments Compliance Notice before the end of the period of 30 days beginning with the last day of a Reporting Period, if during that period:
 - (a) a payment has been made under an Above Threshold Contract, or
 - (b) a sum owed by the Council under an Above Threshold Contract became payable.

- (2) Statutory Officer – s151 Officer shall prepare and publish a Payments Compliance Notice in accordance with the requirements of the Procurement Legislation.

iii) **Key Performance Indicators**

(1) **General:**

- (a) For the purposes of these CPR a KPI shall mean a key performance indicator as defined in s52(4) of the Procurement Act 2023, being a measure against which a supplier's performance of a contract can be assessed during the life-cycle of the contract.

(2) **Key Performance Indicators for contracts valued more than £5m (s52(1) of the Procurement Act 2023):**

- (a) If key performance indicators have been set in accordance with s52(1) of the Procurement Act 2023, Authorised Officers shall at least once in every twelve months during the life-cycle of the contract and on termination of the contract:
 - (i) assess performance against the key performance indicators, and
 - (ii) publish any information specified in the Procurement Legislation in relation to that assessment and as directed by the Procurement Manager.

- (b) The Officer shall ensure that the information set out at Rule 18 d)iii)(2)(a) shall be published before the end of the period of 30 days beginning with the day on which Rule 18 d)iii)(2)0 and/or Rule 18 d)iii)(2)(c) first applies in relation to a particular breach or failure to perform.

Rule 18 d)iii)(2)(d) applies if:

- (i) a supplier has breached an Above Threshold Contract, and
- (ii) the breach results in:
 1. termination (or partial termination) of the contract,
 2. the award of damages, or

3. a settlement agreement between the supplier and the Council.

(c) Rule 18 d)iii)(2)(d) also applies if the Officer considers that a supplier:

- (i) is not performing an Above Threshold Contract to the Council's satisfaction,
- (ii) has been given proper opportunity to improve performance, and
- (iii) has failed to do so.

(d) The Officer shall ensure that the following information is published:

- (i) that the subsection of the Procurement Legislation that Rule 18 d)iii)(2)(d) relates to applies,
- (ii) the circumstances giving rise to its application, and
- (iii) any other information specified in the s95 of the Procurement Regulations 2024 or as required by the Procurement Manager.

(e) Rule 18 d)iii)(2)(d) does not apply in relation to a Light Touch Contract.

e) **Sub-contracting**

i) This Rule 18e) shall apply in relation to a supplier if:

(1) the Authorised Officer, as a condition of awarding an Above Threshold Contract, required that the supplier sub-contract the supply of certain goods, services or works to another supplier, or

(2) the supplier -

(a) indicated to the Authorised Officer that it intended to sub-contract all or part of the Above Threshold Contract to another supplier, and

(b) relied on that other supplier to satisfy any conditions of participation in accordance with the relevant Procurement Legislation.

ii) The Authorised Officer may direct that the supplier enters into a legally binding arrangement with the other supplier for the purpose of that supplier performing all or part of the contract (as required or indicated).

iii) If a supplier fails to enter into a legally binding arrangement as directed by the Authorised Officer, the Authorised Officer may:

(1) choose not to enter into the contract with the supplier,

- (2) where Rule 18e)i)(2) applies, direct the supplier to enter into a legally binding arrangement with another appropriate supplier, or
 - (3) if the contract has already been entered into, terminate the contract.

 - iv) In Rule 18e)iii), an appropriate supplier means a supplier that –
 - (1) is not an Excluded supplier, and
 - (2) could have been relied on in place of the supplier referred to in Rule 18 e) i)(2)(b).

 - v) In Rule 18 e)i)(1), the reference to a condition of award includes, the case of a direct award, any condition attaching to the award of a contract.

 - vi) For the purposes of Rule 18 e)i), a supplier is not to be treated as having relied on another supplier to satisfy conditions of participation if the conditions were satisfied by the first supplier alone.
- f) **Record and Documents Retention and Control**
- i) Officers must keep such records as the Procurement Manager considers sufficient to explain a material decision made for the purpose of awarding or entering into an Above Threshold Contract which shall include full and complete contemporaneous written records of the evaluation process.

 - ii) A decision is "material" if under the Procurement Act 2023 the Council is required to:
 - (1) publish or provide a notice, document or other information in relation to the decision,
 - or
 - (2) make the decision.

 - iii) Officers must keep records of any communication between the Council and a supplier that is made:
 - (1) in relation to the award or entry into of an Above Threshold Contract, and
 - (2) before the contract is entered into.

