

Part G – Appendices

Section G4E:- Finance and Contract Procedure Rules

(Contract Procedure Rules)

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Section G4E Cheshire West and Chester Council Finance and Contract Procedure Rules (Contract Procedure Rules (“the Rules”))

E1 Basic Principles

E1.1 The aims of the Rules are to:-

- (a) ensure compliance with all legal requirements;
- (b) achieve best value;
- (c) ensure transparency, openness, non-discrimination and fair competition;
- (d) demonstrate probity, consistency, accountability and integrity;
- (e) support the Council’s corporate aims of value for money, best practice and leadership; and
- (f) ensure compliance with the Council’s Procurement Strategy.

E1.2 The principles of transparency, non-discrimination and equality are obligations that apply to all procurements and must be complied with at all times.

E1.3 Where these Rules provide for a decision to be made by a Director of Service, the decision may be delegated in writing by the relevant Director of Service to another Officer.

E1.4 These Rules are supplemented by Procurement Procedure Guidance (“PPG”) as indicated. The PPGs will be updated as required so Officers must check the intranet site for the latest version.

E2 Statute

E2.1 The Council is required by s.135 of the Local Government Act 1972 to make standing orders to ensure competition and regulate the procurement process.

E2.2 The Council must also comply with various other statutes when purchasing goods, works or services, including the Public Contracts Regulations 2015

(the “Regulations”). Nothing in these Rules is intended to override national or EU legislation.

- E2.3 The risks of non-compliance are significant and include awards of damages and contracts being set aside.

E3 Compliance

- E3.1 These rules apply to the following undertaken by or on behalf of the Council:-

- (a) the purchase of all goods, services or works;
- (b) concessions*;
- (c) in circumstances where the Council is procuring goods, works or services on behalf of a collaborative working arrangement; and
- (d) in circumstances where the Council is seeking a commercial partner for the purposes of a joint venture.

All references in these Rules apply equally to a) to d) above as appropriate and as advised by Procurement. All Officers are responsible for ensuring compliance with these Rules. (* Note that concessions have a different EU procedure see PPG 11)

- E3.2 Third parties acting on behalf of the Council must also comply with the Rules. Officers instructing third parties to procure contracts must supply the third party with a copy of the Rules.
- E3.3 Officers and third parties must ensure that any conflicts of interest are avoided. Any conflicts of interest must be declared to appropriate line managers as set out in the Officer Code of Conduct. Legal advice must be obtained by Officers where any conflict has potential to impact on contractual relationships.
- E3.4 Corruption is a criminal offence. All Officers who let, manage or supervise contracts must act in accordance with the highest standards of propriety and ensure adequate records are kept.
- E3.5 Differences in the interpretation of these rules will be resolved by the Director of Governance in consultation with the Director of Commercial Management.

- E3.6 These Rules do not apply to the sale, leasing or purchase of land or any interest in land or any contract of employment or loans or the sale, issue or purchase of any shares or other similar financial asset.
- E3.7 These Rules do not apply to an award of a contract in the following circumstances
- E3.7.1 any contracts between the Council and a company that is controlled by it (sometimes referred to as a Teckal company); or
- E3.7.2 any contracts between the Council and a company that is jointly controlled by the Council with another contracting authority; or
- E3.7.3 any contract which establishes or implements a co-operation between the Council and another contracting authority with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common and where implementation of the co-operation is governed solely by considerations relating to the public interest and participating contracting authorities perform on the open market less than 20% of the activities concerned by that co-operation; or
- E3.7.4 any service contract awarded by the Council to another contracting authority on the basis of an exclusive right which the latter enjoys pursuant to a law, regulation or published administrative provision which is compatible with the Treaty on the Functioning of the European Union (also known as “TFEU”).
- E3.8 For contracts falling within the exceptions at E3.7, written advice from the Director of Governance must be obtained to ensure that the specific rules relating to the exceptions apply and to ensure that the award does fall outside of the scope of these Rules.
- E3.9 Additional goods, services or works within the scope of a contract with a company that is wholly or jointly owned by the Council may be permitted but shall comply with the general provisions for authority to vary as found in paragraphs E12.7- E12.9. It may be possible to increase the scope of a

contract falling within E3.7.1 and E 3.7.2, but before seeking to do so, the Officer shall prepare a business case demonstrating value for money. Increasing the scope of such a contract shall comply with the general change principles stated in paragraph 12.5 below, shall be recorded in writing by ODN and shall be authorised by the Director of Service and Director of Governance.

