



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

CONTRACT PROCEDURE RULES

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1 Introduction

- 1.1 These Contract Procedure Rules (“**Rules**”) provide a framework for the procurement of all Goods, Services and Works for the Council, including Light Touch, Concession and Utility Contracts (Special Regime Contracts).
- 1.2 The Council **must** strategically manage its spend and Officers shall ensure that they:
- (a) obtain Value for Money and the required level of quality and performance in all Contracts let;
 - (b) conduct procurement activity openly, transparently and, where practicable, based on standard approaches and use of common systems that appropriately minimise complexity, cost, timescales and requirements for Suppliers;
 - (c) share information for the purpose of allowing Suppliers as well as others to understand the Council Policies and decisions;
 - (d) have regard to the importance of maximising public benefit;
 - (e) treat Suppliers the same unless a difference between Suppliers justifies different treatment; providing that the Council takes all reasonable steps to ensure it does not put any Supplier at an unfair advantage or disadvantage;
 - (f) comply with all legislation that governs and/or relates to the procurement of Goods, Services and Works and the letting of Special Regime Contracts (Procurement Legislation);
 - (g) have regard to the principles of the Welsh Government’s Wales Procurement Policy Statement (WPPS) as may be amended;
 - (h) have regard to the fact that SMEs and VCSEs may face particular barriers to participation, and must consider whether such barriers can be removed or reduced;
 - (i) achieve the organisational outcomes of the Council Policies; Procurement Strategy and Corporate Plan;
 - (j) consider all relevant guidance issued by Welsh Government including Procurement Advice Notes and the Code of Practice on Ethical Employment in Supply Chains;
 - (k) support the achievement of the seven well-being goals for Wales as set out in the Well-being of Future Generations (Wales) Act (2015) being; a prosperous Wales; a resilient Wales; a healthier Wales; a

more equal Wales; a Wales of cohesive communities; a Wales of vibrant culture and thriving Welsh language and a globally responsible Wales;

- (l) support the achievement of social partnership, sustainable development duties the socially responsible procurement duty under the Social Partnership and Public Procurement (Wales) Act 2023 to amongst other things, seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way;
- (m) have procurement processes which, when followed, should protect Members and Officers from any allegation of acting unfairly or unlawfully in connection with any Procurement undertaken by the Council.

- 1.3 Contracts, which involve the receipt of income by the Council or the disposal of an asset or an undertaking by the Council, may often require a competitive Procurement exercise.

The reason for this is because they amount to a “concession”, or confer a competitive advantage on the Supplier as against its competitors, or the Council needs to be able to demonstrate that it has received an appropriate market value.

Therefore, all references to competitive Tenders and Quotations within these Rules shall apply (with such changes as are appropriate) equally to circumstances where the Contract involves the receipt of income by the Council or the disposal of any asset or undertaking by the Council, as they do to purchases to be made by the Council, unless specifically stated otherwise. Disposal of land is not governed by these Rules (see **Rule 4**).

- 1.4 Prior to commencing disposal of an asset or an undertaking, appropriate advice from the Head of Legal and Democratic Services and/or the Director or Finance **must** be sought.
- 1.5 In the event that a Senior Officer determines that Goods are beyond their economic useful life and therefore of no value, they should arrange for recycling as appropriate or disposal as waste. Appropriate records of disposal **must** be documented in line with the Council’s Financial Procedure Rules and Accounting Instructions & Guidelines.
- 1.6 These Rules govern organisational behaviour in the conduct of a Procurement or those arrangements set out in **Rule 1.3**. It is a given that such behaviour is undertaken in support and delivery of the wider Council

Policies and objectives of the Council and in respect of Officers, this includes the Employees' Code of Conduct.

- 1.7 In conducting any Procurement, integrity **must** be demonstrated at all times.
- 1.8 Where Senior Officers wish to exclude the requirements of these Rules, a report **must** be taken to Cabinet. The report to Cabinet **must** be in the standard template on the Council's intranet. The Head of Service may only proceed with the proposed Procurement or Contract once the decision to exclude has been made by Cabinet and passing of any Call-In period.
- 1.9 In line with UK and Welsh Government Procurement Legislation reform, these Rules take effect on **24th February 2025** and nothing in these Rules affect the validity of any action taken before that date under previous Rules.

Procurements and Contracts commenced prior to **24th February 2025** will be subject to Transitional Arrangements and advice should be obtained from the Head of Legal and Democratic Services in relation to such arrangements including where these will expire early as a result of Transitional Arrangements.

- 1.10 Any estimated Contract values or amounts included are **inclusive** of Value Added Tax (VAT) unless specified otherwise.

2 Definitions and Interpretations

- 2.1 In these Rules, the definitions included at **Annex 1** will apply.
- 2.3 Any dispute regarding interpretation of these Rules shall be referred to the Head of Legal and Democratic Services for resolution.
- 2.4 These Rules shall be read in conjunction with the Council's Constitution as a whole and with the Council's Financial Procedure Rules and Accounting Instructions & Guidelines.
- 2.5 The Head of Legal and Democratic Services and the Corporate Procurement Manager shall periodically undertake a formal review of these Rules.
- 2.6 The Head of Legal and Democratic Services may amend these Rules from time-to-time, to ensure that they meet all legal requirements.

