

CHERWELL DISTRICT COUNCIL
CONTRACT PROCEDURE RULES
(May 2025)

1. INTRODUCTION	1
2. SCOPE OF CONTRACT PROCEDURE RULES.....	1
3. COMMENCING A PROCUREMENT	2
4. ROLE OF THE PROCUREMENT & CONTRACTS GROUP	3
5. REQUIREMENTS IN RELATION TO TUPE	3
6. FINANCIAL THRESHOLDS AND PROCUREMENT PROCESS.....	3
7. INSURANCE	6
8. PARENT COMPANY GUARANTEES AND PERFORMANCE BONDS.....	6
9. TENDER ADMINISTRATION: PROCEDURE FOR ISSUING AND RECEIVING TENDERS.....	6
10. EXCLUSIONS	7
11. EXCEPTIONS	8
12. CONTRACT FORMALITIES	8
13. ENGAGEMENT OF CONSULTANTS	10
14. CONTRACT PERFORMANCE MONITORING.....	10
15. CONTRACT COMMENCEMENT	11
16. RECORD RETENTION	11
17. PROCEDURE FOR THE DISPOSAL OF COUNCIL ASSETS	12
18. STANDARDS OF CONDUCT AND OBSERVANCE OF RULES.....	13

1. INTRODUCTION

- 1.1 This part of the Constitution sets out the Council's ('Council') rules for buying goods, services and works on behalf of the Council and disposing of some types of property ("Contract Procedure Rules"). The Council must have contract procedure rules under section 135 of the Local Government Act 1972 and S1-29 of Local Government Act (1999). The Contract Procedure Rules must be read in conjunction with relevant laws, regulations and policies/procedures including the Council's Financial Procedure Rules, the Officer Scheme of Delegation, English law, the CDC Commercial Playbook and the Provider Section Regime (PSR) Guide.
- 1.2 Officers must have regard to the Council's Procurement Guidance or any replacement of such guidance from time to time in force ("the Guidance"). Officers involved in procurement and contract management activities and making procurement/contract management decisions must be fully aware of and comply with the Rules as they form part of the Council's Constitution and have regard to Procurement guidance including the CDC Commercial Playbook.
- 1.3 All procurements and contracts must realise value for money through the optimum combination of whole life costs and quality of outcome.
- 1.4 The Rules seek to protect the Council's reputation by minimising the risk of allegations of corruption, dishonesty and failure to meet legal obligations. As these Rules are required by law, failure to comply with them could lead to disciplinary action. If in doubt and/or if advice on compliance with legislative requirements is required, this may be obtained from Legal Services and/or the Procurement and Contracts Unit.
- 1.5 The Commercial Playbook is an invaluable sources of operational guidance to support any procurement activity and the correct application of these rules. Guidance (including the Commercial Playbook) can be found via the Council's intranet page.
- 1.6 Should a conflict be found between these Rules, the law and Procurement & Contracts Guidance, the order of precedence shall be the law, the Rules and then the Guidance.
- 1.7 The Rules apply to contracts or agreements with external organisations where the Council pays for:
 - Goods and/or services
 - Works of any kind
 - Hire, rental or lease of equipment, material and/or plant.
- 1.8 In order to apply these Rules, it is necessary to estimate the value of the contract. Further guidance is available in the Commercial Playbook but in summary, the estimate must include all proposed expenditure under the contract over its maximum term including any extension periods. All thresholds referred to in these Rules are inclusive of VAT. Where the estimated value cannot be determined, the procurement must be managed as though it was over the relevant UK

Procurement Threshold. Requirements should not be split to avoid thresholds in these Rules.

In practice, this means Officers must not split a single contract requirement up into separate contracts with the intention of avoiding the thresholds and related tendering, invoice administration or internal approval requirements.

