

# **Contract Procedure Rules**

**February 2025**



## Castle Point Borough Council

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# Contract Procedure Rules

## 1. INTRODUCTION

- 1.1 In these Contract Procedure Rules the expression “the Council” shall be deemed to include reference to Council, Cabinet or any Regulatory Committee with power to make decisions.
- 1.2 Contract Procedure Rules are formal Rules which exist to ensure that the Council lets Contracts in a fair, consistent, honest, open, transparent and legal manner.
- 1.3 Section 135 of The Local Government Act 1972 requires Local Authorities to introduce and implement Standing Orders for Contracts let “by them or on their behalf for the supply of goods or materials or for the execution of works”.
- 1.4 This document, therefore, constitutes the Council’s Contract Standing Orders pursuant to Section 135 of the Local Government Act 1972.
- 1.5 This edition of the Contract Procedure Rules will apply from May 2024 and supersedes all previous editions. Where updates are required (e.g. due to changes in legislation) these will be authorised by the section 151 officer and the updated version published on the Council’s website.
- 1.6 All Contracts let by the Council will comply with the Local Government Act 1988 (Part II) which lays down general rules as to contracting practice.
- 1.7 In determining whether a financial threshold has been reached pursuant to Rule 4 below, it is a requirement of these Contract Procedure Rules to aggregate the value of separate Contracts for meeting a single requirement. Conversely, single requirements must not be broken down for the purpose of taking the value below the financial threshold.
- 1.8 Where under any Contract the Council is receiving rather than making payments, these Contract Procedure Rules will be observed as far as possible by the Council, and any breaches will be recorded in writing and reported to Cabinet, if in the opinion of the Proper Officer such a breach may result in an adverse impact on Council functions.

## 2. BEST VALUE

- 2.1. The Best Value Duty relates to the statutory requirement for local authorities and other public bodies defined as best value authorities in Part 1 of the Local Government Act 1999 (“the 1999 Act”) to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.

- 2.2 Contractors, sub-contractors or agents appointed pursuant to a Contract with the Council shall be, throughout the duration of the Contract, under a
- 3.4 Central Digital Platform (CDP) means the Governments web-based portal on behalf of the Cabinet office.
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continuing duty to the Council:

- 2.2.1 To make arrangements to secure continuous improvement in the performance of its obligations to the Council having regard to a combination of economy, efficiency and effectiveness and, in particular, to any performance indicators or performance standards specified by the Council and the need of the Council to achieve efficiencies and realise value for money;
- 2.2.2 To supply such information as the Council may from time to time reasonably request relating to the Contract and/or to the performance by that party of its obligations to the Council under that Contract;
- 2.2.3 To co-operate fully with the Council in discharging the Council's duty under Section 3 of the Act including as and where appropriate:
- setting benchmarks or performance indicators by which to measure performance under the Contract;
  - incorporating into the Contract any applicable performance indicators or performance standards specified by the Council, whether prior to or during the course of the Contract;
  - establishing performance plans for the Contract either alone or together with other similar or related Contracts;
  - Undertaking regular periodic reviews of the performance of the Contract.

### **3. DEFINITIONS**

- 3.1 "Proper Officer" shall mean the Officer who has been given delegated authority, either by way of a Cabinet or Council decision, or through the Council's Constitution or Financial Regulations to operate all or part of a procurement exercise and contract management (including the Essex Procurement Partnership) or are responsible for the relevant budget.
- 3.2 "Best price/quality ratio" means evaluation based on criteria such as qualitative, environmental and/or social aspects and may include for example: technical merits, aesthetic and functional characteristics, social and environmental characteristics as more particularly set out in Section 19(1) of the Procurement Act 2023 and provided it is appropriately linked to the subject matter of the contract.
- 3.3 "Contract" shall mean a Contract as defined in English Common Law.

- 3.4 Central Digital Platform (CDP) means the Governments web-based portal on behalf of the Cabinet office. All procurements that are advertised and exceed £30,000 excluding VAT shall be advertised on the Central Digital Platform.
- 3.6 “Cost effectiveness approach” means cost or price and may include (so long as it is appropriately linked to the subject matter of the contract) life cycle costing such as all consecutive and/or interlinked stages, including research and development, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product, the works or the provision of the services from raw material acquisition or generation of resources to disposal, clearance and end of services or utilisation. It may also include greenhouse gases and pollutant emissions.
- 3.7 “Emergency” shall mean a situation which has arisen where in the opinion of the Proper Officer it has been brought about by events unforeseeable by and not attributable to the Council and where there is a real and immediate danger to health and safety, a need to protect the public or Council operations or Council’s interests or reputation and procuring goods, works or services is immediately necessary in order to deal with the emergency.
- 3.8 “Competitive tendering procedure” shall mean an  
Open Procedure – a single stage tendering procedure without restriction on who shall submit tender; or a  
Competitive Flexible Procedure – a competitive tendering procedure formulated as the contracting authority considers appropriate for the purpose of award the public contract.
- 3.9 “Project” shall mean a sequence of related activities which are designed to achieve a defined outcome/change in service.
- 3.10 “Partnership” shall be a joint working arrangement where the partners:
- Are otherwise independent bodies
  - Agree to co-operate to achieve a common goal
  - Create a new organisational structure or process to achieve a goal
  - Plan and implement a jointly agreed programme, often with joint staff or resources
  - Share relevant information and
  - Pool risks and reward
- 3.11 “Most Advantageous Tender” (MAT) in line with Section 19 (1) of the Procurement Act 2023 means that tenders will be evaluated based on price and best quality ratio. Where quality evaluations are made, these are to be scored blind of price. Where cost or price is the basis of evaluation the “cost-effectiveness approach” must be used. Whichever evaluation basis is used the criteria must be linked to the subject matter of the contract.
- 3.12 “The Regulations” means the Procurement Act 2023 and Procurement Regulations 2024

3.13 "Light touch contract means a contract wholly or mainly for the supply of services of a kind" specified in regulations section 9

Light touch contract thresholds are:

Utilities contract that is a light touch contract £884,720

Concession contract that is a light touch contract £5,372,609

All other light touch contracts £663,540

3.14 "SME" means small or medium-sized enterprises.

