

**OXFORDSHIRE COUNTY COUNCIL**

**CONTRACT PROCEDURE RULES**

# Contract Procedure Rules for the Supply of Goods, Services and Works

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# Contract Procedure Rules for the Supply of Goods, Services and Works

## CHAPTER ONE: BASIC PRINCIPLES

### 1. Compliance with these Rules, Council Policies, Relevant Legislation and Legal Requirements

#### Introduction

**1.1** These Rules shall be regarded as standing Orders of the Council for the purposes of section 135 of the Local Government Act 1972 and aim to **ensure that when the Council conducts its procurement activities and makes decisions, it:**

~~Provide the foundation for achieving value for money in pursuit of the councils~~

- (i) **further its** strategic aims and objectives ~~Promote transparency, non-discrimination~~
- (ii) **delivers value for money**
- (iii) **maximises public benefit**
- (iv) **acts,** and ~~equal treatment in all of~~ **is seen to act with integrity,**
- (v) **shares information with suppliers and others with the purpose of allowing them to understand** the Council's procurement activities **policies and decisions**
- (vi) **treats suppliers the same unless a difference between suppliers justifies different treatment**
- (vii) **has regard to barriers that may be faced by small and medium-sized enterprises as and when required to do so by the Procurement Legislation.**

**1.2** These Rules govern all Contracts let by the Council otherwise than specified in these Rules<sup>4</sup>. Further, these Rules apply to arrangements which the Council wishes to enter into in consequence of it having received a grant funding from an outside body to procure a service, goods or works, or to receive an income in return for giving another body the right (a concession) to run a service.

**1.3** These Rules must be read in conjunction with other parts of the Council's Constitution (for example, ~~is if~~ a decision about a contract is also a "key

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<sup>4</sup> ~~See in particular Rules 1.12 and 1.13~~

decision” then the requirements set out in the Constitution in relation to key decisions will also have to be met).

- 1.4 Failure by an Officer to comply with these Rules could lead to disciplinary action being taken against them and in some cases may be referred to any relevant authorities. Any non-compliance with ~~there~~ **these** Rules should be dealt with in accordance with Rule ~~18~~ **20**.

### **What contracts must comply with**

- 1.5 All Contracts must comply with all of the following:
- (i) English law (including the Council’s statutory duties and powers including the Council’s fiduciary duty to safeguard public funds);
  - (ii) these Rules, as supplemented by complementary rules in the Council’s Constitution including ~~it’s~~ its Financial Procedure Rules;
  - (iii) any relevant Council policies/regulations; and
  - (iv) any legal requirement stipulated by the Director of Law & Governance **and Monitoring Officer**.
- 1.6 The procurement and award of Contracts must comply with the principles of non-discrimination, transparency, equal treatment, and proportionality.
- 1.7 Where the estimated value of a Contract dictates that the tender procedure is to be carried out under the Procurement **Legislation Regulations** ~~(a PR Tender)~~, additional rules applying to such tender procedures must be complied with. The Relevant Procurement Team should be consulted for advice.
- 1.8 In addition to Officers, these Rules must be complied with by all other persons who are authorised to carry out procurement and contracting on behalf of the Council (“**Agents**”). It must be a term of all Contracts between the Council and its Agents that the Agents comply with these Rules.

~~1.9 These rules must be read in conjunction with the Procurement Strategy and the procurement Handbook which provide guidance on compliance with these rules.~~

### **Scope**

- 1.9 ~~(1.10)~~ These Rules do not apply to:
- (i) contracts which are not for the provision of goods, services or works ~~(e.g. contracts of employment or contracts relating to land).~~ ~~Note, they do apply to consultancy contracts which are contracts for services.~~

- (ii) contracts entered into by schools with delegated budgets (which should instead be awarded in accordance with the Scheme for Financing Schools).
- (iii) low value purchases ~~below the procurement threshold that~~ may be made from petty cash or procurement cards ~~provided that they are~~ in accordance with any operational instructions and the financial limits issued by the Executive Director of Resources and S151 Officer **pursuant to the Financial Procedure Rules.**
- (iv) **supply of works, goods or services by the Council.**
- (v) **grant** funding agreements save that all grant funding agreements with a value of £500,000 or more must be sealed. The Financial Procedure Rules and the Financial Regulations govern external arrangements including grants and therefore it is important to ascertain at the outset whether a proposed arrangement is a grant or a contract for services and which rules apply. **Subsidy Control Law will need to be considered.**
- (vi) **contracts which are exempt by virtue of Schedule 2 of the Procurement Act 2023 (e.g. contracts of employments, certain legal and financial services, land transactions etc.) These contracts will, however, need to (i) comply with any requirements imposed by the Procurement Act 2023, (ii) comply with the Council's internal governance requirements and (iii) secure value for money. Officers should seek advice from the Relevant Procurement Team/Legal Services at any early stage of planning a procurement if uncertain as to whether a contract is exempt.**

1.10 The following Contracts are exempt from the requirement to conduct a competitive procurement process (as would otherwise be required under Rule 5.1):

- (i) **Health Care Services subject to the Health Care Services (Provider Selection Regime) Regulations 2023 ("PSR Regulations") which are, regardless of value, to be procured under direct award processes (A, B or C) or the most suitable provider process. The decision as to which selection process shall be followed must be made in accordance with the PSR Regulations and on advice from the Relevant Procurement Team.**
- (ii) **Contracts which are to be directly awarded pursuant to either section 41 (and one or more of the justifications in Schedule 5), section 42 or section 34 of the Procurement Act 2023 (including, but not limited to, genuine urgency, user choice, single supplier, insolvency etc).**

**The rest of the Rules must be complied with.**

~~1.11 In exceptional circumstances, exemptions to these Rules may be granted. Authorised officers should refer to Rule 19 of this Part, for details.~~

## **2. Where to get advice**

**2.1** Officers requiring advice on procurement practice and the Procurement Regulations **Legislation** should contact the Relevant Procurement Team **who will consult with Legal Services where necessary.**

**2.2** Officers requiring Contracts, terms and conditions or legal advice should contact Legal Services.

**2.3** Officers requiring support or advice relating to finance issues relating to these ~~Rules~~ should contact the relevant Finance Business Partnering Team.