- 1.9 The Monitoring Officer in consultation with the Procurement & Contracts Unit shall have the power to make incidental amendments from time to time to the Rules, for example when updates are required from changes to legislation, job titles and roles.
- 1.10 Members have a key role in providing oversight to the Rules set out below, in making key decisions on major projects, considering the risks and ensuring that the Council takes best advantage of public procurement rules. Full details of the role that Members play in procurement activity can be found in the LGA's A Councillor's Guide to Procurement, 2019 edition (local.gov.uk).
- 1.11 In the case of a breach to these Rules, the Responsible Officer must make an immediate report to the Procurement & Contracts Unit detailing the nature of the breach and any management action taken to address the issues arising from the breach. The Procurement & Contracts Unit will maintain a record of all such breaches which will be reported to the relevant Committee periodically.

2. SCOPE OF CONTRACT PROCEDURE RULES

These Rules (and those complementary rules in the Council's Constitution, including its Financial Procedure Rules) apply to all spending on works, supplies and services by the Council. They also apply to the disposal of all Council assets.

The Rules also apply whether the Council is dealing on a commercial basis with entities in the private sector or the public sector.

These Rules must also be followed where the Council decides to accept an expression of interest received from a relevant body under the community right to challenge.

Further, the Rules apply to arrangements which the Council wishes to enter into in consequence of its having received grant funding from an outside body to procure a service, or to receive an income in return for giving another body the right (a concession) to run a service.

The Rules do not apply, however, to:

- contracts of employment
- contracts with Counsel and specialist legal advice
- grant/funding agreements

The Monitoring Officer may amend these Rules where required by statutory change, updates in government procurement policy, managerial adjustment or administrative error.

The Council's procurements, apart from those for health care services, are regulated by the Procurement Act 2023 and the Procurement Regulations 2024. Procurement of health care services is regulated by the Provider Selection Regime.

There is a raft of other legislation, such as the Social Value Act 2012 and the Transparency Code 2015, which also impacts on procurement and it is important that officers are aware of the wider legislative framework.

Where a procurement was started under the Public Contract Regulations (2015) or the Provider Selection Regime, governance for that procurement or contract continues to be those Regulations rather than the Procurement Act (2023). In the case of procurements/contracts started under the Public Contract Regulations (2015) they are governed by those Regulations until either:

- The end of the contract in question.
- For a framework/DPS, the end of the last call off contract.

Relevant Officers must ensure they provide the Procurement & Contracts Unit with accurate and timely information as required in respect of periodic updates and publication of the Council's procurement pipeline and contract register.

3. COMMENCING A PROCUREMENT

No procurement shall commence without there being sufficient budget available to cover the estimated cost of the Works, Supplies or Services being procured, or an outside body providing grant for the procurement of Works, Supplies or Services having given a binding commitment to the Council to provide those funds.

Further, for all procurements above £50,000 (inclusive of VAT) the relevant Officer shall first consider and agree with the Procurement and Contracts Manager agree a procurement strategy that:

(a) has regard to the following Procurement Objectives and related government policy aims :

- Delivering value for money
- Maximising public benefit
- Sharing information for the purposes of allowing suppliers and others to understand the Council's policies and decisions.
- Acting, and being seen to act, with integrity
- whether the contract could be allocated into lots, including with regards to SMEs

- the National Procurement Policy Statement which sets out national priorities for procurement

(b) is most likely to achieve the procurement's intended outcomes and objectives, having regard, therefore, to such matters as:

- the likely total cost of the project;
- the amount and source of the money earmarked for it;
- the length of the proposed arrangement;
- the procedure to be adopted for achieving effective competition;
- the proposed procurement timetable;
- whether procurement jointly with another public body would be of benefit;
- how Value for Money and/or Service improvements may be achieved;
- how Social Value might be secured for the Council's area by the procurement;
- details as to whether TUPE is likely to apply; and
- any risk to the Council in undertaking (or not undertaking) the procurement.

4. ROLE OF THE PROCUREMENT & CONTRACTS GROUP

The Procurement and Contracts Group (PCG) is an officer-member board with its terms and reference set out at Appendix 1.

5. REQUIREMENTS IN RELATION TO TUPE

TUPE, and the interpretation of it, changes frequently, and only a brief reference to it is therefore contained within these Rules. Officers should consult Human Resources and Legal for further TUPE guidance and advice as necessary or appropriate.