E3.10 In calculating the total value of a contract, the following principles shall apply to determine the total value:

- (a) The total amount payable over the term of the contract plus any extension period, net of VAT, including any form of option and any renewal of the contract by all Council Services utilising the contract;
- (b) Where the award of a contract involves lots, the total amount payable for all of the lots, net of VAT, including any form of option and any renewal of the contract by all Council Services utilising the contract and
- (c) For joint purchasing arrangements, the contract value shall be the aggregate of both parties' spend under the contract.

E3.11 No Officer shall take any steps or omission which seeks to subdivide procurements or payments in order to avoid the application of the Rules or any part of the Rules or the Public Contracts Regulations 2015.

E3.12 Rules relating to grants and collaborative working arrangements are dealt with in Sections F and G of the Financial Procedure Rules.

E4 Consequence of Breach

E4.1 Failure to comply with any of these rules may be considered a breach of the Officer Code of Conduct and may result in disciplinary action and legal proceedings against the Officer or third parties concerned. No Officer shall take any steps or fail to take steps to knowingly or recklessly seek to avoid the Rules.

E4.2 Any Officer who fails to follow the Rules may lose the protection of the indemnity given to Officers by the Council and therefore may have personal liability for a contract or any losses.

- E4.3 Where it becomes apparent that a Service has failed to comply with the Rules the Director of Service must notify the Audit Manager. The Director of Service must compile a report outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence.
- E4.4 The Audit Manager will, if the breach of the Rules is significant, submit a report to the Chief Finance Officer, Director of Commercial Management and Director of Governance with appropriate recommendations before reporting to Audit and Governance Committee.

E5 Review

- E5.1 The Director of Governance will keep the Rules under review and shall have authority to make minor amendments and updates as required.
- E5.2 Any significant changes require the consent of full Council.
- E5.3 The Director of Governance will report to the Audit and Governance Committee who will make recommendations to Council.
- E5.4 The Director of Governance and the Director of Commercial Management will keep Procurement Procedure Guidance under review and have authority to make such amendments and updates as required.

E6 Corporate Contracts

- E6.1 Officers must always check if there is an existing Council contract in place before starting a new procurement activity.
- E6.2 If a Council contract exists, it must be used unless the contract allows for, and the Council's procurement unit ("Procurement") authorise, another course of action.

E7 Frameworks

- E7.1 A framework contract is an agreement with suppliers which establishes the terms governing contracts from which orders for goods, services or works may be placed or 'called off'.
- E7.2 Frameworks may only be used when:-
- (a) the works, goods or services required are clearly identified within the framework; and
 - (b) the framework allows the Council to participate; and
 - (c) the framework adheres to the aims of the Rules.
- E7.3 Officers must ensure that they follow the rules applicable to the framework which set out how individual contracts can be called off. Often this will involve a further procurement activity, referred to as a mini competition. Advice must be sought from Procurement. Advice must be sought from Legal Services concerning the contract terms to ensure the contract terms are acceptable.
- E7.4 Authority to establish a new framework agreement must be evidenced in an Officer Decision Notice (ODN) signed by the Director of Governance and Director of Commercial Management before procurement activity is started and must be supported by a business case. The business case must clearly state the maximum value of the framework agreement, the range of contracting authorities able to call-off from it and monitoring arrangements in particular relating to the total spend under the framework and compliance with call-off procedures.
- E7.5 No framework agreement established by the Council shall exceed a contract term of 4 years unless exceptional circumstances exist which are substantiated and are related to the subject matter of the framework agreement. If a framework agreement is to exceed a term of 4 years then the reasons for this must be set out in the ODN to establish a new framework agreement (see E7.4).

E7.6 No contracting authority shall be entitled to call off from a framework agreement established by the Council unless the contracting authority has signed an access agreement with the Council. The Director of Governance must advise on the most appropriate form of access agreement.

E8 In house suppliers

E8.1 Various services can be provided internally from within the Council or by the Council's controlled companies, (see rule E3.7). Procurement can provide advice on utilising these services.