3.15 "Tender" shall mean any written, binding offer to supply materials, goods, supplies, services or works in the manner laid down in these Contract Procedure Rules relating to Contracts and whose value exceeds £50,000.

3.16 "Quotation" shall mean any offer, whether written or verbal, to supply materials, goods, supplies, services or works in the manner laid down in these Contract Procedure Rules relating to Contracts and whose value does not exceed £50,000.

3.17 "Serial Programme" shall mean any goods, works or services of a similar nature which are provided over a twelve month period, the total value of which exceeds the limit for which Tenders would normally be obtained.

3.18 "Works" New and replacement building and civil engineering works, improvement and modernisation works to building and structures.

3.19 "Supplies" The purchase of goods, plant, equipment, vehicles, materials and energy.

3.20 "Services" Repair and maintenance works

- Transport
- Telecommunications
- Financial, accounting and computing
- Research and development
- Consultancy, market research and advertising
- Building cleaning and property management
- Publishing and printing
- Refuse collection and disposal
- Sewage disposal
- Hotel and restaurant services
- Legal services
- Personnel and placement services
- Environmental health services
- Security
- Recreational, cultural and sporting Services
- Insurance
- Certain other services

3.21 "Contract Value" the Total estimated value of the Contract to be placed, NOT

the annual value.

#### **4. FINANCIAL THRESHOLDS**

4.1 Where values appear in these Contract Procedure Rules, these **exclude** VAT. Contract values have been given financial thresholds as follows:

Low Value	-	up to £10,000
Medium Value	-	£10,000 up to £50,000
High Value	-	£50,000 and over

4.2 The following values are the thresholds at which public procurement opportunities are subject to the full suite of UK regulations. The values are inclusive of VAT:

£5,372,609 (Works Contracts)  
£214,904 (Supplies and Services Contracts)

#### **5. COMPLIANCE WITH CONTRACT PROCEDURE RULES/FINANCIAL PROCEDURE RULES AND THE REGULATIONS**

5.1 All Contracts made by the Council or on its behalf shall comply with these Contract Procedure Rules. The only exceptions to this will be as described in Rule 31 of these Contract Procedure Rules.

5.2 Every exception so made on behalf of the Council will be made in consultation with the Council's Monitoring Officer or Section 151 Officer with the reasons that justified the exception being made.

5.3 These Contract Procedure Rules set out minimum requirements: higher levels of diligence may be appropriate for specific Contracts.

5.4 Proper Officers are responsible for ensuring that relevant legal requirements are complied with, that proper procedures are observed under these Contract Procedure Rules, the Council's Financial Procedure Rules and the Regulations and that all relevant records are kept and maintained.

5.5 In the event of any conflict between European Community Legislation, UK Law and these Contract Procedure Rules, the requirements of European Community Legislation shall prevail over UK Law and the requirement of UK Law shall prevail over these Contract Procedure Rules.

5.6 The Proper Officer must ensure that a genuine pre-Tender estimate of anticipated costs is prepared and recorded in writing and where appropriate the value of a Contract is ascertained in accordance with the relevant European Procurement Rules.

#### **6. Light Touch contracts**

- 6.1 “Light touch contract means a contract wholly or mainly for the supply of services of a kind” specified in regulations section 9
- 6.2 The Council is subject to the requirements of the Procurement Act 2023 which set out the procurement procedures and processes that the Council must follow.
- 6.3 Works Contracts valued over £5,372,609 **inclusive** of VAT<sup>i</sup> and supplies and services contracts with a total value over £214,904 **inclusive** of VAT<sup>ii</sup> must comply with the Regulations.
- 6.4. Schedule 1 to the Procurement Act specifies which services are light touch services by description and reference to the corresponding Common Procurement Vocabulary (CPV) codes.

Officers proposing to enter into these Contracts must obtain advice from the Essex Procurement Partnership to ensure that the correct procedures are followed.

**Note:** These are the current limits as at 1<sup>st</sup> January 2024 and are subject to change. Any amendments will be published by the Cabinet Office by way of a Procurement Policy Note.

## 7. AGENCY WORK

No agency work shall be carried out on behalf of any other organisation without the prior approval of the Council and without adequate Insurance arrangements being put in place.

## 8. CORPORATE REGISTER OF CONTRACTS and TENDERS

- 8.1 Proper Officers are responsible for ensuring that all contracts over the value of £5,000 **excluding** VAT relating to their services are entered on the Council’s Contract Register. The information shall include the title of the Contract, description of the goods, works and/or services being provided, contract price, start, end and review dates, name of the contractor including company registration number, whether or not the contract was the result of an invitation to quote or invitation to tender and whether the contractor or supplier is an SME.
- 8.2 Proper Officers are also responsible for ensuring that details of all tenders over the value of £5,000 **excluding** VAT relating to their services are entered on the Council’s Register of Tenders. The information shall include title of the procurement, description of the goods and/or services, start, end and review dates and dept responsible for the procurement in order to meet the Council’s obligations under the Local Government Transparency Code 2015.



- 8.3 Pursuant to the Local Government Transparency Code 2015 the Council publishes on its website details of its expenditure on goods, works or services in excess of £500. Sole traders or bodies acting in a business capacity with the Council in receipt of payments of at least £500 of public money should expect such payments to be transparent.
- 8.4 The Council's Contracts and Tenders Registers are open for inspection by the public on the Council's website pursuant to the Local Government Transparency Code 2015.