Whenever a new supplier is appointed to take over the provision of an existing Service, employees of the original supplier engaged in the provision of that Service (or the Council, if the Service was provided in-house) may be affected by transferring that Service to another provider. If so, it will be necessary to form a view as to whether TUPE applies, and advice from Legal and HR must therefore be obtained by the Project Officer before commencing a procurement.

6. FINANCIAL THRESHOLDS AND PROCUREMENT PROCESS

Where a Relevant Contract is being procured the minimum procurement process and rules for inviting tenders are as follows.

Estimated Total Contract Value (inclusive of VAT)	Minimum Process	Method of Invitation & Transparency /VFM Obligation	Authority to award	Authority to sign
Less than £10,000	At least one quote must be sought from an appropriate source via the procurement portal (or alternative method with prior approval of the Procurement and Contracts Unit)	None mandated	Relevant Assistant Director	Relevant Assistant Director
£10,000 to £100,000	Invitation to quote or tender must be sent via the procurement portal to at least three	Method to be approved by the Procurement and Contracts Unit.	Relevant Assistant Director and if over £50,000 in value with the prior approval of	Authorised Signatory (Legal Services)

	suppliers - including at least one SME* or VCSE* organisation - where appropriate and possible		Procurement & Contracts Group Manager.	
Over £100,000 to the relevant FTS (Find a Tender Service) threshold.	Tender process via the procurement portal, with at least five written tenders sought, where appropriate and possible	Advertise open invitation to tender (ITT) on the Council's portal and Contracts Finder	Relevant Assistant Director with the approval of 151 and Monitoring Officer. If over £200,000 approval of Procurement & Contracts Group.	Executed as Deed under Seal (Legal Services) or alternative method approved by the Monitoring Officer
Over Relevant FTS threshold	Full competitive tender process applies via the procurement portal.	Advertise relevant Procurement Procedure by on the Council's portal. Advertise on Contracts Finder and Find a Tender system Other media may also be used	Relevant Assistant Director with the approval of Procurement & Contracts Group If over £500,000 Executive decision is required	Executed as Deed under Seal (Legal Services) or alternative method approved by the Monitoring Officer

Prior approval from the Procurement & Contracts Unit must be obtained prior to use of the Open or Competitive Flexible Procedure under the Procurement Act 2023.

Purchasing Schemes

An officer responsible for the procurement exercise may use Purchasing Schemes subject to the following conditions:-

An officer responsible for the procurement must seek advice in advance that:

- the Council is legally entitled to use the Purchasing Scheme;
- the purchases to be made do properly fall within the coverage of the Purchasing Scheme;
- the establishment and operation of each Purchasing Scheme is in compliance with the Procurement Legislation and meets the Council's own requirements.

A "Purchasing Scheme" may include:

- Framework arrangements (including those set up by the Crown Commercial Services);
- Purchasing arrangements set up by central purchasing bodies and commercial

- organizations; Consortium purchasing;
- Collaborative working arrangements;
- [Formal agency arrangements];
- E-procurement / purchasing schemes and methods;
- Other similar arrangements.

Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Rules of Procedures in respect of the choice and conduct of procedures. Advice should be sought from the Procurement and Contracts Unit prior to entering to such arrangements.

Getting Tenders and Quotations

Where quotations or Tenders are required, the documentation comprising the ITT or the RFQ/RFP shall be based on relevant model documents available from the Procurement and Contracts Unit.

Evaluation Criteria

Any ITT or RFQ/RFP must contain details as to the criteria for awarding the Contract to which it relates. Those criteria must be robust, fair, auditable, compliant with any relevant Public Procurement Legislation and, for any ITT, weighted wherever possible.

The award criteria may be based on price alone or on that which represents the Most Advantageous Tender received. In relation to Contracts above the FTS Threshold, any award *must* be based on the Most Advantageous Tender.