E9 Joint Procurement

E9.1 It is best practice to consider working with others either internally or externally where there may be benefits to a joint procurement with other service areas or public bodies to achieve economies of scale and prevent duplication.

E9.2 Advice from the Director of Governance must be sought as to the most appropriate form of agreement for joint procurement activity and the apportionment of risk between the parties.

E9.3 If the Council is responsible for any procurement under such joint arrangements which result in the Council entering into a contract with a supplier, the Rules must be followed.

E10 Authority to Proceed

E10.1 Before beginning a procurement, the Officer is responsible for ensuring that the appropriate authority and budget is in place. The form of the authority will depend on the value, strategic importance of the proposed contract, budget implications and risks.

E10.2 Officers must consider whether the decision to procure is a key decision and if so, ensure that details are entered onto the Forward Plan.

E10.3 Authority to proceed must be evidenced in writing. Acceptable forms of authority are;

- (a) minutes of the Cabinet; or

- (b) Officer Decision Notice; or
- (c) Portfolio Holder Decision Notice; or
- (d) relevant extract from the appropriate Service Scheme of Financial Delegation; or
- (e) e mail or other written authority from the budget holder including confirmation that the budget is available.

E10.4 Officer decision notices are only required in relation to decisions to set up a framework E7.4, extend or vary a contract E12.5 or waive these rules E24.

E11 Insurance

E11.1 Officers are responsible for checking that all chosen contractors provide written evidence of adequate insurance to cover public liability, employers' liability and if necessary professional indemnity for the full duration of the contract.

E11.2 Indemnity levels must reflect the risk to the Council which typically will be for each and every contract:-

- (a) £10 million for public liability;
- (b) £10 million for employers liability;
- (c) £1 to 5 million for professional indemnity;
- (d) At least £5 million for medical indemnity for public health services contracts.

E11.3 The levels required may be reduced following the written consent of the Audit and Risk Team either as a one off in respect of a particular contract or, where other arrangements have been agreed, for particular types of contract. The Officer shall consider insurance risks and issues before commencing a procurement and shall seek any necessary approvals prior to issue of the invitation to tender.

E11.4 In some circumstances, it may be necessary to obtain specialist insurance. Officers shall be responsible for making enquiries with Audit and Risk Team.

E12 Form of Contract

- E12.1 The form of contract must be identified. Every request for a quote (“RFQ”) or invitation to tender (“ITT”) must be accompanied by the appropriate form of contract. The Council’s standard form of contract must be used. In exceptional cases, an alternative form of contract may be used such as the supplier’s form of contract or a varied form of the Council’s standard contract, but only after consultation with the Director of Governance and agreement of the relevant Director of Service
- E12.2 E12.1 does not apply to call-off contracts from frameworks. In addition, in appropriate circumstances, industry standards such as PSPC, NEC, JCT, JClI, ACE, RIBA & ICE may be used with the Council’s additional standard clauses covering freedom of information and other local government specific issues. These additional clauses are available from Legal Services. Officers must ensure that the published RFQ/ITT includes the correct form of contract or refers to the correct industry standard.
- E12.3 Letters of Intent will only be used in exceptional circumstances and with the consent of the Director of Governance.
- E12.4 Contracts with a value of less than £100,000 may be signed by two authorised officers in accordance with a Council Service scheme of financial delegation. Contracts for £100,000 or more shall be sealed as a deed by the Director of Governance unless authority has been granted to the contrary by the Director of Governance.
- E12.5 A change to a contract, such as an extension of the contract period (in addition to any extension period included in the original contract), or a change to any of the terms or adding in scope to the goods, works or services, is known as a variation to the contract. When drafting the specification for the ITT, it is good practice to provide for a variation in clear, precise and unequivocal words that state the scope of the variation(s) permitted and the conditions under which the variation(s) shall apply, provided that such variation(s) do not alter the overall nature of the contract. For example, the ITT may state additional goods, works or services which

may be included in the contract in the future, or an extension in time of the contract period.