## CHAPTER TWO: STEPS PRIOR TO PROCUREMENT

### 3. Pre-Tender Authorisations, Requirements and Market Engagement

3.1 Authorised Officers must ensure, before entering into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works be it capital or revenue, that:

- (i) Where it is a key decision, the requirements of Part 1.3, paragraph 3(b) (Decision Making), Part 4.2, paragraph 2.3 (Cabinet Procedure Rules) and Part 8.1, paragraph 13 (Access to Information Procedure Rules) of the Constitution ~~have been~~ **will be** complied with;
- (ii) the provisions of the Financial Procedure Rules at Part 8.2 of the Constitution and Financial Regulations have been complied with (including ensuring that there is adequate budgetary provision);

and written authorisation has been obtained in accordance with Appendix 2, Table 1 of this Part (unless authorisation has been obtained under the Financial Procedure Rules, Part 8.2 of the Constitution<sup>2</sup>):

- (iii) they have considered whether any consultation requirements apply, including whether the Public Services (Social Value) Act 2012 applies to any services, and have complied with any such requirements.

3.2 The Relevant Procurement Team and Legal Services ~~(with the exception of (iv) below)~~ must be notified before officers enter into any procurement process which will or may result in the incurring of any expenditure for the supply of goods, services or works, where:

- (i) the estimated value of the proposed ~~eContract~~ **eContract** is **£30,000 incl VAT ( £25,000 excl VAT)** or more; or
- (ii) the proposed Contract is for the benefit of two or more ~~directorates~~ **services** or parties; or
- (iii) the Contract is considered complex, sensitive or high-risk for any other reason (e.g. an outsourcing involving a TUPE transfer of Council staff), or will involve the use of a third party Framework Agreement, **dynamic purchasing system or dynamic market**; ~~or (iv) the proposed Contract is to be advertised and the estimated~~

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<sup>2</sup> See Rule 4 for details of establishing the value of a contract and see Rule 21 for details of Schemes of Delegation

~~value of the Contract (exclusive of VAT) is £20,000 or more (please notify the relevant Procurement Team (only), in compliance with statutory transparency requirements)~~

### 3.3 Prior to the commencement of any procurement exercise:

3.3.1 The ~~Head of Pension Fund Service manager Pensions~~ and the Director of ~~HR & Cultural Change Workforce and Organisational Development~~ must be notified **by the Authorised Officer** where the procurement:

- (a) will or may result in any transfers of staff under the Transfer of Undertakings (Protection of Employment) Regulations (“**TUPE**”) where any of the staff are or were previously Council employees; or
- (b) will or may result in any transfers of staff under TUPE who are members of the Local Government Pension Scheme.

3.3.2 The Director of Property and ~~Services~~ **Assets** as Corporate Landlord must be notified where the procurement will or may result (a) in a contract that confers exclusive possession of the Council's premises or (b) in the acquisition by the Council of a property interest.

3.3.3 The ~~Head Director of Digital and ICT~~ **IT** must be notified where any procurement involves the purchase of IT products or services that are not listed in the ICT Service Catalogue in order to address any potential data security implications for the Council.

3.3.4 The Information Governance Manager must be notified where any procurement or contract involves the transfer of personal or sensitive data to ensure compliance with data protection **legislation**.

3.3.5 As part of the options appraisal and business case (if appropriate) for the relevant procurement the Authorised Officer must undertake an appropriate risk assessment before entering into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works to determine whether there are, or may be, financial, reputational, legal or other risks posed by the proposed contract, **and how they are to be treated or managed**.

3.3.6 **All contracts must include risk assessed levels of insurance requirements, to be determined pre-procurement, supported by the relevant Procurement Team, and in accordance with any Guidance approved by**



~~the Executive Director of Resources and S151 Officer. The Authorised Officer must also complete a documented risk assessment and consult with the Insurance team where there is uncertainty about as to the levels of insurance required for the project in question, having first had regard to the Council's standard insurance requirements for contracts. Any variance away from the standard insurance levels needs to be approved by the Executive Director of Resources and S151 officer based on a risk assessment submitted by the Authorised Officer to the Insurance Team for appraisal. This process must also be followed at any other stage during the procurement process where a departure from the standard insurance requirements are proposed.~~

- 3.4 Where there is a corporate contract (i.e. a contract for the benefit of the Council as a whole) for the supply of goods, services or works, no other contract may be used for the supply of those goods, services or works unless this has been authorised in advance in writing by the Relevant Procurement Team.

### Market Engagement

- 3.5 The Officer responsible for any procurement may consult potential suppliers in general terms about the nature, level and standard of the contract packaging and other relevant matters, provided this does not prejudice any potential ~~b~~**Bidder**. The Officer must not adopt any technical advice in the preparation of an Invitation to Tender or Request for Quotations from anyone where this may prejudice the equal treatment of ~~b~~**Bidders** or distort competition. When considering undertaking any pre-tender market engagement **in respect of a procurement above the Procurement Act Threshold**, the Relevant Procurement Team must be consulted **to ensure requirements of the Procurement Act are satisfied**.
- 3.6 Authorised Officers must keep and maintain records in respect of each contract in order to demonstrate compliance with these Rules and the Procurement ~~Regulations~~ **Legislation** where they apply **applicable**. Authorised ~~e~~**Officers** must work with the Procurement Hub to ensure that the contract management system is updated to hold the relevant contract information and updates throughout the life of ~~e~~**Contract**. A Contract must be retained for 6 years after the end of the Contract where it has been signed and for 12 years after the end of the ~~e~~**Contract** where it has been sealed.

### Small and Medium-Sized Enterprises

- 3.7 Officers must, prior to conducting either a procurement above the Procurement Act Threshold or a regulated below Procurement Act Threshold **(with the exception of below threshold Call-Off Contracts)**, have regard to the fact that small and medium-sized

enterprises may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.

#### **4. Establishing the Value of the Contract/Expenditure per Contract**

- 4.1** For the purposes of calculating Contract values under these Rules, the Contract value is the estimated aggregate or recurring value payable in pounds sterling excluding VAT over the entire Contract period, including any form of options or extensions of the Contract. For the purpose of determining whether the procurement thresholds set out in Rule 5.6 Table 1 have been met or exceeded (in which case the Procurement Act will apply) the same calculation will apply except the sum shall be inclusive of VAT. Where the Council is not able to estimate the value of the Contract (for example where the Contract duration is indefinite), the Contract is to be treated as being subject to the Procurement Act (where it applies).