Lowest Price

Awards based on price alone will usually only be suitable for Supply Contracts where the Supplies required can be specified in significant detail at the outset and no after sales service or other special requirements are needed in connection with that Supply. Where appropriate, guidance should be sought on price assessment and [lifecycle costs] from the Procurement and Contracts Unit.

Most Advantageous [Tender]

Where the Council intends to award a Contract on the basis of the proposal which is the Most Advantageous Tender received, the criteria (and any sub-criteria) to be used in the evaluation shall, as a minimum:

- be pre-determined,
- have relevant weightings set out with applicable criteria
- be strictly observed at all times throughout the competition for the Contract,
- include (with any relevant weightings) criteria where appropriate in respect of Social Value
- reflect value for money, including price and quality criteria,

- be capable of objective assessment, and
- have regard to environmental impact and sustainability considerations relevant to the Works, Supplies or Services being procured.

Where a contract award is to be made following the above approach, it should be awarded to the tenderer obtaining the highest overall score (i.e., the Most Advantageous Tender) from the evaluation process with a compliant tender.

Conflicts of Interest

Officers must take all reasonable steps to identify and keep under review any conflicts of interest or potential conflicts of interest.

Any person who influences a decision must be included in the conflict of interest review.

Officers must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage. If the officer deems that the advantage or disadvantage cannot be avoided, they should contact the Procurement and Contracts Unit before progressing further with the procurement. This obligation starts when the need for the procurement is first identified and continues until the termination of the contract.

Where the procurement is valued over £100,000 inclusive of VAT, a conflicts assessment must be prepared by the Responsible Officer in conjunction with the Procurement and Contracts Unit before the procurement is published. This should include details of all conflicts or potential conflicts of interest and any steps that the Council has taken or will take to mitigate that conflict of interest. This may include any steps taken to demonstrate that there is no conflict of interest where one might be perceived.

This conflicts assessment must be kept under review and revised as necessary during the procurement and contract term.

Any Officer or Member who fails to declare a conflict of interest may be subject to disciplinary proceedings and risks being prosecuted under the Bribery Act 2010.

Officers and Members involved in a procurement will, at all times, act in a way that is consistent with their Code of Conduct.

Market Engagement

Market engagement is permitted for the purposes of:

- Developing the Council's requirements and approach to the procurement
- Designing a procedure, conditions of participation or award criteria
- Preparing the tender notice and associated tender documents
- Identifying suppliers that may be able to supply the requirement (understanding the market).
- Identifying likely contractual terms
- Building capacity amongst suppliers in relation to the contract.

The Procurement and Contracts Unit should be notified of any planned – and actual – market engagement. Market engagement must not have the effect that suppliers participating are put at an unfair advantage or that competition is otherwise distorted. If an officer deems that a supplier has been put at an unfair advantage, they must contact the Procurement and Contracts Unit or Legal Services before progressing further with the procurement.

If the procurement is valued over the relevant UK procurement threshold, a preliminary market engagement notice must be published on the government's Central Digital Platform/Find a Tender.

Key Performance Indicators

Any contract with a value of over £5million must include at least three Key Performance Indicators (unless the council considers that the supplier's performance could not appropriately be assessed by reference to KPIs) which must be published on the [council's website]/.

Where the Council has set KPIs in accordance with the above, it must assess performance against these KPIs and publish information as specified under the Procurement Act (and related Regulations) in relation to that assessment. The Council must do this at least once in every period of 12 months during the lifecycle of the contract and on termination of the contract.

7. INSURANCE

At the commencement of any procurement exercise, the relevant Officer and the Assistant Director of Finance (or nominated officer) shall together determine the type and level of insurance cover required in relation to a particular procurement. The appropriate Officer shall ensure the successful bidder has any required insurance cover in place before performance of the Contract begins, and shall further ensure, at appropriate intervals, that such cover is maintained by the supplier throughout the Contract period.

8. PARENT COMPANY GUARANTEES AND PERFORMANCE BONDS

Before commencing any tendering exercise for a Contract exceeding £150,000 in value of amount, the relevant Officer and the Assistant Director of Finance (or nominated officer) shall together determine the need for, and value of, any parent company guarantee and/or performance bond necessary in relation to that procurement.

