Part 4

CONTRACT PROCEDURE RULES 2026

1 INTRODUCTION

1.1 **BASIC PRINCIPLES**

1.1.1 Contracts for the supply of works, goods, services have a high profile in terms of public accountability. Not only does the public expect that the Organisation achieves best value from its procurement and contractual arrangements, but it also expects fair competition, the highest standards of honesty and integrity from those involved, and transparency in respect of all decisions made as part of this process.

1.1.2 Accordingly, when undertaking all procurement, the Organisation must:

a) Have regard to the importance of:
   - delivering value for money;
   - maximising public benefit;
   - sharing information for the purpose of allowing suppliers and others to understand the Organisation's procurement policies and decisions;
   - acting, and being seen to act, with integrity.

b) Treat suppliers the same unless a difference between the suppliers justifies different treatment.

c) Take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage where the Organisation considers that different treatment is justified.

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

1.2 **OFFICER RESPONSIBILITIES**

1.2.1 All officers responsible for purchasing must comply with these Contract Procedure Rules and the *Organisation's*:

a) Procurement Strategy
b) Sustainable Procurement Policy
c) Financial Procedure Rules;
d) Code of Conduct; and
e) all UK binding legal requirements which includes the Procurement Act 2023 (PA23) and international law, such as the WTO General Procurement Agreement.

Where there is a conflict between the *Organisation's* internal rules, codes and policies and these Contract Procedure Rules, then these Contract Procedure Rules will take precedence.

1.2.2 Officers must ensure that agents, consultants and contractual partners acting on the *Organisation's* behalf must also comply with the matters listed in 1.2.1.

1.3 MEMBERS RESPONSIBILITIES

Members should refer to the Code of Conduct at their Organisation. They must also have regard to the Councillor Protocol for Procurement as set out in SCHEDULE 2.

1.4 WHERE TO GET ADVICE

1.4.1 These Contract Procedures Rules are divided into two sections to cover the situations where the *Organisation* is acting either as a “purchaser” (when public procurement rules will apply) or as a “seller” or generating an income (when other regulatory requirements may apply).

1.4.2 *Officers* who are uncertain as to whether or not the Rules apply, or how the Rules apply, should seek advice from the *Procurement Team* and/or *Legal Services* at an early stage.

2 COMPLIANCE AND EXCEPTIONS

2.1 COMPLIANCE

Every contractual arrangement entered into by the *Organisation* must comply with these Contract Procedure Rules.

2.2 NON-COMPLIANCE

2.2.1 Any non-compliance with any of these Contract Procedure Rules must be notified to the *Chief Finance Officer, Chief Internal Auditor* and the *Monitoring Officer* at the earliest opportunity.

2.2.2 Failure to adhere to these Contract Procedure Rules could result in disciplinary proceedings.

2.2.3 If these Contract Procedure Rules are not complied with, this will not invalidate any contract entered into by the *Organisation*, except where applicable law provides to the contrary.

2.3 EXCEPTIONS

These Rules do not apply to Public Contracts of a type listed in SCHEDULE 1 of this document.

2.4 WAIVERS

2.4.1 Where the circumstances of a particular procurement mean that the application of these rules is not possible or inappropriate, a waiver may be sought.

2.4.2 A waiver is required for any proposed procurement or contractual action which is not compliant with these Rules. A waiver cannot be given if it contravenes PA23 or any other applicable legislation.

2.4.3 If a waiver is required for any reason, please contact the *Procurement Team* in the first instance.

2.4.4 Officers must obtain approval for a waiver in writing specifically identifying the CPR that is being waived and the reason for which the waiver is sought, including justification and risk. The approval process for waivers is set out in the table below:

The approval required for a waiver is as follows:

Contract Value	Approval
Up to Regulatory Thresholds	Accountable Officer and CMT
Over Regulatory Thresholds	Accountable Officer and CMT after consultation with Legal Services and the Leader of the Organisation

As a general principle, waivers should only be authorised where there are objectively demonstrable grounds for doing so.

2.4.5 A waiver cannot be granted retrospectively; this is viewed as non-compliance with these Rules.

2.4.6 It is not possible to waive or depart from the requirements of the mandatory provisions set out in the PA23 or other relevant legislation applicable to a proposed contract.

2.4.7 Nothing in these *Rules* prevents the acceptance of a quote or tender, or requires a waiver, simply because less than the minimum number of quotations or tenders have been submitted in response to a procurement process, as long as at least the minimum number of entities were actually requested to quote or tender as required under the *Rules*.

3 AUTHORITY FOR THE CONTRACT

3.1 Sufficient budget allocation must be obtained before a procurement process is commenced. No contract for the supply of goods or services or for the execution of any works shall be entered into, nor any order given for such work unless the appropriate financial provision has been made in the capital or revenue estimates, except pursuant to a specific resolution of the *organisation* or the *cabinet*. (See also the Financial Procedure Rules).

3.2 The *Responsible Officer* must obtain authorisation to proceed with the contract before it is entered into (see also the Scheme of Delegations to Officers).

SECTION 1 PURCHASING

4 PRE-PROCUREMENT CONSIDERATIONS

4.1 GENERAL

4.1.1 Before *Officers* consider undertaking any procurement process, they should liaise with the *Procurement Team* at the earliest opportunity for support, advice and to check if there is already a Corporate (or other suitable) Contract in place that covers their requirements and can be utilised without the need for a new procurement*4.1.2* *Officers* must consider these *Rules* before undertaking a procurement process, to ensure that all the relevant issues have been taken into account and any internal consultation undertaken. This would include any relevant policies a supplier should have in place to deliver the contract.

4.1.3 There are also legislative obligations which impact on purchasing decisions, which may need to be taken into account, as appropriate. for example:

- The Procurement Act 2023
- The Public Services (Social Value) Act 2012: how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area.
- Local Government Act 1999: best value duty.
- Local Government Act 1988: non-commercial considerations.
- Application of TUPE and pension rules.
- ICT and potential data security issues.
- The Subsidy Control Act 2022

4.1.4 Where *Officers* consider that it may be helpful in undertaking some early **pre-market engagement** with potential contractors, they should refer to the *Procurement Team* for assistance.