~~The value of a contract (that is, the expenditure per contract) means the actual or estimated amount payable by the Council to the supplier for the goods, services or works over the entire possible length of the contract (including, if the contract confers an option to extend, with the exercise of that option, e.g. a three-year contract with an option to extend for two years under which £20,000 is payable per annum has a value of £100,000). The estimated value of a contract below the Procurement Regulation Threshold is to be calculated exclusive of VAT (where applicable). The estimated value of a contract above the Procurement Regulation Threshold is to be calculated inclusive of VAT (where applicable). Table 1 in Rule 5.4 (iii) of this Part below, shows the Procurement Regulation Thresholds expressed both as inclusive and exclusive of VAT in order to assist calculation.~~

- 4.2** Subject to Rule 4.1, in the case of establishing new Framework Agreements or a dynamic market, the Contract value must be calculated to include the total estimated value of all of the Contracts (or, in respect of open Frameworks, the value of all Frameworks) envisaged to be awarded for the total term of the Framework Agreement or the dynamic market and Concession Contracts must be calculated to include the maximum a Supplier could expect to receive under or in connection with the Contract.

~~The value of a Framework Agreement means the estimated amount payable by the users of the framework for the goods, services or works under Call-off Contracts entered into over the entire possible duration of the framework. The estimated value of a Framework Agreement below the Procurement Regulation Threshold is to be calculated exclusive of VAT (as applicable). The estimated value of a Framework Agreement above the Procurement Regulation Threshold is to be calculated inclusive of VAT (as applicable). Table 1 in Rule 5.4 (iii) of this Part~~

~~below, shows the thresholds expressed both as inclusive and exclusive of VAT in order to assist calculation.~~

- 4.3 Contracts must not be split into smaller contracts in order to avoid any of these Rules. **Spend with Suppliers will be monitored regularly by the Procurement Team to ensure Contracts are not disproportionately awarded and exceeding thresholds.**
- 4.4 Where the award of a €Contract to a particular sSupplier creates circumstances where any reasonably foreseeable future additional work could only be awarded to the same sSupplier (e.g. because of the sSupplier's ownership or exclusive rights in relation to a product or service) the value of the €Contract for the purpose of this Rule 4, should include the likely value of such additional work.

## CHAPTER THREE: THE PROCUREMENT PROCESS

### 5. Procurement Process and Thresholds

- 5.1 Please refer to Appendix 2, Table 2 of this Part, for the procurement thresholds and the process to be followed.
- 5.2 **Where** Requests for Quotation or Invitations to Tender are not required to be sought, Authorised Officers must take practicable steps to secure value for money in accordance with the **Guidance approved by the Executive Director of Resources and S151 Officer Procurement Handbook**.
- 5.3 Where Requests for Quotation or Invitations ~~To~~ Tender are required, Authorised Officers must take practical steps to secure value for money through a combination of cost, quality and competition. Competitive quotations or tenders must be sought in consultation with the Relevant Procurement Team following the **Guidance approved by the Executive Director of Resources and S151 Officer** ~~requirements set out in the procurement Handbook~~. **A Legal & Procurement instruction form must be completed for all projects with a value of above £25,000 excl VAT and for lower value projects where legal advice is required.**
- 5.4 Where the estimated value of a Contract is between £25,000 excl VAT and the current Procurement Act Threshold, the Relevant Procurement Team will, in consultation with the service area, determine the most appropriate method for procuring the supplies, services or works. This will consider aspects such as capability and capacity of officers in the relevant service area to manage the procurement themselves, timescales, risk and the relative maturity and state of the supplier market. The rationale for selecting a particular procurement method will be documented, recording details behind the selection.
- 5.5 The Head of Commercial and Procurement Services will maintain a record of all contracts below the Procurement Act Threshold that have been awarded directly to a Supplier ( such record to contain the date of the contract, the nature of the contract, the value and duration of the contract, the name of the Supplier and the relevant service area) and will provide a copy of this record to the Director of Law & Governance and Monitoring Officer at least every 6 months, and where otherwise requested to do so by Director of Law & Governance and Monitoring Officer.
- 5.6 ~~5.4~~ Where the total value of:
- (i) a Contract;

- (ii) all contracts to meet a single requirement for goods or services;  
or
- (iii) all successive contracts of the same type<sup>3</sup> **(the Relevant Procurement Team must be consulted for advice on calculating this)**

is equal to or exceeds the Procurement Regulation **Act** Threshold set out below, the Authorised Officer shall contact their Relevant Procurement Team to establish whether the relevant Procurement regulations **Act** Threshold has been met or exceeded. **The Procurement Act Thresholds (in bold) are inclusive of VAT and will be revised every even year. To assist calculations, the values in italics are shown exclusive of VAT).**

**Table 1**

	<b>Threshold (from 1 January 2024) (incl.VAT)</b>
Goods & Services	<b>£214,904</b> <i>( £179, 086.67 excl VAT @ 20%)</i>
Works & Concessions	<b>£5,372,609</b> <i>( £4,477,174.17excl VAT @ 20%)</i>
<del>Social and other specific services under Schedule 3 of Public Contracts Regulations 2015</del> <b>Light Touch Contracts</b>	<b>£663,540</b> <i>(£552,950 excl of VAT @20%)</i>

~~Call-off Contracts must be entered into in accordance with the terms of the relevant Framework Agreement and a mini-competition (the tender process required by the Framework Agreement) must be held where relevant. Where a Framework Agreement has been set up following an EU Tender, there must be full compliance with Procurement Regulations when awarding Call-off Contracts under it.~~

**5.7** ~~(5.5)~~ **Where it is intended to direct award an above Procurement Act Threshold contract pursuant to either section 41 (and one or more of the justifications in Schedule 5), section 42 or section 34 of the Procurement Act 2023 (including, but not limited to, genuine urgency, user choice, single supplier, insolvency etc), the Relevant Procurement Team must consult Legal Services.**

## **6. Pre-Qualification Requirements/Minimum Standards for Suppliers**

**6.1** Authorised Officers are responsible for ensuring that all Suppliers awarded Contracts for the supply of goods, services or works to the Council have met the Council's minimum standards of suitability,

<sup>3</sup> ~~Authorised Officers should consult with the Relevant Procurement Team for advice on calculating this amount~~