The Assistant Director of Finance (or nominated officer) may also require any Contract below £150,000 to be supported by a parent company guarantee and/or performance bond for such amount as the Assistant Director of Finance (or nominated officer) may consider necessary or appropriate in all the circumstances.

In determining the need for appropriate guarantees, regard should be had to using performance bond and/or a parent company guarantee only in specific

and justified circumstances where the contract is judged to be at high risk of supplier or performance failure. Key points include: is the contract with the ultimate parent company; is the balance sheet commensurate with the liabilities in the contract; what proportion of the net assets are represented by the maximum liability under the contract; and to what extent are the assets are tied to the contracting party?

The appropriate Officer shall ensure the successful tenderer has any required parent company guarantee and/or performance bond in place before the Contract is commenced.

9. TENDER ADMINISTRATION: PROCEDURE FOR ISSUING AND RECEIVING TENDERS

An electronic Invitation to Tender shall be issued by the Council for all contracts with an estimated value of £100,000, or more and tenders shall be submitted electronically via the Council's Procurement Portal (and where applicable under the Procurement Act 2023, advertised on the UK Central Digital Platform).

The Council Procurement Portal and the Invitation to Tender must specify the format in which an electronic tender is submitted by tenderers and such tenders shall be stored in a secure portal account which is locked until the date and time specified for its opening.

No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the Monitoring Officer is satisfied that there are exceptional circumstances and the other tenders have not been opened.

The electronic opening of tenders submitted on the Procurement Portal shall be conducted by a Procurement or Legal Officer and the relevant Assistant Director or their nominated representative.

Only in limited circumstances a tender process should be undertaken by hard copy submissions. In such cases written approval of the Monitoring Officer is required.

All Tenders must be returned strictly in accordance with the instructions prescribed in the ITT and must not be returned directly to the Officer, a Council Member or to any consultant acting on the Council's behalf.

10. EXCLUSIONS

The requirement to conduct a competitive procurement process is excluded in the following circumstances:

	Type of circumstance	Written record and approval

a)	the proposed contract is excluded under the Procurement Legislation; or	Prior written approval from the Monitoring Officer is required.
b)	the proposed contract is being awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council or other public sector organisation; or	Prior written approval from the Monitoring Officer is required.
c)	the proposed contract is an extension to or a variation of the scope of an existing contract where the existing contract provides for such extension or a variation or where the variation is a modification permitted under the Procurement Legislation.	For contract extension or variation where annual value is greater than £200,000, approval of the Procurement & Contracts Group.

11. EXCEPTIONS

The Council does not have the power to waive the applicability of Public Procurement Legislation.

Subject to Public Procurement Legislation the requirement to seek Tenders or Quotations may be waived as follows:

Value	Authority to Waive
Up to £200,000 (inc. VAT)	Monitoring Officer and Section 151 Officer
Above £200,000 (inc. VAT)	Monitoring Officer and Section 151 Officer with a report approved by Procurement & Contracts Group

All exceptions or waivers to these Contract Rules of Procedure must be:

fully documented with a record noting the reasons for the waiver and that the circumstance are genuinely exceptional; and

noted on the waiver register to be kept by the Procurement and Contracts Unit.

12. CONTRACT FORMALITIES

12.1 The Form of Contract

- 12.1.1.** All contracts should be made in writing and on the Council's standard written terms unless Legal Services approves otherwise. Contracts made on the supplier's written terms must be reviewed and approved by Legal Services. In advance of the tender process, the procuring Officer must seek advice from Legal Services on the form of contract to be used.
- 12.1.2.** Advice from the Finance team must be obtained where the contract involves a finance leasing arrangement.
- 12.1.3.** Every contract shall specify the goods, materials or services to be supplied and the work to be executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties and are required by law.
- 12.1.4.** Consideration must be given as to whether or not a performance bond, parent company guarantee, or other form of security acceptable to the S151 officer and Legal Services, is required from the supplier.