4.2 ESTIMATING CONTRACT VALUE

The estimated value of a contract is critical to determining which procurement process to follow, Where the estimated value of a contract is above the Applicable Threshold Value, it will be a “covered procurement” and it will be subject to the full application of the PA23 rules. The estimated value of the contract must therefore be calculated before the procurement procedure commences, in order to determine the correct process to follow.

Schedule 3 of the PA23 contains detailed rules as to how the estimated value of a contract is calculated and when the value of one contract has to be aggregated with contracts awarded by the *Organisation* as a whole, to see whether it is over the threshold for the PA23 to apply. Guidance is attached at but seek further clarification from *Legal Services* or the *Procurement Team* if needed.

4.3 MIXED PROCUREMENTS

Different Applicable Threshold Values apply, depending on the type contract; for example, whether the contract is for goods, services, works, “light touch” services or a concession.

Some contracts will cover more than one category e.g. they may include works, supplies and/or services. The PA23 calls these contracts “mixed procurements”. If the contract is a mixed procurement, special rules apply for deciding which threshold is applicable. This is because a mixed contract may comprise two or more elements that, if procured separately, would have different applicable thresholds.

If a contract has more than one category, the Responsible Officer must seek advice from Procurement or Legal Services about the rules which will apply.

5 PUBLIC SECTOR JOINT WORKING, USE OF CENTRAL PURCHASING ARRANGEMENTS, DYNAMIC MARKETS AND FRAMEWORKS

5.1 In the event that use of a *central purchasing arrangement, dynamic market* or *framework agreement* is being considered or any form of joint working with other public sector bodies, then *Legal Services* and the P*rocurement Team* must be consulted at the earliest opportunity. This is to ensure that the proposed arrangements have been established in accordance with the relevant procurement rules and are available to be used by the O*rganisation* in the way intended.

5.2 The O*rganisation* fulfils its obligations under these rules when it acquires supplies or services from a central purchasing body offering the centralised purchasing activity. The *organisation* also fulfils its obligations where it acquires works, supplies or services by:

a) using contracts awarded by a central purchasing body;
b) using dynamic markets operated by a central purchasing body; or
c) by using a *framework agreement* concluded by a central purchasing body offering the centralised purchasing activity.

5.3 Call-off contracts entered into under a *framework agreement or* dynamic market must be awarded under the terms set out in the *framework agreement or* dynamic market. These may include a mini competition between those contractors on the framework or dynamic market or direct award of a contract to one contractor without competition. Where the *framework agreement* or dynamic market terms for call-offs are complied with then competitive quotations or tenders are not required under these *Rules*.

5.4 Where the *Organisation* is procuring through joint working with other contracting authorities, the procurement must be compliant with these *Rules* or those of the lead authority. In so far as that is the case and the process followed is compliant with the PA23, then the process will be deemed to comply with these *Rules.*

6 SUMMARY OF ADVERTISEMENT RULES AND TENDER REQUIREMENTS

6.1 Where a proposed contract meets or exceeds the thresholds set out in the PA23, (*applicable threshold value*) a public contract notice (depending on the procedure) must be placed in the uk e-notification service (central digital platform) (CDP) if and when required under the PA23.

6.2 Where aprocurement is commenced under the PA23, the *responsible officer* must also ensure that the contract is advertised using the organisation's e-procurement portal.

6.3 Where the *organisation* chooses to advertise an opportunity for a below threshold contract the *responsible officer* must also advertise the opportunity through CDP. The information must be published in CDP within 24 hours of the time when it first advertises the award opportunity in any other way.

6.4 The contract is not 'advertised' for the purpose of triggering a requirement to advertise in CDP if the invitation to quote is only made available to a number of particular contractors who have been selected for that purpose, either ad hoc or by virtue of their membership in some closed category, such as a framework agreement.

6.5 All tendering procedures from planning to contract award and execution must be undertaken in a manner so as to ensure:

a) Sufficient time is given to plan and run the process;
b) Equal opportunity and equal treatment;
c) Openness and transparency;
d) Probity; and
e) Outcomes which deliver sustainability, appropriate balance of efficiency and resilience, and whole life costing.

7 CONTRACTS BELOW £25,000

7.1 The *Responsible Officer* has an obligation to secure best value for these contracts and should always obtain at least one quote. There is no obligation to go out for a particular number of quotes. However, consideration should always be given to whether three quotes should be sought.

8 CONTRACTS BETWEEN £25,000 AND £150,000 FOR SERVICES/SUPPLIES OR £250,000 FOR WORKS

8.1 Where the appropriate *Responsible Officer* estimates a contract is likely to fall within this category, they must seek at least three competitive quotations in writing. Where appropriate, Officers should give priority, when seeking quotes, to tenderers who support local employment and the local economy.

8.2 It is not the intention that there should be any advertisement when obtaining quotations, but it should be noted that where the value of the contract is estimated to be £25,000 or more and the *Organisation* chooses to advertise, then the requirements set out in Schedule 5 must be observed.

8.3 The Responsible Officer must not use a pre-selection stage for a contract below the *Applicable Threshold Value*. For this purpose only, the threshold that applies to works contracts is the same as for services/supplies contracts.

8.4 An invitation to supply a quotation shall, as a minimum, include the following information:

a) Instructions for return
b) The basis on which a quotation will be assessed and on which the winning quotation will be accepted.
c) Terms and conditions under which the works, goods or services are to be provided.
d) Specification of the works, goods or services to be provided.
e) Pricing schedule or similar from which the bid price can be readily ascertained.
f) A statement that the Organisation is under no obligation to accept any quotation.

8.5 Unless it is not practicable, quotations must be returned through the electronic tendering system of the *Organisation*. Where this is not possible, tenderers should be asked to provide written quotations by a specified date by email.