- E12.6 In relation to EU procurements, variations to contracts shall only be permitted where the variation falls into one of the categories listed in Regulation 72 of the 2015 Regulations or as amended from time to time. Variations to such contracts shall be recorded in writing by Officer Decision Notice and shall be authorised by the Director of Service and Director of Governance. Procurement shall ensure that appropriate notices are issued to comply with Regulation 72 requirements.
- E12.7 For non EU procurements, Officers shall not enter into variations which would extend the contract beyond the original scope or which would increase the contract price by more than an additional 20% of the original contract price, without the approval of the Director of Commercial Management. Such approval shall be evidenced by ODN signed by the Director of Commercial Management and the Director of Service. A business case will be required to obtain this approval. The Director of Commercial Management will keep a record of such approvals. Any variation pursuant to this paragraph 12.7 shall comply with the principles in E12.5 above.
- E12.8 In all cases, any variation shall be agreed between the parties to the contract and as a minimum shall be recorded in writing and signed by the parties.
- E12.9 In no circumstances shall a variation be made to a contract which has ended or which has been terminated. If there is no provision within the contract terms for a variation of the type required, legal advice shall be sought.
- E12.10 Contracts must be effectively monitored throughout the period of the contract by the relevant Service and appropriate records kept until 7 years after the expiry of the contract.
- E12.11 Contracts shall not permit payment in advance except in respect of software licences, hardware or software support, HP leases, deposits, warranties or new or additional water, electricity and gas connections, instigated by a new build or refurbishment project, unless the Director of Service and

Director of Finance agrees otherwise, such agreement to be recorded in writing . Part payments may be made during the contract period after the completion of a stage of work provided that the services, goods or works have been completed or delivered. The contract shall include a clear payment schedule which identifies milestones and payment dates or shall identify the events and performance indicators which will trigger a part payment. No part payment shall be made unless the contract precisely sets out the payment schedule and the circumstances in which the part payment shall be made.

E12.12 Payments made under a contract shall be made in accordance with the relevant Service scheme of delegation.

E13 Bonds and Security

E13.1 A performance bond or adequate security will be required where;

- (a) the nature and length of the contract is such that the risk of failure is sufficiently high; or
- (b) the estimated cost of re-establishing a service if the contract fails is relatively high; or
- (c) the financial and technical standing of the contractor is such that the risk of the failure is sufficiently high.

The decision as to whether a performance bond or other security is required shall be made by the Director of Service in consultation with the Director of Finance and the Director of Commercial Management.

E13.2 The amount of the bond will be 10% of the total contract value unless otherwise agreed by the Director of Finance.

E13.3 Where the contractor is a limited company which is part of a larger group, the ultimate holding company may be required to provide a parent company indemnity in addition to or instead of a performance bond or other security.

E14 Compact for Cheshire West and Chester

E14.1 The Compact for Cheshire West and Chester is a framework designed to build relationships between organisations in the public, voluntary, community and faith sectors. See <http://www.westcheshiretogether.org.uk/>

E14.1 Where a procurement process may involve applicants from the voluntary, community and faith sectors, Officers shall comply with the requirements of the Compact for Cheshire West and Chester

E15 Procurements of Works, Goods or Services below the EU Threshold

E15.1 Where the estimated costs of any goods or services is less than the EU threshold, quotes shall be invited as outlined below;

Value of Goods or Services Procurement	Procedure
Under £25,000	A minimum of one quote shall be sought which shall evidence value for money and the evidence retained.
Between £25,000 – and under £100,000	<p>Either of the following options apply:</p> <p>a) A minimum of three quotations sought via an e tendering portal * or</p> <p>b) Value for money demonstrated in other ways such as benchmarking, market knowledge or market research which shall evidence value for money and the evidence retained for audit purposes allowing the contract award to be made without the need for three quotations **</p> <p>* Procurement will approve which option to apply, depending upon the urgency of the requirement and how many suppliers are available on the open market, and having regard to the general availability of the goods/services being procured .It is also permissible, if the market conditions exist, for a Service to follow the procedure for over £100,000 and up to EU threshold procurements.</p> <p>** PPG 1 deals with value for money considerations and how this must be undertaken and evidenced.</p>
£100,000 and	An openly advertised tender (minimum of

<p>above, up to the EU threshold *</p> <p>*the EU threshold differs for services/ goods and social and health care . Check with Procurement before you start</p>	<p>three tenders where possible) shall be sought through an e tendering portal.</p>
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E15.2 Where the estimated costs of works is below the EU threshold, quotes shall be invited as outlined below

Value of Works Procurement	Procedure
Under £100,000	A minimum of one quote shall be sought which shall evidence value for money and the evidence retained for audit purposes
Between £100,000 and under £1,000,000	minimum of three quotations sought via an e tendering portal
£1,000,000 and above, up to the EU threshold	An openly advertised tender (minimum of three tenders) sought through an e tendering portal.