## **9. PRE-CONTRACT APPRAISAL**

- 9.1 Before inviting Tenders or seeking quotations Proper Officers will ensure that:
- (i) Any pre-procurement market consultation with a view to preparing for the procurement and informing providers of the Council's procurement plans and requirements which may include the current incumbent:
    - a. does not have the effect of distorting competition and
    - b. does not breach requirements for non-discrimination and transparency and
    - c. avoids any conflicts of interest
    - d. there are no equality issues or issues arising from the processing of personal information

A risk assessment may form part of the pre-contract appraisal to identify the above risks and incorporate steps taken to mitigate against such risks;

- (ii) The proposed Contract is provided for in the appropriate budget;
- (iii) The proposed Contract has been approved by the Council or is authorised pursuant to the budget process and delegated powers;
- (iv) Proper consideration and compliance with the Council's Project Management workbook where the proposed Contract forms part of a Project;
- (v) Proper technical and financial appraisal of the scheme has been undertaken;
- (vi) In the case of high value Contracts, the Contract planning process allows sufficient time for the Council to decide which form of procurement route will be taken;
- (vii) Appropriate time is made available at each of the key stages, for example, to allow potential contractors to provide a considered response and answer any supplementary questions;

- (viii) Consideration has been given to any equality issues and an Equality Impact Assessment undertaken and that where appropriate consultation with service users has been undertaken;
- (ix) Consideration has been given to the Council's obligations in safeguarding children and vulnerable adults and whether contractors and suppliers should be subject to DBS checks.
- (x) Consideration has been given to any data protection issues in relation to the processing of personal information identified in a Data Privacy Impact Assessment in particular the security of personal information and compliance with the General Data Protection Regulations 2016 and the Council's Data Protection Policy 2018

## **10. PREPARATION OF TENDER DOCUMENTS**

10.1 Tender documentation can consist of various documents including but not limited to the following documents:

- (i) Drawings
- (ii) Specification
- (iii) Bills of Quantity
- (iv) Standard Terms and Conditions of Contract together with special conditions (if appropriate)
- (v) Pre-qualification questionnaire (if appropriate and procurement is above EU threshold)
- (vi) Invitation to Tender
- (vii) Instructions to Tenderers (below EU threshold may include suitability assessment questions but cannot include a PQQ stage)
- (viii) Evaluation criteria in descending order of importance together with any weightings
- (ix) Insurance requirements
- (x) Collusive Tendering Contract
- (xi) Canvassing Certificate
- (xii) Contract Performance Bond (where appropriate)
- (xiii) Form of Tender
- (xiv) Acceptance documents.

10.2 Other information that will need to be made available to ensure that Contractors' bids reflect service requirements and are competitively priced include the following:

- (i) The Terms and Conditions under which assets will be made available
- (ii) Workforce information required for the purpose of assessing prospective liability in relation to the possible transfer of an undertaking. To ensure consistency of provision of information, this will be provided by the Proper Officer and not by an existing Contractor;
- (iii) The amount of work likely to be available under the Contract.

10.3 The Proper Officer will ensure that:

- (a) Ambiguities and contradictions do not occur between documents and

- information provided;
- (b) Any locally prepared variations to standard documentation are clear and use generally accepted terms;
- (c) Contract terms and conditions and specifications are in the best interests of the Council in respect of quality, cost and performance.

10.4 To ensure consistency and to aid understanding by the Tenderer, Tender documentation will be collated by an experienced Officer who will obtain the advice and approval of the Essex Procurement Partnership.

10.5 Tender documents shall be made available electronically for Tenderers at the time of publication in OJEU and pursuant to Regulation 22 the Council has switched to fully electronic communication unless Regulations 22(3) or (5) of the Public Contracts Regulations 2015 apply.

## **11. CONDITIONS OF PARTICIPATION**

11.1 The Procurement Act 2023 (section 22) allows for contracting authorities to set conditions of participation which a supplier must meet to be awarded a contract. In a competitive flexible procedure, the conditions of participation may be used to limit the number of suppliers.

11.2 These conditions must only relate to:

- 11.2.1 legal and financial capability or
- 11.2.2 technical ability to perform the contract.

11.3 The conditions must be a proportionate means of ensuring the supplier's relevant capacity or ability, having regard to the nature, complexity, and cost of the public contract.

11.4 If a supplier does not satisfy a condition of participation, the contracting authority may exclude the supplier from participating in or progressing as part of, the competitive tendering procedure.

## **12. ADVERTISING REQUIREMENTS**

12.1 Pursuant to the Procurement Act 2023 the Council is required to advertise contracts and contract award notices with values as follows:

- A. £30,000 up to £50,000 excluding VAT (goods, works and services) a below threshold tender notice must be published on the central digital platform before the opportunity is published anywhere else.
- B. £50,000 excluding VAT to £214,904 including VAT (goods and services) on the Central Digital Platform
- C. £50,000 excluding VAT to £5,372,609 including VAT (works) on the Central Digital Platform
- D. £214,904 including VAT and above (goods and services) on the Central Digital Platform
- E. £5,372,609 including VAT and above (works) on the Central Digital Platform

12.2 If the Council invites the submission of tenders in relation to a below threshold contract it must be advertised on the Central Digital Platform before it is published in alternative sources.

12.3 Award notices for all procurement over the threshold of £30,000 must be published on the Central Digital Platform

Below Threshold – Contract Details Notice  
Threshold and above – Contract Award notice

### **13. CATEGORIES AND FORM OF CONTRACT**

13.1 All Contracts will be categorised by estimated value into low, medium or high value and this categorisation will determine which of the following sections of these Contract Procedure Rules are followed.

13.2 All Contracts including Contracts for Schedule 3 Services “light touch regime” shall comply with the legal obligations of transparency (Rules 8.3 and 8.4), equal treatment (Rule 27), safeguarding (Rule 28) and data protection (Rule 23) (where appropriate). The procurement procedure undertaken will be determined by the Proper Officer as part of the pre-procurement process but must at all times:

13.2.1 be properly documented;

13.2.2 all time limits imposed on service providers are reasonable and proportionate.