8.6 Quotations must not be accessed or opened until after the deadline for return has passed, regardless of the format in which they are received. The *Responsible Officer* must record the following details on the Procurement Control Form:

a) The name of the company.
b) The value of the quote.
c) The date the quote was received.
d) The form in which it was received from the company.
e) The recommendation as to which quote if any to accept.

8.7 The *Responsible Officer* shall recommend a contract award to and seek approval from the *Accountable Officer*. All documents relating to the quotation exercise shall be provided to the *Accountable Officer* by the Responsible *Officer*. The *Accountable Officer* shall certify the acceptance of the quote on the Procurement Control Form. Please ask the *Procurement Team* for the latest version of the form.

8.8 A quotation must be accepted in accordance with 8.4b). i.e. either:

a) The lowest price quotation; or
b) The highest scoring quotation, where evaluated against acceptance criteria previously disclosed to those participating in the competition.

No quotation which exceeds the approved budget provision shall be accepted until approval to further expenditure has been obtained.

8.9 Where applicable, notices must be published in accordance with the table set out at Schedule 6.

9 WORKS CONTRACTS EXCEEDING £250,000 AND NOT EXCEEDING £4,000,000

9.1 Where the appropriate Responsible Officer estimates a contract is likely to fall within this category, they shall seek at least five tenders in accordance with this section 9.

9.2 The *Responsible Officer* can choose to advertise the tender by public notice or select appropriate contractors that have been identified as suitably qualified to deliver the works. If selecting contractors, Officers should, where appropriate, give priority to tenderers who support local employment and the local economy.

9.3 In both circumstances, the tenders should be managed through the Organisation' e-tendering portal. Please contact the *Procurement Team* at the earliest opportunity for support with the process.

9.4 Where applicable, a notice must be published in accordance with the table set out at SCHEDULE 6.

9.5 The *Responsible Officer* shall recommend a contract award to and seek approval from the *Accountable Officer*. All documents relating to the quotation exercise shall be provided to the *Accountable Officer* by the Responsible *Officer*. The *Accountable Officer* shall certify the acceptance of the quote on the Procurement Control Form. Please ask the *Procurement Team* for the latest version of the form.

10 SERVICE OR SUPPLY CONTRACTS EXCEEDING £150,000 AND WORKS CONTRACTS EXCEEDING £4,000,000 OR ANY OTHER PUBLICALLY ADVERTISED OPPORTUNITIES.

10.1 Contract opportunities must be advertised by public notice through the Council's e-tendering portal. Please contact the Procurement Team for support with the process.

10.2 Where a contract is above the *Applicable Threshold Value,* the Procurement Specific Questionnaire (PSQ) may be used.

10.3 The invitation to tender shall (unless otherwise agreed by the *Procurement Team*) state that no tender will be considered unless it is received by the date and time stipulated in the invitation to tender. No tender delivered in contravention of this clause shall be considered.

10.4 An invitation to tender shall (unless otherwise agreed by the *Procurement Team*), as a minimum, comprise the documents listed below:

a) Form of tender, which must include a statement that the *Organisation* is under no obligation to accept any tender
b) Certificate that the tender is bona fide
c) Instructions to tenderers
d) Form of contract including contract conditions
e) Specification of the works, goods or services to be provided
f) Bill of quantities or pricing schedule (as necessary)
g) Evaluation and award criteria for the selection of the successful tender.

10.5 Where applicable, a notice must be published in accordance with the table set out at SCHEDULE 6.

10.6 The *Responsible Officer* shall recommend a contract award to and seek approval from the *Accountable Officer*. All documents relating to the tender exercise shall be provided to the *Accountable Officer* by the Responsible *Officer*. The *Accountable Officer* shall certify the acceptance of the quote on the Procurement Control Form. Please ask the *Procurement Team* for the latest version of the form.

11 EXTENSIONS AND CHANGES TO EXISTING CONTRACTS

11.1 No variation and/or extension must be made to a contract without an agreed budget.

11.2 Contracts that have been awarded with extension and/or modification provisions written in can be extended in accordance with those terms, subject to the provisions in section 74 PA23.

11.3 Variations and/or extensions to existing contracts which <u>do not</u> already have such provisions included will only be permitted only where <u>all</u> the following criteria are met:

a) Variation and/or extension is not so materially different from the scope of the original contract that a new procurement exercise needs to be run, having regard to the provisions in section 74 PA23; and
b) Value for money can be demonstrated; and
c) The variation and/or extension is approved by Legal Services and authorised in accordance with paragraph 11.4 below.

11.4 Delegated authority to authorise extensions and variations is as follows:

a) any extension or variation to a contract resulting in a total increase of up to £100,000, must be authorised by the relevant *Assistant Director*.
b) any extension or variation resulting in an increase of up to £500,000 must be authorised by the relevant *Chief Officer*.
c) any extension or variation resulting in an increase over £500,000 must be authorised by the Section 151 Officer in consultation with the relevant portfolio holder
d) Where the extension or variation would lead to a significant change in the level of service or have cost implications for future years outside of the Organisation's overall budget framework, extensions and/or variations may be granted by the Chief Officer after consultation with the S151 Officer, but only in exceptional and/or extremely urgent circumstances (as determined by Legal and Procurement). Any necessary resulting action must be reported to the next meeting of the Cabinet and if necessary, Council.

11.5 Where any variation or extension results in a need for budget virement, this will be subject to the virement provisions in the *Financial Procedure Rules*.

12 RECEIPT AND OPENING OF TENDERS

12.1 *Officers* should ensure that contractors who may tender are aware of the rules relating to the tendering process set out below.

12.2 A tender should only be considered if received in accordance with the *Organisation's* tendering protocols set out in the invitation to tender or, where otherwise agreed in consultation with the *Procurement Team* and/or *Legal Services*.

12.3 Where not submitted electronically through the approved procurement portal, the *Responsible Officer* must keep the tenders securely. Tenders, however received, must not be opened or accessed until expiry of the time limit for submission and the time appointed for their opening.