12.2 Required Terms

- 12.2.1 Boilerplate Clauses** - The Council is required to include statutory terms which include non-exhaustively: Anti Bribery; Anti-Money Laundering; Freedom of Information; Data Protection; Safeguarding of Vulnerable Adults and Children; Transparency; Prevention of Terrorism; Audit; Anti-Discrimination Equality and Diversity; Payment of Subcontractors; Termination and Exit of Above Threshold Contracts; Compliance with Anti-Slavery and Human Trafficking laws; Force Majeure; Health and Safety.

If Officers consider one of the above clauses is more appropriate to their contract, they must notify Legal Services when asking them to consider the contract terms. For example, where personal data is being controlled or processed by a third party on the Council's behalf, an additional data sharing agreement may be required.

- 12.2.2 Liquidated Damages** - Officers must consider the effect on the Council of any delay in performance of the contract, and whether that delay is likely to cause the Council financial loss which requires protection. If so, the Officer must estimate the reasonable and genuine loss that the Council is likely to suffer as a result of the delay and that would fairly compensate the Council, usually at a daily or weekly rate for that loss.
- 12.2.3 Standards** - Where an appropriate British Standard or code of practice (or other applicable standard) applies to the procurement, the relevant Officers are required to the relevant standard is included in the contract or specification.

12.2.4 Implied Terms – Procurement Act. Applicable contracts awarded under the Procurement Act 2023 must contain any implied terms required under the relevant legislation.

12.3 Execution of Contracts

- 12.3.1.** Where a contract is required as a result of any legal procedure or legal proceedings on behalf of the Council, it shall be signed by the Monitoring Officer or another person authorised by them, unless any enactment provides otherwise.
- 12.3.2.** Contracts with a value of £10,000 or less (inclusive of VAT) may be signed by the relevant Assistant Director. Contracts with a value of more than £10,000 (inclusive of VAT) must be signed or executed, as appropriate, by Legal Services.
- 12.3.3.** Any contract with a value of £100,000 or more (inclusive of VAT) must be executed as a deed using the common seal of the Council, signed by an authorised signatory, and witnessed in accordance with the required formalities.

12.4 Electronic Signatures & Seals

- 12.4.1.** The Council may execute, seal, or sign any agreement by electronic means, to be approved by Legal Services.
- 12.4.2.** For contracts that require a seal, the Monitoring Officer may adopt such means of sealing as from time to time they consider appropriate. This may include allowing electronic sealing in accordance with section 7A(1) of the Electronic Communications Act 2000 (or other subsequent legislation). Affixing of an electronic seal approved in this way shall be of the same legal effect as affixing the common seal of the Council. Any additional formality relating to the witnessing of such contracts are complied with.

13. ENGAGEMENT OF CONSULTANTS

- 13.1** The financial limits in these Contract Rules apply to the engagement of consultants and the appointment must be based on approved evaluation. If a consultant is to provide services over the lifetime of a project then the whole lifetime cost should be taken into account when procuring the consultant.
- 13.2** External legal consultants must be appointed through Legal Services in accordance with the Council's Constitution.
- 13.3** Prior to the engagement of the consultant the Officer must:
 - a) Prepare a business case in advance of the appointment which as a minimum, should detail the reason for seeking external expertise, for example, lack of internal capacity or capability due to the specialist nature of services;
 - b) This business case should be approved by either the Director or the Head of Service or their delegated nominee;

- c) Financial checks of lead consultants' financial stability and professional indemnity insurance should be made (which should also include any sub-consultants);
 - d) Insurance expiry date should be monitored by project managers except in those cases where the insurance Section is directly responsible for such insurance. Ongoing checks of valid insurance renewals should be undertaken during the lifetime of contracts;
 - e) Where the consultant is an individual, check with Payroll and Procurement to find out if the consultant is acting in the capacity of an employee and therefore subject to IR35 (tax and national insurance payments at source)
- 13.4 The terms of engagement of a consultant (not being an Officer of the Council) shall be set down in a form approved by Legal Service.
- 13.5 Previous employees should not be engaged as consultants until a period of at least 6 months has elapsed since they ended their employment with the Council.