~~capability, legal status and financial standing as advised by the Relevant Procurement Team.~~

- 6.2 Where the ~~contract~~ **procurement** is ~~not subject to a PR Tender for a below Procurement Act Threshold Contract regulated by the Procurement Act, Authorised Officers the Council~~ must not ~~carry out a separate pre-qualification stage unless approved by the Relevant Procurement Team~~ **restrict the submission of tenders or quotes by reference to an assessment of the Supplier's suitability to perform the Contract. This does not apply to (a) a works contract with a value of not less than £214,905 or (b) an award of a Contract in accordance with a Framework.**

## 7. Invitations to Tender/Request for Quotations

- 7.1 ~~An invitation to Tender/Request For Quotation must be sent to for all procurement processes listed in Appendix 2, Table 2 of the part. (7.2) All~~ Invitations to Tender must:

- (i) Clearly specify the goods, services or works that are required (subject to appropriate adjustment applicable to the procedure being used);
- (ii) list the criteria on which the tender(s) will be evaluated (see Rule 8) showing the weighting of the various evaluation criteria unless otherwise advised by the Relevant Procurement Team and Legal Services;
- (iii) include a requirement for ~~tenderers~~ **Bidders** to declare that the tender content, price and all other figures or particulars concerning the tender have not been disclosed by the Bidder to any other party;
- (iv) include a requirement for Bidders to complete fully and sign all tender documents including certificates confirming that no canvassing or collusion has taken place; and
- (v) include the Council's written conditions of contract and state that the **eContract** will be subject to these.

- 7.2 ~~7.3~~ The list of requirements in Rule ~~7.21~~ of this Part, is not exhaustive and any and all additional requirements of the Relevant Procurement Team must also be met.

## 8. Evaluation Criteria

- 8.1 In determining the relevant evaluation criteria **for any procurement on which quotations and tenders are to be assessed**, Authorised Officers, in consultation with their Relevant Procurement Team ~~where appropriate~~, must consider all factors relevant to their requirement,

including environmental and social considerations, **including social value benefit where appropriate**, so far as this is lawful.

- 8.2 The evaluation process must clearly demonstrate that the Council is seeking to **award a contract** ~~identify the quotation or tender~~ which offers the best value for money i.e. ~~the Most Economically Advantage Tender (MEAT)~~. **For procurements (including Call-off Contracts under Framework Agreements) under either the Public Contract Regulations 2015 or the Procurement Act this respectively means the Most Economically Advantageous Tender (MEAT) or the Most Advantageous Tender (MAT) (see Rule 5 of this Part).**

## 9. Terms and Conditions of Contracts

- 9.1 Terms and conditions for all **eContracts** for goods, services and works with a value of £25,000 (**excl VAT**) or more (and preferably all other **eContracts**, particularly consultancy contracts to ensure that all intellectual property rights are transferred to the Council, **no data is wrongly removed from the Council's possession** and no employee or worker rights are acquired by the consultant) must be in accordance with terms and conditions prepared or approved by the Director of Law & Governance and Monitoring Officer, unless otherwise agreed by the Director of Law & Governance and Monitoring Officer.
- 9.2 Any **eContract** of less than £25,000 (**excl VAT**) which is of indefinite duration must be in accordance with any terms and conditions prepared or approved by the Director of Law & Governance and Monitoring Officer so as to ensure that the termination provisions are satisfactory. Other **eContracts** under £25,000 (**excl VAT**) should also be on terms and conditions prepared or approved by ~~Legal s~~**Services** where there are specific legal issues arising such as ownership of intellectual property rights or the processing of personal data.
- 9.3 All written **eContracts** (whatever their value) shall require that:
- (i) any payment due from the Council is made no later than 30 days from the date on which the relevant invoice is ~~regarded as valid and undisputed~~ **received provided that the invoice is not considered to be invalid or is disputed. Where an invoice is considered invalid or is disputed, the Supplier must be notified without undue delay;**
  - (ii) any invoices submitted by the ~~contractor~~ **Supplier** are considered and verified by the Council in a timely fashion and undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid ~~and~~ **or** undisputed;
  - (iii) any subcontract imposes obligations similar to those which (i) and (ii) require and an obligation that the subcontractor is required to impose such obligations in any further subcontract.

- 9.4 All eContracts with a value of £25,000 (**excl VAT**) or more must include a clause empowering the Council to terminate the contract for bribery or corruption and to recover from the ~~s~~Supplier the amount of any loss resulting from such termination in a form approved by the Director of Law & Governance and Monitoring Officer.
- 9.5 All eContracts with a value of £500,000 (**excl VAT**) or more and any other eContract requiring the additional limitation period of 12 years rather than 6 years for court proceedings in the event of default must be drafted as a deed **and sealed by the Council**. This is particularly relevant to construction contracts in the case of latent defects.
- 9.6 Any Contract that will result in a public facing website/mobile app where the Council or a Supplier on its behalf is presenting information relating to the Council or services the Council offers, must comply with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.

## **10. Third-Party Framework Agreements, subject to the procurement Regulations must not Dynamic Purchasing Systems and Dynamic Markets**

- 10.1 A Contract may be awarded by calling-off a third-party Framework providing the following criteria are met:
- i) Legal Services have reviewed the framework documentation, confirmed that the Framework is lawfully accessible to the Council and any access agreements are entered into;
  - ii) ~~9.6~~ The Framework Agreement is considered suitable taking into account the complexity and scale of the requirement, the relevant market and value for more than four years (including options to extend) unless otherwise advised by the Director of Law & Governance and Monitoring Officer and **money (following consultation with the Relevant Procurement Team)**;
  - iii) The call-off can be undertaken in compliance with the terms and conditions of the Framework Agreement (such terms and conditions must meet the Council's requirements as set out in these Rules and have been approved by Legal Services); and
  - iv) For above Procurement Act Threshold Contracts, the outcome was not determined prior to identifying the Framework.
- 10.2 Contracts based on either a third-party Dynamic Purchasing System or Dynamic Market may be awarded if they comply with the relevant Procurement Legislation. Legal and Procurement advice must be sought at an early stage to ensure legal compliance and the relevant access arrangements are put in place.