12.4 Where not submitted electronically through the approved procurement portal, tenders must be opened in a fair and secure fashion by the *Responsible Officer.*

12.5 A request by the Organisation for clarification of a tender should be made only after the *Organisation* has looked at all the tenders. Furthermore, that request must be sent in an equivalent manner to all undertakings which are in the same situation, unless there is an objectively verifiable ground capable of justifying different treatment of the tenderers in that regard, in particular where the tender must, in any event, in the light of other factors, be rejected.

12.6 Where information or documentation to be submitted by a tenderer is or appears to be incomplete or erroneous, or where specific documents are missing, the *Organisation* may request the tenders concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in compliance with the principles of equal treatment and transparency

12.7 In addition, a request should relate to all sections of the tender which are imprecise, or which do not meet the technical requirements of the tender specifications if the *Organisation* wishes to raise queries or reject the tender because of them. Such a request must not in reality lead to the submission of a new tender. It must relate to the identification of any obvious errors, ambiguity and incompleteness, which might prevent the *Organisation* from being able to undertake the evaluation process and in particular those which are capable of simple explanation and can be easily resolved.

12.8 A request for clarification should not unduly favour or disadvantage the tenderer or tenderers to which the request was addressed.

12.9 If *The Responsible Officer* accepts a tender, it must be accepted in accordance with the terms of the tender and following an evaluation process against the criteria set out in the invitation to tender i.e. either:

a) The lowest priced tender; or
b) The tender that scores highest when evaluated against the acceptance criteria previously set by the *Responsible Officer* and disclosed to those participating in the competition.

12.10 The *Responsible Officer* must retain a copy of each tender in accordance with the *Organisations* Document Retention & Disposal Schedule.

13 CONTRACT AWARD

13.1 *Responsible Officers* or *Accountable Officers* have delegated authority to authorise contracts within their approved budget, in accordance with the Scheme of Delegation.

13.2 Tenders exceeding the approved estimate may only be accepted once approval for further expenditure is obtained from the relevant budget holder within delegated limits. Otherwise, approval by *Cabinet* or *Council* in accordance with the Constitution is required.

13.3 Any works contract, including ancillary contracts (e.g. architect), over £250,000 must be authorised by an Accountable Officer and executed as a deed or under seal. The Council seal is held by *Legal Services* and will only be used once *Legal Services* receives the necessary authorisation from the *Accountable Officer* to bind the *Organisation* to the contract.

13.4 The award of a contract over £30,000 (Including VAT) (including under a framework agreement) must be published in accordance with the PA23 and in CDP.

13.5 A tender that is not the lowest priced or highest scoring tender can only be accepted by the Accountable Officer in consultation with the *Procurement Team* and Legal Services.

13.6 All award decisions should be recorded on the Procurement Control Form.

14 FINANCIAL CHECKS

14.1 In the case of contract awards where either the estimated value is in excess of £100,000, or where the *Accountable Officer* considers that the failure of the contractor to perform would result in a high risk to the *Organisation*, the *Accountable Officer* must request that the *Chief Finance Officer* carry out a financial status check on all applicants.

14.2 The financial status check will take into account the financial viability of the applicant, their ability to deliver the contract in financial terms and the current level of contractual relationship with the applicant.

14.3 The *Accountable Officer* may authorise a tender to be invited from a contractor whose financial status is not favourable, where to do so is necessary in order to secure a bid for the works, supplies or services and the risks associated with contract failure have been assessed and in his/her opinion are within acceptable limits. In such an event, the *Accountable Officer* must justify such a decision and maintain all records accordingly.

15 CONTRACT TERMS

15.1 Every contract that exceeds £100,000 in value or contains a potentially significant risk as determined by the Responsible Officer must be in a form approved by *Legal Services.*

Note: *Legal Services* may also determine the format of any contract for a lesser value.

15.2 Other than in exceptional circumstances, and where the written consent of *Legal Services* has first been obtained, all contracts must be concluded formally in writing before the supply of any goods, service or the commencement of any work. The issue of an award letter or letter of intent is **not acceptable** for this purpose.

15.3 Every contract must include details of:

a) The works, goods or services to be provided, supplied or carried out;
b) The price to be paid, with a statement of discounts or deductions;
c) The time or times within which the contract is to be performed;
d) Where appropriate, provision for the payment of liquidated damages where the contractor fails to complete the contract within specified timescales;
e) A clause empowering the *Organisation* to cancel the contract in circumstances of corruption and/ or collusion and to recover any loss resulting from such cancellation;
f) A clause requiring appropriate insurance cover;
g) Where appropriate, as determined by the Responsible Officer in consultation with the Chief Finance Officer, a requirement for the provision of a bond, parent company guarantee or other sufficient security for due performance of the contract. Where the contract value exceeds £1,000,000 the contract shall contain such a provision unless the *Chief Finance Officer* determines otherwise;
h) Specific provision as to sub-contracting where appropriate;
i) A clause enabling termination in accordance with PA23 if it is above the *Applicable Threshold Value*; and
j) A clause containing suitable provisions (having regard to guidance issued by the Minister for the Cabinet Office) to comply with the requirements of clause 68 PA23 in relation to the payment of undisputed invoices within 30 days to contractors and sub-contractors.

15.4 In any contract where a contractor or subcontractor will have contact with members of the public, the *Responsible Officer* is responsible for ensuring that it is a condition of the contract that the contractor, or subcontractor, will comply with the *Organisation's* '**Safeguarding Children and Vulnerable Adults Policy'**. The *Responsible Officer* is responsible for ensuring that the contractor has a copy, or has access to a copy, of this policy.

15.5 These Rules must be read in conjunction with the *Organisation's* Corporate Procurement Strategy and the Sustainable Procurement Policy. These reflect the *Organisation's* corporate standards and objectives.