13.3 Every high and medium value Contract will:

13.3.1 Unless otherwise agreed, be in writing and signed by an Officer approved to do so in line with the thresholds contained within the Financial Regulations;

13.3.2 Contain a Specification of the goods, materials and works or services to be delivered or undertaken;

13.3.3 Contain details of the price to be paid to include details of any discounts or deductions;

13.3.4 Contain provisions whereby the Council shall discharge valid undisputed invoices within 30 days and a condition requiring suppliers and contractors to include similar provisions in their contracts where they sub-contract the goods, works or services;

13.3.5 Contain details of the timing of the Contract;

13.3.6 Provide for the following remedies in the event of late delivery, non-delivery or poor performance (default) by the Contractor of the contract goods, materials or services:

- (a) termination of the contract by the Council either wholly or to the extent of such default;
- (b) the right for the Council to purchase alternative goods, materials or services of the same or similar description, to make good the default or, in the case of termination, the goods, materials or services remaining to be delivered or carried out;
- (c) state that the amount by which the cost of purchasing other goods, materials or services exceed the amount which would have been payable to the contractor shall be recoverable from the contractor.

13.3.7 Provide that the law governing the contract shall be the law of England;

13.3.8 Provide that in the event of dispute between the parties which is incapable of resolution by negotiation shall be referred to a single arbitrator to be agreed by the parties, or in default thereof, to be nominated by the President for the time being of The Law Society or such appropriate body;

13.3.9 Contain provisions enabling the Council to terminate a contract where:

- (a) A contract has been subject to substantial modification which would have required a new procurement process;
- (b) A contractor should have been excluded from the procurement procedure pursuant to section 27 of the act;
- (c) A serious infringement of the obligations under the Regulations, EU Directive or Treaties that has been declared by the Court of Justice of the European Union the result of which the contract should not have been awarded to the contractor.

13.4 The Proper Officer shall ensure that the Contract letting process allows sufficient time for the legal documentation to be completed prior to the commencement of the Contract.

13.5 In exceptional circumstances where it is essential that work starts before formal Contract signing, it may be possible for a letter of intent to be submitted but this must only be done in consultation with the Council's Monitoring Officer and Section 151 Officer. A letter of intent may be construed as a formal Contract if not drafted appropriately. Letters of intent are only appropriate for works or services to the extent required to carry out emergency works or services where there are implications which may result in death, injury or damage to Council property or to the Council's reputation if the works or services are not executed accordingly.

13.6 The practice of split ordering to obviate the need to obtain quotations and Tenders is forbidden however the Council shall where appropriate divide contracts into lots as a means of attracting SME's to bid for the contracts.

**14. CODE OF PRACTICE FOR LOW VALUE CONTRACTS UP TO £10,000 excluding VAT (Purchase Order).**

- 14.1 Purchase Orders will only be placed in accordance with these Contract Procedure Rules.
- 14.2 Orders for works, goods or services shall be in accordance with the Council's current procedures issued by the Section 151 Officer.
- 14.3 Purchase Orders will be issued for all works, goods or services to be supplied to the Council except:
- supplies of public utility services;
  - periodical payments, such as rent or rates;
  - petty cash purchases;
  - where in the opinion of the Proper Officer a failure by the contractor could result in an adverse impact on Council functions in such case a formal written contract will be let;
  - other exceptions approved specifically in advance by the Monitoring Officer or Section 151 Officer.
- 14.4 Purchase Orders will be in a form designed or approved by the Section 151 Officer and be approved only by employees authorised in line with the Council's Financial Regulations.
- 14.5 Purchase Orders will be completed in sufficient detail to identify accurately the materials, works or services required including quantities wherever possible and will specify where applicable the quotation, Contract or other Agreement, the price agreed and the approved budget expenditure code against which costs will be charged.
- 14.6 Any Council directions relating to central purchasing, standardisation of supplies to materials, etc., will be complied with and in accordance with the Council's Procurement Strategy.
- 14.7 In respect of Contracts estimated in value to be up to £10,000 **excluding** VAT, then quotations from at least one supplier is required, (although it is advisable to obtain at least two written quotes).
- 14.8 Purchase Orders over the sum of £5,000 must be published on the Council's website pursuant to the Local Government Transparency Code 2015
- 15. MEDIUM VALUE CONTRACTS - £10,000 UP TO £50,000 excluding VAT.**
- 15.1 Contracts with an estimated value £10,000 up to £50,000 **excluding** VAT will be deemed medium value Contracts.
- 15.2 The Proper Officer will:
- 15.2.1 invite written quotations from at least three Contractors; or
  - 15.2.2 call off under a Framework Agreement available to the Council.

- 15.3. If there are not three Contractors whom the Proper Officer has been able to obtain quotations from; or
  - 15.4 if there is no Framework Agreement available for the Council to call off under or;
  - 15.5. where works, supplies or services are of a particularly specialist nature and are only available from one supplier;
- it is permissible to use a supplier identified by the Proper Officer provided that they are satisfied that the price payable is reasonable and offer Best Value to the Council and is pre-quoted in writing.
- 15.6. where regular purchases or commission of works, supplies or services from the same supplier are likely to be made and it is considered inappropriate by the Proper Officer to obtain competitive quotations for each individual supply, consideration must be given to procuring on the basis of a one year agreement, with a rate card or similar provided based on typical examples of the goods or services to be required.
  - 15.7 Any quotations must be considered and accepted in accordance with Rule 2 as to Best Value above.
  - 15.8 Sufficient time will be allowed for written quotations to be submitted.
  - 15.9 A written record must be made of Contractors invited to quote but who failed to do so.
  - 15.10 When it is not possible to procure goods, works or services pursuant to Rules 15.2.1 – 15.6 an open tendering process shall be undertaken and where the procurement is over the threshold of £30,000 must be published on the Central Digital Platform.
  - 15.11 Where the nature of the goods or services being procured are clear and simple to specify, one-off in nature and of low risk, it is permissible, after consultation with the Monitoring Officer and Section 151 Officer to utilise a Purchase Order rather than a full written contract.