 - iv) A record must be kept until:
 - (1) the day on which the Authorised Officer gives notice of a decision not to award the contract (see s55 of the Procurement Act 2023), or

- (2) the end of the period of three years beginning with the day on which the contract is entered into or, if the contract is awarded but not entered into, awarded.
- v) This Rule 18 f) does not affect any other obligation under any enactment or rule of law by virtue of which the Council must retain documents or keep records, including for a longer period.
- vi) Officers must comply with all document and retention policies, procedures and controls of the Council beyond those set out in these CPRs.

Section 7: Approval Process

19) Approval Process

- a) Reference to Approval or Approved in these CPRs means a written approval from the relevant Officer in the form required by the Statutory Officer – s151 Officer ('**Approval Document**').
- b) The relevant Officer must ensure that any Approval Document is attached and referred to in any associated record of decision.
- c) Copies of all Approval Documents and any relevant records of decision to which the Approval has been attached must be sent to the Procurement Manager in a timely fashion.

Section 8: Definitions and Interpretation

20) Definitions

For the purposes of these CPRs the following terms have the following meanings:

Above Threshold Contract	means a Public Contract within the meaning of s3(1) of the Procurement Act 2023
Approved	means approved in accordance with the process set out in Rule 19) of these CPRs
Assessment Summary	has the meaning given to it in s50(4) of the Procurement Act 2023
Associated Person	means a person that the supplier is relying on in order to satisfy the conditions of participation
Associated Tender Documents	means: <ul style="list-style-type: none"> (a) in relation to a Tender Notice for an Above Threshold Contract, a document setting out information specified in regulations under s95 of the Procurement Act 2023 that supplements that set out in the Tender Notice (b) in relation to a Tender Notice for a Below Threshold Contract a document setting out any information or provision that the Council requires in such notice whether or not set out in the Procurement Guidance
Authorised Officer	means the Officer(s) nominated to have responsibility for the relevant Procurement
Below Threshold Contract	means— <ul style="list-style-type: none"> (a) a contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority, (b) a framework, or (c) a concession contract, that has an estimated value of less than the threshold amount for the type of contract.
CMT	means the corporate management team at the Council
Competitive Flexible Procedure	see definition of Competitive Tendering Procedure
Competitive Tendering Procedure	applies to a Public Contract and means — <ul style="list-style-type: none"> (a) a single-stage tendering procedure without a restriction on who can submit tenders (an “open procedure”), or (b) such other competitive tendering procedure as the contracting authority considers appropriate for the purpose of awarding the Public Contract (a “competitive flexible procedure”)
Connected Person	has the meaning given to it in para 45 of Schedule 6 of the Procurement Act 2023
Contracting Authority	has the meaning given to it in s2 of the Procurement Act 2023
Contract Award Notice	has the meaning given to it at s50(2) of the Procurement Act 2023.
contract	a contract to which these CPRs apply

Contract Change Notice	has the meaning given to it in s75(3) of the Procurement Act 2023
Contract Termination Notice	has the meaning given to it in s80(2) of the Procurement Act 2023
Contracting Authority	has the meaning given to it in s2(1) of the Procurement Act 2023
Convertible Contract	has the meaning given to it in s74 of the Procurement Act 2023 in summary being a contract which as a result of a permitted modification which is not a substantial modification or a below-threshold modification that will become an Above Threshold Contract
Covered Procurement	means the award, entry into and management of a Public Contract
CPRs	these Contract Procedure Rules
DPO	the data protection officer at the Council
Exempt Contract	has the meaning given to it in Schedule 2 of the Procurement Act 2023
EMT	the executive management team at the Council
Excluded supplier	has the meaning given to it in s57(1) of the Procurement Act 2023
Excludable	has the meaning given to it in s57(2) of the Procurement Act 2023
Exclusion Ground	means a mandatory exclusion ground or a discretionary exclusion ground
Improperly	has the meaning given to it in s30(4) of the Procurement Act 2023
IT Manager	means the Officer designated as the manager of the IT department at the Council
Legal Department	the legal department at the Council
Light Touch Contract	has the meaning given to it in s9 of the Procurement Act 2023
Notices	any notice that may be required under Procurement Legislation
Officers	an officer employed by the Council
Open Procedure	see definition of Competitive Tendering Procedure
Participation Period	means the period beginning with the day following the day on which a Contracting Authority invites the submission of requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted
Payments Compliance Notice	has the meaning given to it in s69(2)) of the Procurement Act 2023
Pipeline Notice	has the meaning given to it in s93(3) of the Procurement Act 2023
Procurement	means the tender, award, entry into and management of a contract
Procurement Department	means the procurement department at the Council
Procurement Documents	means (a) the Tender Notice or Associated Tender Documents, including any requirements of a Competitive Tendering Procedure, conditions of participation or award criteria; (b) documents inviting suppliers to participate in a competitive selection process under a framework, including details of the process, any conditions of participation or criteria for the award of the contract; (c) documents inviting suppliers to apply for membership of a dynamic market, including any conditions for membership; and