16 RECORDS

16.1 The following records must be kept by the *Responsible Officer*:

a) forms of tender received from all tenderers
b) all documentation from the three highest scoring tenderers
c) communication with unsuccessful tenderers
d) the award criteria
e) for above threshold contracts, the information required for reporting and documenting in Regulation 84 of the PA23 (including why an above threshold contract has not been divided into Lots).

16.2 The documents detailed must be kept for at least six years after the end of the contract, or as specified by any Document Retention Policy approved by the *Organisation*.

17 INCOME GENERATING CONTRACTS

17.1 The Responsible *Officer* shall consult with *Legal Services* in relation to contracts where the *Organisation* is proposing to generate an income or receive a payment. Such contracts may include joint venture arrangements or concessions contracts. A concession contract may include contracts for the provision of works and services where the consideration under the contract includes the right to exploit the works or services to be provided. These may be governed by the public procurement rules.

18 DEFINITIONS

Word or Phrase	Meaning
Accountable Officer	For EBC and LDC this means the Chief Executive or Director of Service responsible for the particular project.
Applicable Threshold Value	The threshold in relation to the estimated value of the contract (**including VAT**) as set out in the Schedule 1 of the Procurement Act 2023.
Cabinet	For EBC and LDC this is the Cabinet of the Council.
Cabinet Portfolio Holder	For EBC/LDC the member of the Cabinet designated as the lead member for the relevant function or service and if none the Leader of the Cabinet.
Central Digital Platform or CDP	The UK e-notification service.
Central Purchasing Arrangement	This is an arrangement involving a “central purchasing body”. A “central purchasing body” means a contracting authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities. Contracting authorities may acquire supplies, services, or works through a central purchasing body offering a centralised purchasing activity.
Chief Finance Officer	For EBC and LDC the officer appointed under section 151 of the Local Government Act 1972;
Chief Officer	For EBC and LDC these are the Chief Executive, the Deputy Chief Executive, and the Chief Finance Officer.
Code of Conduct	Employee and/or staff code of conduct or the Code of Conduct for Councillors, as applicable.
Contracts Finder	Contracts Finder is an electronic procurement portal and is the responsibility of the Crown Commercial Service (CCS) the Contracts Finder portal can be found at www.gov.uk/contracts-finder.
Council	EBC or LDC .
Responsible Officer	The Officer delegated by the Chief Officer to deal with the procurement process in question.
District	The administrative area of the Organisation
EBC	Eastbourne Borough Council.
Council Company	any company controlled by EBC or LDC

Word or Phrase	Meaning
Exception or exception	A circumstance set out in paragraph 2.3 (Exceptions) of the Contract Procedure Rules.
Financial Procedure Rules	For EBC/LDC these are the Financial Procedure Rules that form part of the Constitution.
Framework Agreement	An agreement between one or more contracting authorities and one or more economic entities, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
LDC	Lewes District Council.
Leader of the Council	For EBC and LDC this is the Leader of the Council as appointed under their respective Constitutions.
Legal Services	the Council's Head of Legal Services, Deputy Head of Legal Services, or a procurement lawyer in that team
Monitoring Officer	For EBC and LDC, the person appointed as the responsible officer under section 5 of the Local Government and Housing Act 1989.
Officer or Officers	Any member of staff employed by the *Organisation;* any person seconded to or made available to the *Organisation*; any agent or consultant acting for the *Organisation;* and in the case of any director of the company.
Organisation	Eastbourne Borough Council ("EBC"); Lewes District Council ("LDC") or any other Council Company
PA23	Procurement Act 2023, as amended from time to time
Procurement Team	The Strategic Procurement Manager and such other officers (if any) with responsibility in the relevant *Organisation* for advising on procurement processes
Rules	The Contract Procedure Rules.
Schedule 3 Service Contracts	Contracts listed in Schedule 3 of the PA23 for social and other specific services.
Waive or waiver	A circumstance set out in paragraph 2.4 (Waiver) of the Contract Procedure Rules.

SCHEDULE 1: EXEMPT CONTRACTS

Part 1: Counterparty Exempted Contracts

Vertical arrangements (previously often referred to as “Teckal” contracts)

Vertical arrangement exemptions apply only to contracting authorities that are public authorities - it does not apply to public undertakings or private utilities. The exemption is available where a contracting authority (or two or more contracting authorities acting together) (referred to here as the “contracting authority owner”) contracts with a person (referred to here as the “controlled person”) over which the contracting authority owner has the prescribed form of control and the controlled person carries out more than 80% of its activities for or on behalf of the contracting authority owner or other persons controlled by the contracting authority owner.

One example of a controlled person is a local authority company that the contracting authority owner has set up, either on its own or with other contracting authorities, to provide services to the contracting authority/(ies).

Horizontal arrangements (previously often referred to as “Hamburg” contracts)

Horizontal exemptions, apply only to contracts between contracting authorities (referred to here as the “co-operating contracting authorities”) and only where both of the co-operating contracting authorities are public authorities - it does not apply to public undertakings or private utilities.

The exemption applies only where the:

- the arrangement aims to achieve a common objective in connection with the exercise of the public functions of the co-operating contracting authorities;
- the arrangement is solely in the public interest;
- no more than 20% of the activities envisaged by the arrangement are intended to be carried out for reasons other than for the purposes of the co-operating contracting authorities’ public functions

Defence and security contracts

A defence and security contract between a contracting authority and the government of another state or territory.

Utilities contracts

A contract between a utility and relevant joint venture to which the utility is a party.

A contract awarded by a utility to a person affiliated with the utility or by a relevant joint venture to a person affiliated with any member of the joint venture.

Part 2: Subject Matter Exempted Contracts

Part 2-only contracts do not qualify as exempted if, on award of the contract, a contracting authority considers that the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract and the separate contract would not be of a kind to which part 2 of this schedule applies. When considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.

Land and buildings etc.

Contracts for the acquisition (by whatever means) of (or the acquisition of an interest in or right over) land, buildings or any other complete work or a contract concerning an interest or right over any such things.