## **16. HIGH VALUE CONTRACTS – £50,000 excluding VAT AND OVER**

### **16.1 General.**

- 16.1.1 Contracts estimated to have a value of £50,000 **excluding** VAT and over will be deemed high value Contracts. The Procuring Officer must enlist the assistance of the Essex Procurement Partnership who will provide support and guidance through the procurement exercise.
- 16.1.2 The Proper Officer will be responsible for exercising their judgement as to the sub-division of work into lots with a view to attracting SMEs to bid for the contract. If the procurement is not sub-divided into lots the Proper Officer is responsible for providing reasons for their decision not to sub-divide the

contract which must be incorporated into the tender documents or be published in a report.

16.1.3 The Proper Officer will invite at least three written Tenders in accordance with one of the methods described in Rules 16.2 and 16.3 below, in accordance with the decision of the Council to let the contract.

16.1.4 Proper Officers will ensure that sufficient time is allowed for the preparation of Tenders, having regard to the value and complexity of the subject of the Contract. This will normally be not less than 28 days. Invitations to Tender will be sent out by the Proper Officer who will record:

- (i) the name and nature of the Contract;
- (ii) the number of Tender invitations;
- (iii) the closing date and time for receipt of Tenders.

16.1.5 Tender documentation in accordance with Rules 16.1.3 and 16.1.4 above should be sent to all Contractors who express an interest in bidding for the contract.

16.1.6 Upon finalisation of the Contract, a Purchase Order must be raised, however the Contract supersedes the Council's usual Terms and Conditions attached to the Purchase Order.

## **16.2 Direct Award Framework Agreement (compiled with or by another Authority, Consortium of Authorities or Central Government)**

16.2.1 These Contract Procedure Rules recognise that with a view to improving the efficiency and effectiveness of procurement and in order to obtain the maximum benefits from procurement, collaborative working arrangements are essential as provided for within the Council's Procurement Strategy;

16.2.2 Prior to selecting a Contractor from a Framework agreement which allows for a Direct Award, the Proper Officer must be satisfied that the Contractors' current financial standing and technical capacity to complete the Contract satisfactorily has been appraised by another Authority, Consortium of Authorities or Central Government before the Contractor has been placed on the Framework Agreement and such Agreement is reviewed regularly (preferably at least every 3 years).

## **16.3 Competitive Framework Agreements Or Open Tendering**

16.3.1 Open tendering is generally desirable only where the Council does not have access to a suitable Framework Agreement. Where a competition within a Framework Agreement is being used, the requirements of that Framework Agreement shall be complied with.

16.3.2 Pursuant to Section 96 of Procurement Act 2023 the Council will continue to communicate electronically. Tender documents shall be made available electronically for Tenderers at the time of publication.



16.3.3 For below threshold contracts the Proper Officer will invite Tenders by publishing a contract details notices on the Central Digital Platform. The advertisement will include:

- (i) The proposed Contract;
- (ii) All the criteria which the Council intends to apply to the award, where possible in descending order of importance;
- (iii) Where further details may be obtained and where applications should be submitted;
- (iv) The last date and time when Tenders will be received
- (v) Any other requirements to publish on Contracts Finder

16.3.4 The Proper Officer must be satisfied with the financial standing and technical capability of the successful Contractor in accordance with Rules 16.3.4, 16.3.5 and 16.3.6 above before any Contract is awarded subject to compliance with Section 22 of the Procurement Act 2023.

#### **16.4. Submission of Tenders**

16.4.1 Tenders will be considered only if they are submitted on time and in accordance with the requirements set out in the Invitation To Tender. Typically this means submission on the Essex Procurement Partnership's procurement tool.

#### **16.5. Evaluation of Tenders and Correction of Errors**

16.5.1 Tenderers must complete all parts of the Tender documentation required to be completed. Any omissions will render a Tender null and void with no further consideration given.

16.5.2 Tender evaluation will be carried out by an evaluation panel. The Essex Procurement Partnership and the Proper Officer will ensure that Tenders are compared impartially and on the same criteria, with a view to securing the most advantageous Tender.

16.5.3 The Council shall exclude Tenderers where the Council has been made aware that a Tenderer is subject to the mandatory exclusion grounds pursuant to Schedule 6 Section 57 of the Procurement Act 2023 provided such exclusion is proportionate to the aims the contract is seeking to achieve and the Tenderer has not provided sufficient evidence that the Council is satisfied that it has taken steps to remedy the wrong.

16.5.4 The Council may exclude Tenderers where the Council has been made aware that a Tenderer is subject to the discretionary exclusion grounds pursuant to Regulation 57(8) of the Regulations where the Council is satisfied that any of the situations in which the Tenderer was involved as set out in Regulation 57(8) would affect the ability of the Tenderer to fulfil its obligations under the Contract if it were awarded to the Tenderer.

16.5.5 All Tenders containing figures, including Bills of Quantities, shall be checked for arithmetical accuracy.

16.5.6 All tender evaluation spreadsheets are to be checked for build (arithmetic and logic) by a person independent of the preparer or Proper Officer, and then to have the formulae cells locked down (password protected) prior to providing it to the evaluators.

16.5.7 The Tenders received will be evaluated to ascertain the most advantageous tender (or lowest tender depending based on evaluation set out in the tender documentation) paying particular attention to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications and alternative offers.

16.5.8 If a Tender is found to contain ambiguities or arithmetical errors, the Tender total will be corrected and the Tenderer notified accordingly. If, in the Proper Officer's opinion, any tendered rate is considered unrealistic, the Tenderer may be given the opportunity of confirming the rate or withdrawing the Tender. In order to preserve parity of tendering, amendment to Tender rates after submission of Tenders will not be permitted. If the Tenderer withdraws or the corrected Tender is no longer the most economically advantageous, the next most advantageous Tender will be examined and dealt with in the same way.

16.5.9 There will be no changes in the Specification in any dealings with Tenderers after Tenders have been submitted. Where post-Tender clarifications are necessarily undertaken, no Tenderer will be given an opportunity to reconsider a Tender on the original Specification unless similar opportunities are given to all Tenderers.