	(d) any other documents or information issued to suppliers as part of the Procurement Process
Procurement Guidance	means any guidance relating to the CPRs issued by the Statutory Officer – s151 Officer from time to time
Procurement Legislation	means the Procurement Act 2023, the Procurement Regulations 2024 and any laws which affect a Procurement as may be amended or replaced from time to time and any laws or regulations made under them and any mandatory requirements of any guidance associated with the same
Procurement Manager	means the Officer designated as the manager of the Procurement Department at the Council
Procurement Officer	means the Officer(s) nominated by the Procurement Manger to represent the Procurement Department in relation to the relevant Procurement
Procurement Pipeline	has the meaning given to it in Rule 7 c)i)
Procurement Strategy	the Council's procurement policy, including its aims and ambitions, as may be produced by the Statutory Officer – s151 Officer from time to time
Public Contract	has the meaning given to it in s3 of the Procurement Act 2023
Relevant Authority	means a minister of the Crown
Relevant Exclusion Ground	means any exclusion ground except the ground listed in paragraph 43 of Schedule 6 of the Procurement Act 2023 (failure to cooperate with investigation)
Reporting Period	means every six months period ending on 31 st March or 30 th September each year
Rule	a rule of these CPRs and reference to a specific rule shall be a reference to the relevant paragraph of these CPRs
Statement of Requirements	a detailed description of the goods, services and / or works the supplier is expected to supply during the lifetime of the contract and including and requirements of the Council
Statutory Officer	means the Statutory Officer – Head of Paid Service, the Statutory Officer – Monitoring Officer and/or the Statutory Officer – s151 Officer
Statutory Officer – Head of Paid Service	the statutory Officer designated as the head of paid service at the Council further to s4(1)(a) of the Local Government and Housing Act 1989
Statutory Officer – Monitoring Officer	the statutory Officer designated as the monitoring officer further to s5(1)(a) of the Local Government and Housing Act 1989
Statutory Officer – s151 Officer	means the statutory Officer who has responsibility for the proper administration of the Council's financial affairs as appointed by the Council under s151 of the Local Government Act 1972
Tender Notice	means: (a) in relation to an Above Threshold Contract a notice setting out—

	(i) that the Council intends to award a Public Contract under s19 of the Procurement Act 2023, and (ii) any other information specified in regulations under s95 of the Procurement Act 2023; (b) in relation to a Below Threshold Contract a notice that the Council intends to award a contract in such form as the Council provides
Terms of Procurement	means anything set out in a Tender Notice or Associated Tender Documents, including any requirements of a Competitive Tendering Procedure, conditions of participation or award criteria.
Voluntary Standstill Period	has the meaning given to it in s51(4) of the Procurement Act 2023
Waiver Report	a report in the form set out in the Procurement Guidance or as otherwise prescribed by the Statutory Officer – s151 Officer

21) Interpretation

1. Reference to a "Statutory Officer" shall include reference to any Officer appointed to act on their behalf further to Rule 7)b).
2. Unless otherwise stated, reference to the value of a contract shall mean the value of the contract over its whole term including any potential extensions and shall include VAT.
3. References to a "contract" shall include where appropriate a reference to any modification of that contract.
4. Any reference to a Procurement includes a reference to:
 - a. any step taken for the purpose of awarding, entering into or managing the contract;
 - b. a part of the Procurement;
 - c. termination of the Procurement before award.
5. Any reference to carrying out a Procurement is a reference to carrying out the Procurement:
 - a. on its own behalf, including where it acts jointly with or through another person other than a centralised procurement authority, and
 - b. if the contracting authority is a centralised procurement authority—
 - i. for or on behalf of another contracting authority, or
 - ii. for the purpose of the supply of goods, services or works to another contracting authority

where "centralised procurement authority" means a Contracting Authority that is in the business of carrying out procurement for or on behalf of, or for the purpose or the supply of goods, services or works to, other Contracting Authorities.

ANNEX A – a)i)(1) Contract Procedure Rules