Broadcasting

Contracts entered into by contracting authorities for broadcast content. Contracts for the right to broadcast, by any means, to the general public, material supplied by the supplier - such as programmes or advertisements.

Electronic communications services

Contracts where the main purpose is facilitating the provision by a contracting authority to the general public of an electronic communications service (as the meaning given in section 32 of the Communications Act 2003). Contracts where the main purpose is permitting a contracting authority to provide, maintain or use a public electronic communications network (within the meaning given in section 151 of the Communications Act 2003).

Alternative dispute resolution

Contracts for the purchase of arbitration, mediation or conciliation services and other similar services.

Legal services

Contracts for specified legal services where it would be inappropriate to open those contracts to competition. These are contracts relating to judicial, other dispute resolution proceedings, notary and services that must be carried-out by a particular person under order of a court, tribunal or act.

Financial services

Contracts for the lending of money in any currency to a contracting authority. Contracts for the provision or carrying out of an investment service or activity, or of an ancillary service, in relation to a financial instrument by an investment firm or a qualifying credit institution. Contracts for the provision of services to the Bank of England.

Employment

Employment contracts (which are defined by reference to relevant employment legislation at paragraph 18(2)) and other contracts with individuals appointed to a public office (which may include the appointment of non-executive directors of a public authority or members of a public enquiry).

Emergency services

Contracts for the provision by an organisation or association not run for profit of one or more of the following services:

a) services relating to the promotion of fire safety
b) fire extinguishing services
c) services for the protection of life and property in the event of fires
d) search and rescue services
e) civil defence services
f) nuclear safety services
g) ambulance services provided in respect of medical emergencies (note this does not include general patient transport, for example, between home and a treatment centre)

Public passenger transport services

A contract that is required to be awarded in accordance with the public service obligations regulations within the meaning given by section 136(11) of the Railways Act 1993.

Research and development services

Contracts for the provision of research and development (R&D) services where the services are intended to be for, or to result in, benefit to the public, and the contract does not also provide for the provision of goods or works. The R&D services to be provided must include at least one of the following activities:

a) “fundamental” research to acquire new scientific or technical knowledge without any particular application or use in view
b) “applied” research directed primarily at generating scientific or technical knowledge for a specific objective
c) “experimental” development which draws on existing knowledge to initiate the manufacture of new materials or products, establish new processes, systems or services; or to achieve a substantial improvement in existing materials, products, processes, systems and services
d) the manufacture and testing of prototypes

But services are not “research and development services” if they include— (a) the production of tools for manufacture, or (b) the development of industrial processes to manufacture goods or works arising from R&D.

International agreements and organisations

A contract awarded under a procedure specified in an international agreement of which the United Kingdom is a signatory and which the contracting authority must follow. Exemption only applies to contracts relating to the stationing of military personnel, or the implementation of a joint project between the signatories to that agreement.

A contract awarded under a procedure adopted by an international organisation of which the UK is a member and that procedure is inconsistent in any material way with the procedure to be followed in the act.

National security

A contract that the contracting authority determines should not, in the interests of national security, be subject to all or a part of PA23.

Intelligence activities

A contract for the purposes of carrying out, facilitating or supporting intelligence activities.

Defence and security contracts

A defence and security contract where:

a) the supplier is located in an area outside the United Kingdom in which the armed forces are deployed, and
b) the operational needs of the armed forces require the contract to be awarded to that supplier

A defence and security contract where:

a) the supplier is located in a state or territory outside the United Kingdom in which the armed forces maintain a military presence
b) that state or territory requires, in connection with that presence, that the supplier supplies the goods, services or works to which the contract relates

A defence and security contract awarded under a procedure adopted by an international organisation of which the United Kingdom is a member. A defence and security contract awarded under an arrangement between the United Kingdom and one or more other states or territories, where the purpose of that arrangement is, or is in connection with:

a) the joint development of a new product by or on behalf of the parties to the arrangement, or
b) the exploitation of that product once developed

Utilities contracts

A utilities contract for the supply of goods, services or works to a utility other than one acting as a centralised procurement authority, where:

a) the purpose of the contract is to allow the further sale or lease of those goods, services or works to a third party
b) the utility does not have a special or exclusive right, within the meaning given by section 6(3), to sell or lease those goods, services or works, and

c) other persons may sell or lease those goods, services or works under the same conditions as the utility

A utilities contract for the supply of water to a utility carrying out a utility activity referred to in paragraph 3(1)(a) or (b) of schedule 4 of PA23.

A utilities contract for the supply of energy, or fuel for the production of energy, to a utility carrying out a utility activity referred to in paragraph 1, 2 or 6 of schedule 4 of PA23.

A contract for the supply of goods, services or works wholly or mainly for the purpose of an activity that would be a utility activity if it were not specified in part 2 of schedule 4 of PA23.

Concession contracts

A concession contract for the carrying out of a utility activity within paragraph 3(1) or (2) of schedule 4 (water services), ignoring for this purpose the effect of paragraph 3(4) of that schedule.

A concession contract that:

a) confers an exclusive right to operate a relevant scheduled air service for a period of four years or a series of periods falling within a period of four years, and
b) imposes minimum service requirements in respect of that service during those periods

A concession contract for the provision of public passenger transport services.

Commercial contracts of the City of London

A contract for the supply of goods, services or works to the Common Council of the City of London other than for the purposes of its functions as a local authority, police authority or port health authority

SCHEDULE 2: COUNCILLOR PROTOCOL FOR PROCUREMENT

Introduction

1. The Council's governance arrangements provide for procurement to be managed in accordance with Contract Procedure Rules, and for Councillors to be guided in their work by the Protocol on Member/Officer Relations and the Code of Conduct for Members of the Council. The Code of Conduct for Members includes the need for Councillors to register their interests in any contract with the Council, but in other respects these documents make only limited reference to the role of Councillors in the specialist area of procurement.
2. This protocol is to guide Councillors in procurement procedures and to minimise the risk of any non-compliance with UK legislation and retained EU law.