14. CONTRACT PERFORMANCE MONITORING

- 14.1 The relevant Officer should ensure that the contractor's performance is monitored against the contractually agreed terms, by an appropriate Officer responsible for contract management in their department. The extent of the monitoring should be proportionate to the nature, duration and associated cost of the contract. Assistant Directors and managers are required to ensure Officers carry out proper contract management and that any issues in contract performance are brought to their attention. PCG may also require an updating report on contract performance.
- 14.2 Contract managers are to periodically revise how delivery and processes under ongoing contracts might be improved and to ensure that those improvements are implemented by the supplier and monitored by the contract manager.
- 14.3 Where further goods, works, or services will be required at the end of an existing contract term, contract managers must consult with the Procurement and Contracts Service prior to the expiration of the existing contract in sufficient time to plan the re-procurement to avoid disruption to Council services.

15. CONTRACT COMMENCEMENT

As a general rule, the Project Officer shall not authorise performance of any Contract, nor raise any Purchase Order in connection with it, unless and until all of the documents comprising the Contract have been executed by all of the

parties to it, unless the Purchase Order itself comprises the Contract

However, where there are exceptional circumstances requiring a successful tenderer to commence performance of a Contract prior to its execution as a matter of urgency (to avoid delay and increased costs on the Contract), the relevant Officer must satisfy the Monitoring Officer and the Section 151 Officer before authorising such commencement that:

- a. the supplier has confirmed in writing its unequivocal commitment to:
 - perform the Contract in accordance with the established terms, and
 - execute the document comprising those terms when it is available and to indemnify the Council against any breach of such undertakings;
- b. any performance bond or parent company guarantee required under the terms of the Contract has been received from the supplier's surety or parent company or the surety or parent company has written to the Project Officer confirming the relevant organisation's agreement to be bound by the terms of such performance bond or parent company guarantee from the date of such communication;
- c. a certificate of insurance has been received from the supplier's insurers to confirm all requisite insurance cover is in place; and
- d. the Section 151 Officer has undertaken appropriate financial checks on the supplier to establish its financial capability to undertake the Contract.

16. RECORD RETENTION

All Contracts executed under seal (including the winning Tender and any documentation supplementary thereto) shall be held by the Assistant Director Law and Governance for safe keeping and copy to be kept by relevant Assistant Director.

All other procurement documentation, including all expressions of interest, selection questionnaires, ITTs, unsuccessful Tenders, Quotations, clarification responses, internal deliberations and recorded decisions shall be kept safe and secure by the relevant Assistant Director for a period of at least 3 years from the date of Contract award whereupon such documents shall be destroyed.

Contracts executed under hand shall be held by the relevant Assistant Director and Procurement and Contracts Service for a period of 6 years from the date it is signed.

For applicable procurement exercises conducted under the Procurement Act 2023, per Section 98 of the Act:

- (1) the Council (contracting authority) must keep such records as the authority considers sufficient to explain a material decision made for the purpose of awarding or entering into a public contract.
- (2) For the purposes of subsection (1), a decision is “material” if, under this Act, a contracting authority is required—
 - (a) to publish or provide a notice, document or other information in relation to the decision, or
 - (b) to make the decision.
- (3) A contracting authority must keep records of any communication between the authority and a supplier that is made—
 - (a) in relation to the award or entry into of a public contract, and
 - (b) before the contract is entered into.
- (4) A record under this section must be kept until—
 - (a) the day on which the contracting authority gives notice of a decision not to award the contract (see section 55), or
 - (b) the end of the period of three years beginning with the day on which the contract is entered into or, if the contract is awarded but not entered into, awarded.
- (5) This section does not apply in relation to defence and security contracts.
- (6) This section does not affect any other obligation under any enactment or rule of law by virtue of which a contracting authority must retain documents or keep records, including for a longer period