## **11. ~~10.~~ Receipt of Tenders (including under Framework Agreements) and Opening of Tenders**

~~10.1~~ All tenders/quotations must be submitted online via the Tendering Portal **except where authorised by the Relevant Procurement Team** No Paper copies are acceptable.

## **12. ~~11.~~ Evaluation of Tenders or Quotations**

**12.1** ~~11.1~~ Authorised Officers must ensure that all tenders ~~are evaluated by procurement (including those in mini-competitions under Framework Agreements)~~ **are evaluated** in accordance with the evaluation criteria specified in the Invitation to Tender or in the Requests for Quotations **and that the evaluation process is managed by the Relevant Procurement Team.**

**12.2** ~~11.2~~ The arithmetic in compliant tenders, including those in mini-competitions under Framework Agreements, must be checked. ~~If arithmetical or clerical errors are found they should be notified to the tenderer, which should be requested to confirm the correct figures/wording or withdraw its tender.~~

**12.3** ~~11.3~~ Authorised Officers must compare submitted tender prices with any project appraisal or pre-tender estimates. Where tender prices are above the estimated value of a contract, Authorised Officers must **be satisfied that the tender/quotation represents value for money and** ensure that sufficient budget is available prior to proceeding to award.

**12.4** ~~11.3~~ Where the submitted tender price of any Bidder in response to a ~~PRA~~ Tender is an Abnormally Low Tender, the requirements set out in ~~Regulation 69(1)~~ **Section 19 (4) & (5)** of the Procurement ~~Regulations~~ **Act** must be followed. Where the submitted tender price of any Bidder in response to a non- ~~PRA~~ Tender is an Abnormally Low Tender, advice must be sought from the Relevant Procurement Team.

## CHAPTER FOUR: CONTRACT AWARD

### 13. ~~12~~ Authorisation for the Award of Contracts

**13.1** ~~12.1~~ Contracts may only be awarded by the Council if there has been full compliance with these Rules and the *Financial Procedure Rules*.

**13.2** ~~12.2~~ Tenders may be evaluated and recommended for acceptance as follows<sup>4</sup>:

**13.3** ~~12.3~~ No tender can be accepted or eContract awarded unless this is on the basis of the evaluation criteria sent out with the Invitation ~~To Tender~~ or Requests for Quotation.

**13.4** ~~12.4~~ Where a key decision was **obtained** ~~required~~ to authorise the entering into of the procurement process under Rule 3.1 (i), the eContract must not be awarded unless that decision has been complied with (for example, a new decision may be required prior to award if ~~the~~ risk factors ~~may~~ have changed).

**13.5** ~~12.5~~ Where a key decision was not **initially considered necessary** ~~required to authorise the entering into of the procurement process under Rule 3.1 (i) but due to the price of the winning bid it has become a key decision, the requirements set out in Rule 3.1 (i) of part 1.3, paragraph 3 of the Constitution~~ must be complied with before the eContract is awarded.

### 14. ~~13~~ Procedure for Award of Contracts

**14.1** ~~13.1~~ **For procurements not covered by Procurement Legislation**, Following Contract award, successful and unsuccessful tenderers (and, or PR Tenders, those persons who expressed an interest in the contract unless they have already been rejected and have been informed of that rejection and the reasons for it) **Bidders** must be notified of the award of the eContract for which they bid. This notification letter will be issued by the Relevant Procurement Team.

**14.2** ~~13.2~~ Where there has been a **PR Tender procurement covered by Procurement Legislation**, the Relevant Procurement Team will ~~adhere~~ **need to comply with various transparency requirements prior to award and/or post award. The Authorised Officer must therefore consult the relevant Standstill Period. Relevant Procurement Team prior to any award being made.** Where there is a court challenge prior to completion of the eContract then the eContract must not be completed without the authorisation of the Director of Law & Governance and Monitoring Officer, Executive Director of Resources and S151 Officer,

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<sup>4</sup> Note that "Director and "S151 Officer" includes any officer to whom the Director and S151 Officer may have delegated their function pursuant to the relevant Scheme of Delegation (see Part 7.1)

the Relevant Procurement Team and the relevant ~~Executive Director or~~ Director.

**14.3** ~~13.3~~ All ~~e~~Contracts must be in writing and should be held on the ~~e~~Council's contract management system. **Authorised Officers are responsible for providing a copy of the Contract to the Relevant Procurement Team.**

**14.4** ~~13.4~~ ~~Except where otherwise stated in Appendix 2 of this Part, e~~Contracts must be signed or sealed in accordance with Appendix 2, Table 1 (for the avoidance of doubt no elected or co-opted Member of the Council may sign any ~~e~~Contract for or on behalf of the Council).

**14.5** ~~13.5~~ In relation to Contracts with a total value in excess of £5,000 ~~excl VAT~~ which have not been supported by the Procurement Team, Authorised Officers must inform the Relevant Procurement Team of all ~~e~~Contracts (including Call-off Contracts) awarded promptly (and preferably within 5 working days of the date of the award) so that the:

- (i) details of the ~~e~~Contract can be added to the Council's Contracts Management System; and **the** Relevant Procurement Team can publish details of the ~~e~~Contract award in accordance with any legal requirements; and
- (ii) ~~comply with any~~ **all transparency and** reporting requirements **can be met.**

## **15. 14 Commencement of Contracts**

No supply of goods, services or works must commence until all contract documentation is duly completed (see Rule ~~14.3~~ above) except: **where otherwise approved by the Director of Law & Governance and Monitoring Officer**

~~14.1 In cases of emergency falling under Rule 18.2 of this Part, in which case the contract documentation must be completed at the earliest opportunity;~~

~~14.2 where otherwise approved by the Director of Law & Governance and Monitoring Officer.~~

## **CHAPTER FIVE: POST-AWARD**

## **16. 15 Contract and Risk Management**

Contracts ~~must~~ will be managed according to **the Procurement Legislation (as applicable) and Guidance approved by the Executive Director of Resources and S151 Officer** ~~the principles laid out in the Procurement Handbook, with due note given to the differing roles and responsibilities according to the classification of the contract.~~

## **17. 16 Variations of Contracts (including extensions)**

**17.1** ~~16.1~~ Any variation to a concluded Contract for ~~W~~works, ~~S~~supplies or ~~S~~services (including an extension to the length of any such Contract or a replacement of the original ~~s~~Supplier) ('the Variation') is only permissible if the Variation in principle:

- a) demonstrably represents Value For Money or is otherwise in the Council's best interest to progress;
- b) can be funded from an approved budget;
- c) **in the opinion of the Head of Commercial and Procurement Services** entails no diminution in any Social Value identified at the commencement of the Contract;
- d) does not conflict with the provisions of the Procurement Regulations ~~where they apply; AND 1. It represents no more than 10% of the value of the original Contract (inclusive of VAT~~ **Legislation** (where applicable); **2 and** it is established with advice from the Relevant Procurement Team ~~and Legal Services~~ that a competitive process does not need to be followed. **The Relevant Procurement Team must consult with Legal Services where the Variation is regulated by Procurement Legislation. The Relevant Procurement Team will publish any required transparency notices.**

**17.2** Where, as a consequence of a proposed Variation, a Contract originally below the Procurement Act Threshold will exceed the Procurement Act Threshold, the Variation will become regulated by the Procurement Act and the Relevant Procurement Team must be consulted.

**17.3** Any ~~v~~Variation outside these requirements would require the conduct of a new tender process for a new **Contract**.

**17.4** ~~16.2~~ **Where an Authorised Officer proposes to terminate a Contract which is covered by the Procurement Act or where a eContract unless an Exception under Rule 18 or an Exemption under Rule 19 would apply which is covered by the Procurement Act is due to expire, the Authorised Officer must consult with the Relevant Procurement Team in order that transparency requirements can be met.**

## CHAPTER SIX: GENERAL

~~17. Contracts to which Rules on Tendering (Rules 5 — 8 and 10 — 11) do not apply — Service Specific exceptions~~

~~Competitive quotes or tenders are not required for the following:~~

~~17.1 Director of Law & Governance and Monitoring Officer: contracts for the engagement of Counsel.~~

~~17.2 Transport: subsidised bus contracts not caught by Rule 5.3 of this Part and identified as meeting the de minimis requirements in the Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations 2004 which must instead follow guidance issued by the Department for Transport, currently the “Guidance on New De Minimis Rules for Bus Subsidy Contracts” and the Tendering Road Passenger Transport Best Practice Guidance (October 2013).~~

~~17.3 Adult Services, Children’s Services and Public Health:~~

~~17.3.2 Nominations Agreements<sup>5</sup> where the estimated Void Charges over a 48-month period are below the PR threshold for services under Schedule 3 of the Public Contracts Regulations 2015;~~

~~17.3.2 Spot contracts<sup>6</sup> provided they are below the Procurement Regulations Threshold and it is not possible to rely upon pre-existing procured tendering outlets such as frameworks and dynamic purchasing systems.~~

~~17.4 The exceptions in Rules 17.1 to 17.3 (inclusive) do not apply where the proposed course of action conflicts with the Procurement Regulations.~~

~~17.5 The rest of these Rules must still be complied with.~~

~~19. Exemptions from these Rules~~

~~19.1 The Council does not have the power to waive the applicability of the Procurement Regulations.~~

~~19.2 Exemptions from these Rules will only be granted in exceptional circumstances. A lack of foresight and planning resulting in insufficient time to carry out a lawful tendering process will not constitute adequate justification.~~

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<sup>5</sup> A “Nominations Agreement” is an agreement between the Council and a housing provider whereby the housing provider may not permit occupation of its property by anyone other than a Council-nominated tenant with assessed care needs. In return for this restriction on occupation, the Council pays void charges (“Void Charges”) for periods where the property is not occupied.

<sup>6</sup> SPOT contracts are below Procurement Regulations Threshold contracts for services (that are classified as Schedule 3 services under the Procurement Regulations) to an individual service user (or sibling group in the case of fostering services) where there is an urgent need, and the specific circumstances mean that it is not possible to conduct a procurement process under these Rules.

~~19.3 At the conclusion of every Exemption Process whether granted or not the Director/Authorised Officer shall notify the Director of Law & Governance and Monitoring Officer of the final outcome of the process, along with a copy of the complete set of relevant papers.~~

#### ~~Register of Exemptions~~

~~19.4 The Director of Law & Governance and Monitoring Officer will maintain a register of all exemption requests under this Rule 19 and will provide a copy of this register to the Executive Director of Resources and S151 Officer at least every six months, and otherwise as and when requested to do so by the Executive Director of Resources and S151 Officer.~~

#### ~~Contracts with a value of less than £100,000~~

~~19.5 An Authorised Officer may seek an exemption from any of these Rules for a contract with a total value of less than £100,000 from:~~

- ~~(i) the relevant Director;~~
- ~~(ii) the Director of Law & Governance and Monitoring Officer ; and~~
- ~~(iii) the Relevant Procurement Team.~~

~~19.6 In order to request an exemption the Authorised Officer must prepare a report setting out:~~

- ~~(i) the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from; and~~
- ~~(ii) the process which is intended to be followed instead.~~

~~19.7 An exemption will only be granted where the Director, the Director of Law & Governance and Monitoring Officer and the Relevant Procurement Team are satisfied that the exemption is justified on its own special circumstances and have given their consent in writing.~~

#### ~~Contracts with a value of £100,000 or more~~

~~19.8 A Director may seek an exemption from any of these Rules from:~~

- ~~(i) the Cabinet or a Portfolio Holder acting under delegated powers;~~
- ~~or~~
- ~~(ii) the Chief Executive acting under delegated powers.~~

~~19.9 In order to request an exemption the Director must prepare a report setting out:~~

- ~~(i) the reasons why the exemption is being requested and which Rule(s) an exemption is being requested from;~~
- ~~(ii) the process which is intended to be followed instead;~~
- ~~(iii) a legal appraisal from the Director of Law & Governance and Monitoring Officer;~~

- ~~(iv) a financial appraisal from the Executive Director of Resources and S151 Officer; and~~
- ~~(v) confirmation that the Relevant Procurement Team has approved the contents of the report~~

~~19.10 An exemption will only be granted where the Cabinet, the Portfolio Holder or the Chief Executive is satisfied that the exemption is justified on its own special circumstances and has given their consent in writing.~~

## **18. ~~20~~ Non-compliance with these Rules**

**18.1 ~~20.1~~** Any officer who becomes aware of any non-compliance **or potential non-compliance** with these Rules must notify the Relevant Procurement Team, Legal Services and the ~~Executive Director of Resources and S151 Officer~~ **relevant Finance Business Partner** as soon as this is identified, **together with a proposed compliant solution wherever possible. Instances of non-compliance** Breaches may be escalated to the relevant Director for further investigation in accordance with the ~~Council's Contract Procedure Rules – Breach Policy.~~

**18.2 ~~20.2~~** If the non-compliance cannot be remedied by the taking of any appropriate step or measure, the matter must be notified to the Executive Director of Resources and S151 Officer and the Director of Law & Governance and Monitoring Officer by the relevant Director. Where a particular course of action is specified by both the Executive Director of Resources and S151 Officer and the Director of Law & Governance and Monitoring Officer this must be complied with.