Best Practice Guidance

3. A Councillor must not arrange or participate in any meeting or other form of communication with tenderers or potential tenderers for Council contracts that has not been arranged by Council officers.
4. A Councillor who is or will be involved in the process that leads to the award of any Council contract must not discuss the matter if they are approached by or on behalf of anyone interested in obtaining that contract.
5. A Councillor, who is a representative of an organisation that tenders or quotes for Council work, may not take part in the process that leads to the award of any contract in that area of service or be involved in the subsequent administration of that contract.
6. If a Councillor is a representative of an organisation that tenders or quotes for Council work, the organisation can only be awarded Council work through a process of open competition under Contract Procedure Rules.
7. The Council will not seek tenders or quotes from an organisation, or place work with an organisation using a schedule of rates or any call off arrangement, if a Councillor who is the Cabinet Member for that area of the Council's service is a representative of that organisation.
8. A Councillor must not seek to influence the procurement decisions of officers or do anything that compromises or is likely to compromise the impartiality of officers.
9. A Councillor must not pressure any officer to change his/her professional opinion on procurement issues or give direct instructions to officers
10. A Councillor must not take a proactive part to represent or in any other way advocate on behalf of any tenderer or contractor.
11. Any Councillor, who is a representative of an organisation that tenders or quotes for Council work, must declare that interest in the Register of Interests.
12. Confidential information relating to any tender, tenderer or prospective tenderer must remain confidential, and a Councillor must ensure that no confidential information is disclosed to unauthorised persons or organisations.

A breach of the above guidance may constitute, depending on the circumstances, a breach of the Code of Conduct for Members.

SCHEDULE 3: ESTIMATING THE VALUE OF A CONTRACT

1. The Calculation for goods, services and works contracts

a) The estimated value of a contract for goods, services or works must be based on the total maximum amount the Organisation expects to pay to the supplier during the life of the contract. This includes:
b) the value of any goods, services or works provided by the Organisation under the contract other than for payment;
c) amounts payable if an option in the contract to supply additional goods, services or works is exercised;
d) amounts payable if an option in the contract to extend or renew the term of the contract is exercised;
e) amounts representing premiums, fees, commissions or interest that could be payable under the contract;
f) any amounts representing prizes or payments that could be payable to participants in the procurement;
g) amounts already paid, if applicable;
h) VAT.

2. Frameworks

The Organisation must estimate the value of a framework by adding up the estimated values of all the contracts that have been or may be awarded under that framework.

In the case of a framework awarded under an open framework, the value of the framework is to be treated as including the value of all frameworks awarded, or to be awarded, under the open framework.

3. Concession Contracts

The rules in paragraph 1 do not apply to the estimation of the value of a concession contract.

The Organisation must estimate the value of a concession contract as the maximum amount the supplier could expect to receive under or in connection with the contract including, where applicable, amounts already received.

The amount a supplier could expect to receive includes the following:

a) the amount of revenue (whether monetary or non-monetary) receivable by the supplier by the exploitation of the works or services to which the contract relates (whether from the Organisation or otherwise);
b) the value of any goods, services or works provided by the Organisation under the contract other than for payment;
c) amounts that would be receivable if an option in the contract to supply additional services or works is exercised;
d) amounts that would be receivable if an option in the contract to extend or renew the term of the contract is exercised;
e) amounts representing premiums, fees, commissions or interest that could be receivable under the contract;
f) amounts received on the sale of assets held by the supplier under the contract.

4. Anti Avoidance

The Organisation must not artificially subdivide procurements in order to evade the requirements of the PA23.

Where the Organisation is putting in place two or more contracts, and the goods, services or works to be supplied could reasonably be supplied under a single contract, the Organisation must aggregate the value of each of the contracts,unless there are good reasons not to do so.

An example of a good reason for disaggregation is where separate contracts will provide better value outcomes.

The Organisation must keep a written record of the reasons why it has decided not to aggregate contracts if those contracts could reasonably be supplied under a single contract.

5. Cases where estimation not possible

If it is not possible to estimate the value of a contract, it must be treated as an above threshold contract.

SCHEDULE 4: ESTABLISHING THE ROUTE TO MARKET

Estimated Value of the Contract including extensions (excluding VAT)	**Minimum Requirement**	**What type of contract is required?**	**Contract Award Process**	**Who signs the contract on the Council's behalf?**	**Advertisement and Notices to be Published**
£0 to £25,000 (Services, Supplies & Works) See Para. 7 for details	Minimum 1 quote. Obligation to consider best value and consideration should always be given to whether three quotes should be sought.	Purchase Order Standard Terms	Complete Purchase Order	Not required (approval of Purchase Order)	No requirement to advertise.
£25,000 to £150,000 (Services & Supplies) See Para. 8 for details	Seek a minimum of three written quotes. If using a framework, follow the rules for its use.	Standard Services and Supplies Contract	Completion of Procurement Control Form. Signed by Responsible and Accountable Officers.	Accountable Officer or Officer with Delegated Authority	No requirement to advertise. If advertised, then follow Regulated Below Threshold Process Schedule 5.
£25,000 to £250,000	Seek a minimum of three written quotes.	Standard works Contract	Completion of Procurement	Accountable Officer or Officer with Delegated	No requirement to advertise.