E15.3 The EU threshold is reviewed annually and advice must be taken from Procurement as to the threshold at the time of planning a procurement.

E15.4 The procedure for under threshold procurements is explained in PPG2.

E16 Procurement of Goods, Services or Works above the EU Threshold

E16.1 The Public Contracts Regulations 2015 apply to above threshold contracts for the supply of goods, services and works. There is a separate procedure, (known as the 'light touch regime'), for social care and health care contracts and other contracts specified in Schedule 3 of the Regulations as explained in PPG3.

E16.2 There are six types of procurement routes available for contracts exceeding the EU threshold:

- (a) Open Procedure;

- (b) Restricted Procedure (including through the use of a dynamic purchasing system);
- (c) Competitive Procedure with Negotiation;
- (d) Competitive Dialogue;
- (e) Innovation Partnerships and
- (f) Call Off from a Framework Agreement.

There is a separate procedure for some types of procurements, known as the light touch regime, which is explained in E16.1 and in PPG3.

E16.3 Advice shall be taken from Procurement as to the most appropriate type of procurement procedure. PPG4 is a general guide to the types of procurement procedures.

E16.4 The procedures to be followed for each type of procurement at E16.2 (a) to (f) above are set out in the 2015 regulations and cannot be varied under any circumstances. PPG5 explains the procedure for the Open Procedure. PPG6 explains the procedure for the Restricted Procedure. The types of procurement at (c), (d) and (e) are not to be used unless the appropriate procedures apply. There is a separate procedure for social care and health care procurements and other contracts specified in Schedule 3 of the Regulations, see E16.1 above. Call-offs under a framework agreement shall follow the procedure set down by the framework authority.

E16.5 Before commencing any above EU threshold procurement, advice must be taken from Procurement and if relevant, the Director of Governance.

E17 Remedies for breach of the Regulations

E17.1 The consequences for breaches of the Regulations for over threshold procurement are significant and include

- (a) setting aside of contracts following a declaration of ineffectiveness;
- (b) financial penalties;
- (c) awards of damages and costs to successful challengers;
- (d) compensation to the contractor for repudiatory breach of contract;

- (e) costs of delays in provision of the required goods/services/works or
- (f) costs of further procurement.

E17.2 Officer compliance with these Rules and the Regulations is therefore essential.

E18 Timescales

E18.1 Procurements over threshold can take a minimum of 4 months and sometimes over 18 months to complete depending on complexity.

E18.1 An accelerated procedure may be available for use in urgent circumstances after consultation with the Director of Governance. The Director of Service shall certify the urgency making it impractical to comply with the stipulated timescales.

E19 Electronic Tendering

E19.1 The Chest is the Council e-procurement software, which is used for competitive procurement activities of £25,000 and over

E19.2 Officers must use The Chest for all procurement with a value of £25,000 and over unless the Director of Commercial Management has provided written consent for the exception or unless the procurement is being conducted through a framework which has its own e-procurement software, when it is permissible to use the e-procurement facility provided by the framework provider .

E20 General Rules for Procurements Involving an Element of Competition

E20.1 For procurements of £25,000 and over, Officers must contact Procurement before the commencement of procurement activities to agree the appropriate process which will ensure value for money and adequate competition.

E20.2 The Officer is responsible for drafting a clear and robust specification. The specification must set out exactly what the Council requires and timescales for delivery.