16.5.10 Any changes which affect the original tendered sum(s) will be entered in the Tenders Register, which will be confirmed as an accurate record by the Proper Officer and the evaluation panel.

16.5.11 The Proper Officer will compile a report on the evaluation of the Tenders contrasting the tendered amounts with the original estimate containing the information contained in Rule 16.5.9. This report will form the basis for acceptance of the preferred Tender.

## **16.6 Acceptance of Tenders**

16.6.1 The Proper Officer may accept the most advantageous tender received on behalf of the Council provided that:

- (i) It is within the approved estimate;
- (ii) The appropriate authority has been given by Members
- (iii) It is within their delegated authority set out in the Council's Financial Regulations

In all cases, the Proper Officer will cause a written record to be made recording the preferred Tenderer as part of the evaluation process, along with the names of all Officers and Members involved in the decision making process.

16.6.2 The successful Tenderer will be notified promptly following the decision to accept its offer.

16.6.3 Where the most advantageous tender is outside the approved estimate provision the Proper Officer will either:

- (i) Write to all Tenderers explaining the situation and giving them the opportunity to lower their Tenders to within the approved estimate; or
- (ii) Request a Supplementary Estimate following the requirements set out in the Council's Financial Regulations; or
- (iii) Report to the Cabinet requesting authority to revise the Specification and seek new Tenders.

16.6.4 Once the Contract has been let, all unsuccessful Tenderers will be notified of the results.

16.6.5 Whilst a letter of acceptance establishes a legally binding Contract a formal written Contract signed in accordance with the Council's Financial Regulations is nonetheless required under these Contract Procedure Rules.

16.6.6 For Contractors who did not tender, a questionnaire may be sent to them inviting them to give reasons.

## **17. SUB-CONTRACTORS TO MAIN CONTRACTORS.**

17.1 The Tender will require contractors or suppliers to indicate their proposed sub-contracting arrangements.

17.2 The contract to the contractor shall provide clear wording stating that they would be required to replace any sub-contractors whom the mandatory exclusions grounds apply in line with Section 57 of the Act

17.3 The Tender will provide that the consent of the Council is required if the main Contractor intends to sub-contract.

## **18. LIQUIDATED DAMAGES.**

18.1 Where the estimated amount of a Contract exceeds £50,000 **excluding** VAT, provision may be made in the Contract for payment of liquidated damages or other compensation to be paid by the Contractor where the Contractor fails to complete the Contract within the time specified or fails to perform the contract in accordance with the Contract terms.

18.2 The methodology for calculating the amount of liquidated damages will be determined by the Proper Officer and set out in the tender documents.

## **19. PERFORMANCE BONDS.**

19.1 Where the estimated amount of a Contract exceeds £50,000 **excluding** VAT in relation to Contracts for works and services the Proper Officer may require

the Contractor to provide a Bond or other security. Any decision not to require a Bond will be recorded in writing.

- 19.2 If a Bond or other security, for example, retention, is deemed necessary, the amount will be at the discretion of the Proper Officer but will usually be at least 5% of the Contract sum

## **20. INSURANCE**

- 20.1 Prior to letting a Contract, the Proper Officer will ensure that the Contractor holds adequate Insurance policies to include, Employers Liability Insurance and where appropriate, Professional Indemnity Insurance and Public Liability Insurance, which will protect the Council's interests and cover all potential losses that may arise. An adequate level of Insurance will be determined in consultation with the Council's Insurance Team.
- 20.2. For Contracts of long duration, the Proper Officer will make and record such checks, in consultation with the Insurance Team, as are necessary to ensure that the Contractor's Insurance policies are still in force.

## **21. AVOIDANCE OF CORRUPT OR RESTRICTIVE PRACTICES**

- 21.1 All Contractors submitting a Tender will sign a Declaration that:
- (i) They will not communicate the amount of the proposed Tender to anyone except the Council;
  - (ii) They will not receive details of a proposed Tender from any other Contractor.
  - (iii) They will not adjust the amount of a proposed Tender as a result of an arrangement with any person other than the Council;
  - (iv) They will not agree with any other person:
    - (a) The amount of the proposed Tender
    - (b) Not to tender.
- 21.2 If the Contractor breaches these conditions, the Proper Officer concerned will be informed so that relevant action can be taken to include reporting to the Council.

## **22. ASSIGNMENT**

All Contracts will include provision preventing assignment of Contracts except with the written permission of the Council.

## **23. FREEDOM OF INFORMATION AND DATA PROTECTION**

- 23.1. All Contracts will include a provision:
- 23.1.1. That the Contractor shall comply with the provisions of the Data Protection Act 2018 and General Data Protection Regulations 2016 (as amended from

time to time) and shall indemnify the Council against any loss, damage or expenses which may be incurred as a result of any breach;

23.1.2. That the Contractor will follow all procedures and controls and safeguards as determined by the Council if processing personal information in accordance with the Contract that is subject to the provisions of the Data Protection Act 2018 and General Data Protection Regulations 2016 (as amended from time to time);

23.1.3 That the Contractor will consent to disclosure of any information contained in the Contract where such disclosure is required under the Freedom of Information Act 2000 (as amended) or such other statute having like effect or to the Council's Auditors, H M Inspector of Taxes, H M Custom and Excise and any other person or bodies having a right, duty or obligation to know the Council's business.

## **24. COUNCIL'S WHISTLE BLOWING POLICY**

24.1. The Contractor's attention should be drawn to the Council's Whistle Blowing Policy which can be found on the Council's website which is intended to encourage and enable Council Staff as well as staff of suppliers and contractors or organisations providing goods and services to the Council to raise serious concerns with the Council.

24.2 The Whistle Blowing Policy provides a mechanism should the Supplier have concerns that the Council:

- (i) has acted unlawfully;
- (ii) is or has provided a service falling below established standards;
- (iii) committed an act of impropriety;
- (iv) put the health and safety of people at risk.