(Works) See Para. 8 for details	If using a framework, follow the rules for its use.	or JCT Contract	Control Form. Signed by Responsible and Accountable Officers.	Authority (unless high risk and/or deed required)	If advertised, then follow Regulated Below Threshold Process Schedule 5.
£250,000 to £4,000,000 (Works) See Para. 9 for details	Seek a minimum of five written Tenders If using a framework, follow the rules for its use.	JCT Suite of Contracts.	Completion of Procurement Control Form. Signed by Responsible and Accountable Officers	Execution as a deed (if the Organisation is a Council, this involves affixing the council seal.) Legal services will require written approval to affix seal (see para 9.6 & 13.3).	No requirement to advertise but should be managed through the e-procurement portal. If advertised, then follow Regulated Below Threshold Process Schedule 5.
£150,000 and above (Services & Supplies) See Para. 10 for details	Full Tender If using a framework, follow the rules for its use.	Bespoke contract seek legal advice	Completion of Procurement Control Form. Signed by Responsible and Accountable Officers	Execution as a deed (if the Organisation is a Council, this involves affixing the council seal.) Legal services will require written approval	Yes, as required by the Procurement Act 2023

				to affix seal (see para 10.6 & 13.3).	
£4,000,000 and above (Works) See Para. 10 for details	Full Tender If using a framework, follow the rules for its use.	JCT Suite of Contracts	Completion of Procurement Control Form. Signed by Responsible and Accountable Officers	Execution as a deed (if the Organisation is a Council, this involves affixing the council seal) Legal services will require written approval to affix seal (see para 10.6 & 13.3).	Yes, as required by the Procurement Act 2023

SCHEDULE 5: REGULATED BELOW THRESHOLD FLOWCHART

Process flow

1. Publish preliminary market engagement notice via In-Tend and undertake pre-market engagement (optional)

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2. Publish below-threshold tender notice on the central digital platform via In-Tend before advertising by any other means

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3. Assess tenders

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4. Issue feedback where appropriate

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5. Publish contract award notice via In-Tend to observe any voluntary standstill period

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6. Enter into contract

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7. Publish contract details notice via In-Tend

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8. Manage contract

SCHEDULE 6: TRANSPARENCY NOTICES TABLE

Pre-Procurement Notices			
Notice Type	**What does it cover?**	**When should it be published?**	**Optional or Mandatory?**
Planned Procurement Notice or PPN (s.15)	Like a PIN under the PCR, this notice sets out that the contracting authority intends to publish a Tender Notice.	At least 40 days but not more than 12 months before the day on which the Tender Notice is issued for it to be a "qualifying pre-procurement notice" if the contracting authority wishes to benefit from reduced minimum periods in the tendering process	**Optional**
Preliminary market engagement notice (s.17)	Informs the market that the contracting authority intends to or has conducted preliminary market engagement.	Prior to issuing a Tender Notice	**Optional** but if the contracting authority carries out pre-market engagement without a notice, it must publish its reasons for not doing so in its Tender Notice
Pipeline Notice (s.93)	This notice covers any contract with an estimated value exceeding £2 million in respect of which the contracting authority intends to publish a Tender Notice or transparency notice during "the reporting period" ie a period of 18 months starting with the first day of the relevant financial year	Prior to the end of a 56 day period starting with the first day of the relevant financial year.	**Mandatory** if the contracting authority anticipates a total spend of over £100 million in the financial year in relation to any relevant contracts for the supply of any goods, services or works to the contracting authority.

Procurement Phase Notices			
Notice Type	**What does it cover?**	**When should it be published?**	**Optional or Mandatory?**
Tender Notice (s.20)	A Tender Notice, like a Contract Notice under the PCR, invites tenderers to submit a tender or a call to participate in a procurement procedure. Note the requirement to publish any associated tender documents at the same time.	Minimum "tendering periods" for a competitive procedure are set out in s.54 by reference to the publication of the Tender Notice. Timing of the Tender Notice will therefore be crucial in determining the structure and timetable of the procurement procedure.	**Mandatory** where a contracting authority is undertaking a competitive tendering procedure, including for awards by reference to membership of a dynamic market.
Below-threshold notice (s.87)	This notice is used for the purpose of inviting tenders for a below threshold contract.	Time limits for submitting tenders set out by the notice must be reasonable	**Mandatory** if it is a "notifiable below threshold contract" i.e. it exceeds £12,000 (central government authority) or £30,000 (other contracting authorities), and the contracting authority is inviting tenders for the contract (unless they are requested only from pre-selected or particular suppliers).
Transparency notice (s.44)	The notice alerts the market that a contracting authority intends to make a direct award of a contract (under either s.41 or s.43).	Before entering the contract to be awarded directly.	**Mandatory**, unless the contracting authority is using direct award for protection of life or user choice grounds.
Dynamic Market Notices (s.39)	A series of notices, these notices must be published at certain points	As set out below against each required notice: 1. must be published prior to establishing the DM;	

Procurement Phase Notices			
Notice Type	**What does it cover?**	**When should it be published?**	**Optional or Mandatory?**
	during the life of a dynamic market (DM) including: 1. a notice setting out that the Contracting Authority intends to establish a DM; 2. a notice confirming the DM has been created; 3. if modifications to a DM are made, a notice setting out those modifications; and 4. a notice confirming that the DM has been terminated.	2. must be published as soon as reasonably practicable after establishing the DM; 3. must be published as soon as reasonably practicable after modifying a DM; to identify what modifications have been made; 4. must be published as soon as reasonably practicable after a DM ceases to operate.	

Award Phase			
Notice Type	**What does it cover?**	**When should it be published?**	**Optional or Mandatory?**
Contract award notice (s.50)	A notice setting out that the contracting authority intends to award a contract	After providing tenderers with an assessment summary and before entering into a contract (not after, as under the PCR) This triggers the 8 working day standstill period.	**Mandatory**
Contract details notice (s.53)	The notice should set out that the contracting authority has entered into a contract. Note that s.53(3) also requires the contract itself to be published where the contract exceeds £5million.	After entering into the contract as follows: • If the contract is a light touch contract, within 120 days beginning with the day on which the contract is entered into; or • Any other contract, within 30 days beginning with the day on which the contract is entered into. For publication of the contract itself as follows: • if the contract is a light touch contract, within 180 days beginning with the day on which the contract is entered into; or • otherwise, within 90 days beginning with the day on which the contract is entered into.	**Mandatory** notice, including for certain below threshold contracts (see s.87(3)).
Procurement termination notice (s.55)	This is a notice to inform the market that a procurement process which was previously advertised as commencing has been terminated without an award being made.	The notice should be publicised as soon as reasonably practicable after making the decision not to make a contract award.	**Mandatory**