- E20.3 Where a variant is permitted, the Officer must set out the minimum requirement(s) of the variant. Lots must be considered where appropriate and Procurement will advise on the best use of lots.
- E20.4 The ITT must as a minimum include;
- (a) the time, date and internet address for submission of tenders;
 - (b) information the supplier must provide;
 - (c) timescales for the project;
 - (d) the criteria for award;
 - (e) the contract documents and
 - (f) method for dealing with queries during the tender period
- E20.5 The ITT must state that the Council is not bound to accept the lowest or any tender.
- E20.6 The ITT must set out how errors in tenders will be dealt with using one of the following two ways;
- (a) the tenderer shall be given details of the error(s) found during the evaluation and shall be given the opportunity to confirm without amendment or withdraw the tender; or
 - (b) amending the tender to correct genuine error(s) provided that in this case, apart from these genuine errors, no other adjustment, revision or qualification is permitted.
- E20.7 The ITT must state that by submitting a tender the tenderer agrees to the Council's contract terms. There shall be no discussion or negotiation about the contract terms prior to the tender close date. Once an award has been made, modifications may exceptionally be necessary, for example to address an error, where an issue with consistency with the specification is identified or exceptionally where a condition is at odds with the approach in that sector of the market. Legal advice shall always be obtained to ensure that any modification is appropriately drafted. Such modifications shall comply with the general principles listed below:

- (a) the modifications shall not render the contract materially different from the one forming part of the ITT;
- (b) had the modifications been included originally with the ITT, the modification would not have allowed for the admission of bidders other than those initially selected OR for the acceptance of a tender other than that originally accepted OR have attracted additional bidders;
- (c) the modifications do not change the economic balance of the contract in favour of the contractor in a way which was not provided for in the original contract;
- (d) The modification does not extend the scope of the contract considerably.

Any modifications which do not fall within at least one of the conditions listed in (a) to (d) above shall require approval by ODN from the Director of Governance. Advice shall always be taken from the Director of Governance before agreeing to any modifications of the Council's contract terms.

E20.8 Evaluation criteria are the basis on which scores are given to assess responses. Tender evaluation criteria are assessed on:-

- (a) price or quality only or
- (b) MEAT (Most Economically Advantageous Tender) based on a consideration of quality and cost or
- (c) Life cycle costing or
- (d) Fixed price with quality criterion only.

Guidance on evaluation criteria is contains in PPG7.

E20.9 A record of all tenders received shall be kept on the Chest and shall include

- (a) service name;
- (b) bidder's names;
- (c) tender value;
- (d) date;

- (e) reasons for any disqualifications for late tenders and
- (f) name of those who were invited but did not submit a tender

E20.10 Any request for an extension to a tender period must be made no later than the period stated in the ITT and in any event before the tender close date and shall be agreed by the Director of Commercial Management. If an extended date is permitted all tenderers must be advised.

E20.11 Clear written records must be kept of the assessment process. For EU procurements, a report must be written and retained until the expiry of the contract term. Procurement shall advise what must be recorded in the procurement report.

E20.12 Negotiation or discussion is generally not permitted except for certain types of procedures which permit negotiation or where it clearly states in the ITT that negotiation or discussion is part of the tender process. If used, negotiations or discussions must be recorded either contemporaneously or as soon as possible after the negotiation or discussion has concluded.

E20.13 A contract procured under the Regulations cannot be entered into or a framework agreement concluded until the end of the standstill period. The standstill period is 10 calendar days from issue of the unsuccessful letters and intention to award letter. The period will be extended to the next working day if the standstill period ends on a non-working day. The standstill period ends at midnight.

E20.14 Where timescales allow, for non EU contracts, a voluntary standstill period of 10 days between decision to award the contract and actual contract award can be implemented, depending upon the time available and whether it is appropriate having regard to the subject matter of the contract and other relevant circumstances.

E21 Abandonment

E21.1 If less than three tenders are received, consideration should be given as to whether continuing with the process will achieve a competitive price, value for money and quality of services. A further advertisement may be required.

E21.2 Before abandonment or recommencement of an above threshold procurement, there shall be consultation with the Director of Governance to ensure appropriate procedure and risk management.

E22 Contracts Finder

E22.1 All relevant procurement opportunities which involve an element of competition over £25,000 shall be advertised on “Contracts Finder”. An element of competition means where the procurement opportunity is put into the public domain for the attention of suppliers generally. It does not include situations where a tender or quote is sought from a limited number of suppliers such as a call-off from a framework agreement or seeking quotes/tenders from selected suppliers.

E22.2 An award of a relevant contract shall be notified on “Contracts Finder”.

E22.3 PPG8 explains when an opportunity or award has to be advertised on “Contracts Finder”.

E23 Signing/Sealing

E23.1 All contracts with a value of £100,000 or over will be sealed as a Deed by the Director of Governance, unless authority has been granted to the contrary by the Director of Governance. Contracts below £100,000 may be signed by two authorised signatories in accordance with the Service scheme of delegation.