**18.3 ~~20.3~~** If a non-compliance has given rise to ,or is likely to give rise to illegality or maladministration, the Executive Director of Resources and S151 Officer and Director of Law & Governance and Monitoring Officer must be notified.

If these Rules are not complied with, this will not invalidate any eContract entered into by or on behalf of the Council, except where English law provides to the contrary.

## **19. ~~24~~ Schemes of Delegation**

**19.1 ~~24.1~~** Directors must ensure that they have Schemes of Delegation identifying:

- (i) Authorised Officers; and
- (ii) the extent of Authorised Officers' delegated authority (including expenditure limits which reflect authorisation limits set out in the Financial Scheme of Delegation).

**19.2 ~~24.2~~** Authorised Officers may not, under any circumstances, act outside the delegated powers of their Director.

**19.3** ~~21.3~~ Directors must ensure that all Authorised Officers receive the necessary training to be and remain conversant with these Rules.

## **20. Conflicts of Interest**

**Officers and Members must comply with their respective Codes of Conduct under Part 9 of the Constitution to avoid any conflict between their own interests and that of the Council. Where required by the Relevant Procurement Team, a conflict assessment must be undertaken at the start of a procurement and shall be kept under review during the lifetime of the Contract where one is awarded. Conflict Assessments will be retained by the Relevant Procurement Team.**



## Appendix 1 Definitions

For the purposes of these Rules:

**Abnormally Low Tender** means a tender which gives rise to doubts that the price offered is economically sustainable and will properly deliver the contract.

**Authorised Officers** means those officers of the Council identified as such by Directors in their Schemes of Delegation and approved by the Executive Director of Resources and S151 Officer to undertake procurement and contracting on behalf of the Council (including authorisation of expenditure, preparing and/or negotiating contract documentation, awarding and signing eContracts and/or managing eContracts) and any Agents as defined in Rule 1.8 of this Part, with such authority;

**Bidder** means a potential Supplier who responds to an Invitation to Tender or Request for Quotations or any person who is invited to submit a tender or quote.

**Concession Contract** means a contract for supply of works or services, for a pecuniary interest, where at least part of the consideration for that supply is a right for the Supplier to exploit the works or services that are the subject of the Contract and where, under the Contract, the Supplier is exposed to a real operating risk.

**Contract** means an agreement which:

- (i) may be oral, written, partly oral and partly written or implied from conduct between the Council and another person;
- (ii) gives rise to obligations which are enforceable or recognised by law (i.e. legally binding); and
- (iii) commits the Council to paying or doing something;

and, where the context requires, a reference to a contract means a contract to which these Rules apply<sup>2</sup> and a **“Call-off Contract”** means an order made/call-off contract entered into under a Framework Agreement. **Note that service level agreements or SLAs are not generally legally binding and must not be used with third parties (i.e. outside the Council) without the consent of Legal Services.**

**Director** – for the purposes of these Rules the title “Director” includes Executive Directors, and, where a Director has delegated their function to a Deputy Director or Head of Service under the Scheme of Delegation it shall include the Deputy Director/Head of Service to whom it has been delegated.

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<sup>2</sup> ~~Note that service level agreements or SLAs are not generally legally binding and must not be used with third parties (i.e. outside the Council).~~

**Framework or Framework Agreement** means a ~~eContract with a Supplier or Suppliers which establishes the terms and conditions (in particular as to price) under which~~ **that provides for future award of contracts** (Call-off Contracts can be made during the length of the Framework Agreement. This includes government pre-negotiated contracts.) to the Suppliers or to a Supplier.

**Head of Service** means an officer who reports directly to a Director and is designated by them to be a Head of Service;

**Invitation to Tender** means the document headed as such and used by the Council to invite ~~providers~~ **Suppliers** to bid for the provision of ~~G~~goods, ~~S~~services or ~~W~~works;

**Light Touch Contract** means a contract wholly or mainly for the supply of services of a kind specified in section 9 of the Procurement Act.

**Monitoring Officer** means the officer appointed under Section 5 of the [Local Government and Housing Act 1989](#). The Monitoring Officer is statutorily responsible for reporting to the ~~e~~Council on any proposal, decision or omission by the ~~e~~Council, any committee, sub-committee, joint committee or officer which has given rise to, or is likely to or would give rise to a breach of the law or potential maladministration.

**PAR Tender** means a tender procedure which needs to be carried out under the Procurement Regulations **Act** .

**Person** means any individual, partnership, local authority or incorporated or unincorporated body;

**Guidance** ~~Procurement Handbook~~ means the **procurement** ~~Provision Cycle handbook~~ **guidance** available on the Council's Intranet.

**Procurement Regulations Legislation** means ~~the either~~ **The Public Contracts Regulations 2015 and/or, ~~†~~The Concession Contracts Regulations 2016 as amended and any successor regulations which specify in detail the procedures by which public authorities shall undertake their procurement (as applicable).**

**The Health Care Services (Provider Selection Regime) Regulations 2023 ("PSR Regulations") or the Procurement Regulations Act 2023 as appropriate.**

**Procurement Act** means the **Procurement Act 2023**.

**Procurement Act Threshold** means the thresholds set out in Rule 5.4, Table 1 of this Part (as may be revised by the government every two years).