## **25. CANCELLATION AND DETERMINATION**

25.1 All Contracts will include provision stating that the Council may cancel the Contract and recover from the Contractor any loss arising from the cancellation, if it is proved that the Contractor or any person employed by him has received or offered any consideration other than that properly due under the Contract.

25.2 In the event of the Proper Officer considering it necessary to determine a Contract, they will discuss the proposed course of action with the Council's Monitoring Officer and will submit a report to Cabinet.

## **26. COMPLIANCE WITH BRITISH STANDARDS AND QUALITY OF WORK, GOODS, ETC**

- 26.1 All Contracts will require that all works carried out or goods supplied conform to the current British Standard Specification or Code of Practice or European equivalent, if such exists.
- 26.2 Reference will be made in Contract documentation to specific British Standards or European Standards as appropriate to more clearly define the scope of the Contract.
- 26.3 Arrangements must be made to check work done and supplies received and Contractors must be notified of defects immediately in writing. Payment should not be made for defective works or supplies.
- 26.4 When preparing specifications care should be taken to ensure that such specification is not so prescriptive to lead any potential Tenderer to the view that the Council has a preference for a particular supplier.

## **27. EQUALITY**

All contracts will require the Contractor to positively promote equality and to comply with the Council's equality policies including contributing to the Council fulfilling its legal obligations under equality legislation.

## **28. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 28.1 The Council has a statutory obligation to co-operate with Essex County Council in discharging its duties in relation to children's services and to promote the well-being of children and young people. Essex County Council is also the lead agency for the protection of vulnerable adults. The Council has adopted a Safeguarding Policy for Children, Young People and Vulnerable Adults and in procuring services the Council shall ensure that contractors and suppliers are aware of the Council's statutory obligations and where appropriate will be subject to DBS checks. When procuring services the Council shall:

- 28.1.1. ensure that all contractors and suppliers appointed by the Council are made aware of the Council's safeguarding policy and

- 28.1.2 that those contractors or suppliers providing "regulated activities" or have been identified as providing direct services to children or vulnerable adults where appropriate are DBS checked;

- 28.1.3 all procurement processes specifically identify whether services are providing "regulated activities" or services direct to children and/or vulnerable adults and if so DBS checks are undertaken in relation to staff employed by contractors or suppliers where appropriate.

## **29. ARBITRATION/ALTERATIVE DISPUTE RESOLUTION**

- 29.1 The contract will provide that the law governing the contract shall be the law of England.

29.2. The contract will provide that any dispute between the Council and the Contractor which is incapable of resolution by negotiation shall be referred to a single arbitrator to be agreed by the Council and the Contractor, or in default thereof to be nominated by the President for the time being of The Law Society or such appropriate body.

### **30. APPOINTMENT OF CONSULTANTS.**

30.1 Consultants will only be used if, in the opinion of the Proper Officer the work cannot be handled by Council Officers.

30.2 Appointment of Consultants shall be made having regard to Rule 2 as to Best Value and the financial thresholds contained in Rules 4.1 and 4.2 above and compliance with the relevant Rules in relation to those financial thresholds.

30.3 The appropriate Professional Institution or Trade Association will be contacted to verify a Consultant's qualifications prior to their engagement.

30.4 A note will be placed on each Project's file stating:

- (i) Why it was necessary to use an external Consultant;
- (ii) The brief for the project;
- (iii) The brief for selecting the Consultant and how this was met;
- (iv) Those Officers involved in the selection process

30.5 Where Consultants are employed by the Council, the Proper Officer will ensure that the requirements of Rule 30.6 below are written into the terms of their engagement and will verify that this has occurred.

30.6 Any Consultant who is to be responsible for supervising any stage of the Contract process on behalf of the Council will:

- (i) Comply in all respects with the Council's Contract Procedure Rules and Financial Procedure Rules and Regulations, Council Project Management Handbook and Council's Procurement Strategy;
- (ii) Hold, where appropriate an adequate level of Professional Indemnity Insurance to cover any potential loss that may arise;
- (iii) Produce all records maintained by them relating to the Contract to the Proper Officer whenever requested during the currency of the Contract;
- (iv) Pass all relevant records to the Proper Officer on completion of the Contract;
- (v) Report to the Proper Officer when requested to do so during the currency of the Contract.

30.7 For all types of Consultants, the Proper Officer will:

- (i) Ensure that consultancies can be properly funded, within an approved budget and expenditure code;
- (ii) Consider the kind of Contract and how payments will be made;
- (iii) Draw up a written Contract with any Consultants employed;

- (iv) Appoint a project Officer to manage and monitor each consultancy project in accordance with the Council's Project Management Handbook;
- (v) Ensure that all documentation relating to a proposed consultancy is drawn up in consultation with the Council's Monitoring Officer;
- (vi) Comply with the Council's Project Management Handbook.

30.8 When grants are awarded to outside bodies for feasibility studies, the Organisation concerned will be responsible for appointing and monitoring the Consultants. Grant funded projects agreed by the Council should proceed without variation to the brief which would result in the Council incurring extra costs.

### **31. EXCEPTIONS.**

31.1 In rare circumstances Contract Procedure Rules relating to Contracts will not apply if:

- (i) The Proper Officer is satisfied that there is no genuine competition. For example, where:
  - (a) The goods or materials are proprietary articles or are sold only at a fixed price and no satisfactory alternative is available;
  - (b) The price of goods, materials or services is wholly controlled by Trade organisations or Government order;
  - (c) The goods, materials or services are required for repairing, updating or servicing existing specialist plant or equipment;
  - (d) The work is to be carried out by public service providers, e.g. gas, water, electricity.
- (ii) The proposed Contract for the execution of work forms part of a serial programme, the terms having been negotiated with the Contractor on the basis of the rates and prices contained in an initial Contract awarded competitively following an invitation to tender in accordance with the provisions of Rule 16 above.
- (iii) The goods, materials or services are required due to an emergency;
  - (a) The Proper Officer can take action pursuant to Rule 3.7 above;
  - (b) Emergency action must be taken only following consultation with the Monitoring Officer and Section 151 Officer whose views must be sought and obtained in writing;
  - (c) It is the responsibility of the Proper Officer to be satisfied that the circumstances are sufficient to be classified as an emergency pursuant to these Contract Procedure Rules.