E23.2 Contracts must be sealed or signed before work is started to ensure incorporation of terms. Making payments before the contract is sealed or signed may be a breach of the Rules and may result in disciplinary action.

E24 Waiving the Rules

E24.1 Where an Officer intends to seek an exemption to these Rules on the grounds set out in E24.3, the Officer shall arrange for consent to be obtained in writing by way of Officer Decision Notice after consultation with the Director of Governance and the Director of Commercial Management.

E24.2 Summary Table: Officers authorised to approve waiving of the Contract Procedure Rules

Under £25,000	Under £100,000	£100,000 and over	Over threshold
Approval of Procurement Officer	Approval of Senior Commercial Manager (Procurement, Finance and Performance)	Approval of at least two of the following: Director of Commercial Management or Director of Finance or Director of Governance or authorised representatives of the above and must in addition be signed by the relevant Director of Service	Unable to waive unless exempt from the Regulations and Director of Governance and the Director of Commercial Management provide prior approval

E24.3 Requests to waive these rules for under threshold contracts may be authorised in the following circumstances following a robust audit;

- (a) goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative; or
- (b) compatibility issues such that procurement from another source would be uneconomic given the investment in previous infrastructure; or
- (c) a waiver of the Rules would be in the interests of the efficient management of the service; or
- (d) where there is a legal requirement to contract with a particular supplier.

E24.4 All such exemptions shall be evidenced by Officer Decision Notice signed by the signatories identified in E24.2. Other than in exceptional circumstances, there shall be no retrospective approval of an exemption.

E24.5 Where it has not been possible to advertise in the OJEU and publish a contract award notice, the Council may, under Regulation 99(3) of the Public Contracts Regulations 2015, publish a Voluntary Transparency Notice,

justifying the decision to award without prior publication of a contract notice. Authority to publish a Voluntary Transparency Notice must be documented in an ODN signed by the Director of Governance, Director of Commercial Management, Chief Executive Officer or the Director of Service, providing full justification for the publication and future procurement plans.

- E24.6 All Officer Decision Notices signed pursuant to E24.4 shall be held by the Audit Manager and shall be available for inspection as required.
- E24.7 The Audit Manager shall report to Audit and Governance Committee regularly on the number of decisions approved pursuant to E24.2 and E24.4 and the number of awards made pursuant to the value for money procedure set out in E15.1, E15.2.
- E24.8 In circumstances where a direct award of a contract has been approved through the value for money procedure set out in E15.1 or E15.2, there is no requirement to obtain the authorisation as set out in E 24.2.

E25 Payment of Undisputed Invoices

- E25.1 The Council has a duty under the Public Contracts Regulations 2015 for every public contract (whether it is above or below the OJEU threshold) to pay undisputed invoices within 30 days. PPG9 explains the requirements for payment of undisputed invoices.
- E25.2 E25.1 does not apply to contracts awarded by a contracting authority which is a maintained school or an Academy nor does it apply to contracts for the procurement of health care services for the purposes of the NHS within the meaning and scope of the NHS regulations.

E26 Public Services (Social Value) Act 2012

- E26.1 The Council must consider the social value of its approach to procurement and whether social or environmental criteria or conditions may be appropriate and permissible.
- E26.2 PPG10 explains the requirements for social value.

E27 Schools

E27.1 The Scheme for Financing Schools (the “SFS”) governs the management by each school of its delegated and devolved budget as determined in s.48 of the School’s Standards and Framework Act 1998. Schools (other than foundation schools or academies) are expected to follow these rules but where there is conflict between the rules and the SFS, the SFS will take precedence.

E27.2 Contracts over £60,000 let by schools spending budgets delegated to them under the SFS must be sealed by the Council in addition to signature by the School’s Governing Body. Schools should follow the purchasing, tendering and contracting requirements at Section 5 of the SFS.

E28 Additional Matters

E28.1 PPG11 sets out additional matters which might be relevant to a procurement and Officers are advised to refer to PPG11 before commencing a procurement.

E29 Consultancy Procedure

E29.1 Officers shall follow the separate consultancy procedure in addition to the Rules. Procurement can give advice on the consultancy procedure. Officers shall contact Procurement before starting any procurement to appoint consultants to ensure the correct procedure is followed.