**Relevant Procurement Team** means whichever of the following category based teams advises the Authorised Officer:

- (i) the ~~Environment~~ **Economy** & Place Team;
- (ii) the Health, Education & Social Care Team; or
- (iii) the ~~Corporate & Commercial~~ **Resources** and ~~law and Governance~~ Team

**Request for Quotations** means the document headed as such and used by the Council to invite ~~providers~~ **Suppliers** to bid for the provision of ~~G~~goods, ~~S~~services or ~~W~~works;

**s151 Officer** means the Chief Finance Officer appointed under s151 Local Government Act 1972 and officers to whom the s151 Officer has delegated his or her **their** functions in accordance with the relevant Scheme of Delegation;

**Scheme of Delegation** has the meaning given to it under Rule 21.

**Subsidy Control Law** means the **Subsidy Control Act 2022** as may be amended or any successor legislation.

**Supplier** means any Person who provides or seeks to provide goods, services or works to the Council.

**Tendering Portal** means the e-tendering system/tool authorised by the **Relevant Procurement Team**.

## Appendix 2

**Table 1 - Pre-Procurement Authorisation, Contract Award Authorisation and Execution Requirements<sup>8</sup>**

Subject to compliance with Rule 3.1(i) and Rule 13.4, authorisations may be given in accordance with the Tables below:

### Goods and Services

<b>Cumulative expenditure per contract (<u>excl VAT</u>)</b>	<b>Pre- Procurement and Contract Award Authorisation</b>	<b>Execution</b>
Up to but not exceeding £200,000	Authorised Officer in accordance with their delegated financial limits	<del>Less than £25,000 -</del> Signed by one Authorised Officer in accordance with their delegated financial limit <del>From £25,000 to £200,000 -</del> Signed by Authorised Officers in accordance with their delegated financial limits, and one other officer designated by the Director under the directorate's Scheme of delegation.
Above £200,000 but not exceeding £500,000	<b>Head of Service and Executive Director of Resources and S151 Officer*</b>	Signed by Director and Executive Director of Resources and S151 Officer <b>Head of Service and one other Authorised Officer in accordance with their delegated financial limit</b>
£500,000 and above	Director and Executive Director of Resources and S151 Officer*	Sealed by the Director of Law & Governance and Monitoring Officer on behalf of the Council on the instructions of the Director and Executive Director of Resources and S151 Officer <b>one other Authorised Officer in accordance with their delegated financial limit</b>

<sup>8</sup> ~~Framework Agreements and Call Off Contracts should be authorised in accordance with this Appendix 2. However, Framework Agreements over 500k in aggregate value do not need to be sealed but should be signed by a Director and S.151 Officer. Call Off Contracts over 500k should be sealed in accordance with this Appendix 2.~~

## Works

<b>Cumulative expenditure per contract (<u>excl</u> VAT)</b>	<b><u>Pre- Procurement and Contract Award</u> Authorisation</b>	<b>Execution</b>
Up to but not exceeding £500,000	Authorised Officer in accordance with their delegated financial limits	<del>Less than £25,000 –</del> <b>Up to £200,000</b> signed by one Authorised Officer in accordance with their delegated financial limit
		From <del>£25,000 to</del> £200,000 <b>up to £500,000</b> signed by <b>two</b> Authorised Officers in accordance with their delegated financial limits <del>and one other officer designated by the Director under the Directorate's Scheme of delegation</del>
Above £500,000 but not exceeding £2,000,000	<b>Head of Service and Executive Director of Resources and S151 Officer*</b>	Sealed by the Director of Law & Governance and Monitoring Officer on behalf of the Council on the instructions of the <del>Director and Executive Director of Resources and S151 Officer</del> <b>Head of Service and one other Authorised Officer in accordance with their delegated financial limit</b>
£2,000,000 and above	Director and Executive Director of Resources and S151 Officer*	Sealed by the Director of Law & Governance and Monitoring Officer on behalf of the Council on the instructions of the Director and <del>Executive Director of Resources and S151 Officer</del> <b>one other Authorised Officer in accordance with their delegated financial limit</b>

\* Authorisation by the Executive Director of Resources and S151 Officer is only required at Contract Award stage where there have been variations to the

scope/cost of the contract after the Pre-Procurement Authorisation was obtained.

**Note: Framework Agreements and Call-off Contracts should be authorised in accordance with this Appendix 2. However, Framework Agreements over £500k in aggregate value do not need to be sealed but should be signed by a Director and S.151 Officer. Call-off Contracts over £500k should be sealed in accordance with this Appendix 2.**

**Table 2 - Procurement thresholds and processes**

Estimated cumulative expenditure per contract	Competition
<p><b>Supplies, Services or Works £25,000 or above but less than £100,000 up to the Procurement Act Thresholds</b></p> <p>(Quotations)</p> <p><del>***For Supplies, Service or Works between £25,000 and £50,000</del></p>	<p><del>Authorised Officers must ensure genuine competition by inviting sufficient numbers of Persons (good practice indicates a minimum of 3 selected impartially) to submit written quotations for the goods, services or works required by the Council. Some degree of advertising may be required in accordance with advice from</del></p> <p><del>***Except in cases where the subject matter is high-risk or sensitive, t</del><b>The Relevant Procurement Team will review the needs of the service area and will identify an appropriate procurement process. Authorised Officers will be expected method for the required supplies, services or works. This will take into account aspects such as capability and capacity of officers in the relevant service area to manage the procurement process using available themselves, timescales, risk and the relative maturity and state of the supplier market. Where a competitive process is undertaken, templates, and will be utilised to report standardise the outcome of process and tenders may be advertised on Find A Tender, depending on the procurement to the Procurement Team requirements.</b></p> <p><b>For all procurements, the rationale for selecting a particular procurement method will be documented, recording details behind the selection.</b></p>
<p><del>Supplies, Services or Works £100,000 or above but less than the Procurement Regulations Threshold (or Services where over the Procurement Regulations Threshold but are excluded contracts)</del></p> <p>(Tenders)</p>	<p><del>Authorised Officers must ensure genuine competition by seeking advertising for tenders on Find A Tender and/or elsewhere if appropriate in accordance with advice from the Relevant Procurement Team.</del></p>
<p><b>Equal to or exceeding the relevant Public</b></p>	<p>Tenders must be <b>advertised where required by the Procurement Act on Find a Tender and</b></p>

<del>Regulations Threshold</del> <b>Procurement Act Threshold</b>	<b>conducted</b> using an appropriate <b>competitive</b> procedure under the Procurement <del>Regulations</del> <b>Act</b> (as advised by the Relevant Procurement Team). <b>See Rules 5.7 and 1.10</b> regarding <b>direct awards under the Procurement Act.</b>
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