17. PROCEDURE FOR THE DISPOSAL OF COUNCIL ASSETS

Where the estimated value of an asset is £50,000 or more, or where the Executive so determines, disposal of that asset shall, unless a valuer with relevant qualifications has certified that an alternative method of disposal would better achieve the Council's aims and objectives, be conducted in one of the following ways using approved agents if appropriate:-

- Sale by Tender
 - Ad-hoc Tenders - At least 14 days' notice to be given in such local newspapers circulating in the Council's area and/or in such national journals as the relevant Assistant Director considers desirable stating the nature of the asset and inviting tenders for its purchase and stating the last date when tenders will be accepted; or
 - Approved List - Public notice to be given in respect of a particular transaction in the same manner as that described in *Ad-hoc Tenders* above inviting applications from interested persons to be placed on a list to be approved by the Executive from which prospective purchasers shall be selected and invited to submit tenders.

- Sale at a Named Figure

An assessment of the value of the asset shall be made by a valuer with relevant qualifications. The relevant Assistant Director shall issue particulars of the asset and the price to all enquiring persons. Details of the asset shall be publicly advertised on at least one occasion and, in the case of land or property, a sign board erected upon the site.

- Invited Offers

The asset shall be advertised in accordance with the rules for Sale by Tender but no figure shall be placed in the particulars and interested parties shall be asked to make offers for consideration by the Council. In order to give guidance to prospective purchasers a minimum figure may be quoted where appropriate.

- Sale by Public Auction

Properly qualified and experienced auctioneers shall be commissioned to act on behalf of the Council in offering for sale by auction assets in the Council's ownership.

In any event, prior advice must be sought from Legal Services prior to entering into any negotiation or contract for a land development or concession agreement.

COMPLIANCE

18. STANDARDS OF CONDUCT AND OBSERVANCE OF RULES

All employees involved in the award or the potential award of any Contract or the disposal or potential disposal of any asset shall:

- act with integrity and honesty; and
- exercise all fairness and impartiality; and
- comply with the Rules; and
- respect the Officer's Code of Conduct; and
- observe any policy adopted by the Council on measures to combat bribery and corruption

and shall report instances of suspected fraud and other irregular activity connected with such award or disposal under any whistleblowing policy adopted by the Council.

ANY MANIFEST OR MATERIAL DEPARTURE FROM THESE RULES OR THE OFFICER'S CODE OF CONDUCT OR ADOPTED ANTI-BRIBERY POLICY IS A DISCIPLINARY OFFENCE.

PROCUREMENT & CONTRACTS GROUP TERMS OF REFERENCE

1. INTRODUCTION

1.1 PCG means the Procurement & Contracts Group comprising of:

- Section 151 Officer or nominee
- Monitoring Officer or nominee
- Procurement & Contracts Manager
- Representative from each of the Directorates (where their procurement is under consideration).

For non-operational matters

- The portfolio holder responsible for Procurement and/or Governance; and
- Such other Council Members may be invited on a case by case basis or their nominees

1.2 The PCG shall meet as required or where urgent transact its business electronically.

2. TERMS OF REFERENCE OF THE PCG

2.1 approve the contract strategy report, extension, exception and award reports of all Contracts above £200,000 (inclusive of VAT):

- Perform a strategic and overview role in relation to the Council's procurement and contract management.
- Provide a forum for Officers to discuss policy development, seek strategic advice and raise questions, issues and problems with procurement and contract management.
- Define and spread best-practice as it relates to contracting and Contract management and monitoring.
- Provide advice to Officers as appropriate on contracting issues.

3. PROCEDURES FOR THE PCG

3.1 The PCG shall both be chaired by the Monitoring Officer or their nominee.

3.2 The Procurement and Contract Manager shall convene all meetings of the PCG, and at least two working days before such meeting shall send to every member an agenda and copies of all reports.

3.3 Members of the PCG, or their nominees, shall attend any meeting of them when requested to do so.

3.4 Action shall be made by the Procurement and Contract Manager of the proceedings of the PCG.

3.5 Additional procedures and related arrangements may be issued in Guidance from time to time by the Monitoring Officer.