- (ii) The Proper Officer considers that significant financial loss or damage to the image or reputation of the Council may be incurred if the letting of the Contract is delayed.
- (iii) The value of the contract is below the Low Threshold and it is highly likely that any financial savings and quality changes would be marginal but disruption to services through change of provider would be significant.

In all cases the Proper Officer should be satisfied that the Council is achieving Best Value even when procuring goods, materials or services using an 50 under these Contract Procedure Rules.

In all cases the Proper Officer shall determine when an exception applies in consultation with the Monitoring Officer or Section 151 Officer providing details as follows:

- (i) Description of procurement
- (ii) Date of consideration
- (iii) Proper officers name and role
- (iv) Reason for applying the exception
- (v) A statement that the Proper Officer considers that the exception applies
- (vi) Approval/non-approval by the Monitoring Officer or Section 151 Officer
- (vii) Date of Approval/non-approval

The Procurement Manager shall be responsible for retaining a record of all exceptions.

- 31.2 Where the Council carries out work using a standard form of Contract (e.g. Institution of Civil Engineers Conditions of Contract) procedural requirements may differ slightly to those laid down in these Contract Procedure Rules.
- 31.3 The Council may directly award a contract to another public body provided the conditions referred to in Regulation 12 of the Regulations are met.
- 31.4. The Council may enter into a shared services arrangement or delegate functions and services pursuant to the Local Government Act 1972 with or to another public body.

## **32. PREVENTION OF BRIBERY**

- 32.1 Every Contract must include a clause allowing the Council to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the contractor has:
  - (a) directly or indirectly offered, promised or given any person working for or engaged by the Council a financial or other advantage to:
    - i. induce that person to perform improperly a relevant function or activity; or

- ii. reward that person for improper performance of a relevant function or activity;
- (b) directly or indirectly requests or agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the contract
- (c) commits any offence:
  - i. under the Bribery Act 2010;
  - ii. under legislation creating offences concerning fraudulent acts;
  - iii. at common law concerning fraudulent acts relating to the Contract or any other contract with the Council; or
  - iv. defrauding, attempting to defraud or conspiring to defraud the Council

### **33. PARTNERSHIPS**

- 33.1 For the avoidance of doubt when the Council is involved in a partnership where there is consideration payable to the Council or on behalf of the Council then the Council Contract Procedure Rules will apply as for any other Contract. However the Council may waive these Contract Procedure Rules where compliance could jeopardise the Council's corporate objectives and priorities as identified in the Council's Corporate Plan.
- 33.2 Where the Council on its own is involved in a joint working arrangement with a Contractor (e.g. IT Contract) these Contract Procedure Rules apply but to facilitate partnership negotiations and openness the process prior to tender may provide for flexibility subject to Council's approval (2 stage approach) and in cross reference with the Council's Partnership Strategy.
- 33.3 No waiver of the Council's Contract Procedure Rules will be made in relation to Partnerships other than by resolution from Cabinet.
- 33.4 The Council is subject to increasing expectations of probity, transparency and scrutiny. The Council, its officers and elected members have to comply with a wide range of statutory provisions and non-statutory requirements (eg codes of practice etc). The Council expects the same of its partners whether they are from the voluntary or business sectors. Accordingly all partner organisations are expected to meet the same levels of governance standards as the Council itself such as employment of staff who work with the utmost integrity and do their best for the people they serve and Partners who ensure that public funds are used to the best effect and never misused and to understand and act in accordance with the Nolan Principles.

### **34. FRAUD & CORRUPTION**

- 34.1 The Council is committed to an effective anti-fraud and corruption strategy which is designed to:
  - (i) encourage prevention;
  - (ii) facilitate detection;
  - (iii) provide prompt investigation.

34.2 The Council's anti-fraud and corruption procedures are designed to frustrate any attempted fraudulent or corrupt act and cover:

- (i) values and commitment;
- (ii) prevention;
- (iii) detection and investigation;
- (iv) training.

34.3 As the Council's affairs are open to scrutiny by a variety of external bodies and people including:

- (i) An external Auditor;
- (ii) The Public via the Council's Complaints procedure;
- (iii) Local electors via the Annual Inspection of Accounts;
- (iv) The Business Community via the Annual business Consultation;
- (v) Her Majesty's Revenues & Customs;
- (vi) Dept for Works and Pensions.

34.4 The Council through its Internal or External Auditors may request information relating to the Contract pursuant to the provisions of Rule 34.3 above and Contracts entered into by the Council shall provide that contractors, suppliers or consultants shall provide the Council's Internal or External Auditors with the information forthwith upon request.

### **35. TRANSPARENCY**

35.1. The Procurement Act 2023 requires new mandatory notices to be published throughout the life of the contract

- 35.1.1. Change Contract Notices must be published when an above threshold modification is made to a contract. No publication is necessary if the modification neither increases or decreases the value of contract by 10% or less for goods/services contracts or 15% for works contracts.
- 35.1.2. Contract Performance Notices are required to be published for contracts valued exceeds £2Million showing the data from a minimum of 3 KPI's included within the contract. Data including poor performance, failure to perform and breach of contract.
- 35.1.3. Payment's compliance Notices must be published twice annually to provide details of performance against 30 day payment terms.
- 35.1.4. Contract Payment Notices must be published when individual payments of over of £30,000 made under a contract.
- 35.1.5. Contract Termination Notice must be published within 30 days of termination (this includes natural expiry or any other reason)
- 35.1.6. Transparency Notices need to be published prior to award when undertaking a direct award via a framework or otherwise.

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<sup>i</sup> Threshold set as at January 2024

<sup>ii</sup> Threshold set as at January 2024