3 Compliance with these Rules

- 3.1 Every Procurement undertaken by the Council or any other party on its behalf **must** comply with:
- (a) these Rules;
 - (b) Procurement Legislation and to the extent of any conflict between these Rules and Procurement Legislation, the provisions of Procurement Legislation shall prevail;
 - (c) Any grant or funding agreements which the Council has entered into;
 - (d) the Council's Constitution as a whole and the Council's Financial Procedure Rules and Accounting Instructions & Guidelines;
 - (e) the Council's strategic objectives and Council Policies including its Procurement Strategy and Wellbeing Objectives; and
 - (f) **must** meet the other objectives and requirements listed in **Rule 1.2**.
- 3.2 The Corporate Procurement Manager may from time-to-time issue procurement guidance, following consultation with the Head of Legal and Democratic Services and Director of Finance. Senior Officers in each Service Area must ensure that employees in their Service Area are aware of this guidance and **must** ensure compliance with such guidance.
- 3.3 Any failure by Officers to comply with any of the provisions of these Rules or any associated guidance adopted by the Council may result in disciplinary action.
- 3.4 Any Procurement carried out on behalf of the Council may only be undertaken by Officers with the appropriate delegated authority to carry out such tasks (see **Rule 13**) and who have the necessary capability and capacity to undertake the Procurement.
- 3.5 The Procurement Legislation prescribes the circumstances in which certain notices (some of which are referred to in these Rules) must be published and sets out the requirements as to the contents of such notices. The Corporate Procurement Manager shall co-ordinate the publication of such notices. All Officers involved in Procurement across the Council shall have responsibility for collating information in accordance with procedures, approved by the Corporate Procurement Manager, to facilitate the publication of such notices.

4 Arrangements where these Rules do not apply

- 4.1 These Rules do not apply to:-
- (a) the acquisition or disposal of land. Any land Contracts which involve

development agreements shall be notified to the Head of Legal and Democratic Services and legal advice shall be sought prior to any Procurement);

- (b) contracts of employment which make an individual a direct employee of the Council;
- (c) use of the Council's in-house services;
- (d) Grants (Grants are not regulated by Procurement Legislation, as they are not public contracts. Grants are, however, regulated by subsidy control law in the form of the Subsidy Control Act 2022, case-law and statutory guidance, and by general public law controls relating to fiduciary duty and proper spending of public money. As appropriate, legal and financial advice should be obtained from the relevant Council Officers in relation to the receipt of and administering of Grants and all Grants should be executed under seal and in the presence of the Head of Legal and Democratic Services or nominated officer);
- (e) Instructions and briefs to Counsel issued by or on behalf of the Head of Legal and Democratic Services. The Head of Legal and Democratic Services will make arrangements to ensure that appropriate record is kept of all such instructions or briefs together with a record of Counsel's fee;
- (f) Certain other legal services; financial lending services to the Council; arbitration, mediation or conciliation services, or of any other similar services;
- (g) Public transport Contracts where the Contract falls under the definition of a services concession contract for a public passenger transport service under the Public Service Obligations in Transport Regulations 2023. Advice should be sought from the Head of Legal and Democratic Services on the application of the correct regime.
- (h) Health Procurement if covered by the Health Service Procurement (Wales) Act (2024) and any applicable regulations. Advice should be sought from the Head of Legal and Democratic Services on the application of the correct regime.
- (i) Schools Contracts where they have carried out their own Procurement (the Council will not be the party to such arrangements);
- (j) Entity controlled by the Council (vertical arrangements) subject to

the advice of the Head of Legal and Democratic Services which must be sought on a case-by-case basis;

- (k) Contracts between the Council and another public body (horizontal arrangements) subject to the advice of the Head of Legal and Democratic Services, which **must** be sought on a case-by-case basis.

5 Planning a Procurement

- 5.1 Before commencing a Procurement, the Senior Officer responsible, **must** undertake (or ensure that it is undertaken) the appropriate level of preparation and planning, proportionate to the proposed value and nature of the proposed Contract, taking advice where appropriate, ensuring the requirements of these Rules are complied with and should engage with the Corporate Procurement Manager at the earliest opportunity following consideration of the need to carry out the Procurement.
- 5.2 Officers **must** ensure that they have the necessary authority to carry out the Procurement (see **Rule 13**).

The key tasks at the planning stage include:

- (a) Questioning whether there is a need to undertake the Procurement to begin with;
- (b) Establishing project planning and timeframes, including implementation phases and accounting for a procurement timetable taking advice where necessary;
- (c) Engagement with key stakeholders in order to identify and assess needs – what is being procured and why? Including engaging at early stage of the process, for example with Officers in planning; technical, procurement, legal, financial;
- (d) What is the key driver for the procurement? What are the critical success factors? What outcomes are being sought?
- (e) Checking that no existing in-house provision exists for the Goods, Services or Works required;
- (f) Carrying out of options appraisal to look at different ways of meeting, the identified needs (e.g. buy, lease or rent?)
- (g) Undertaking any pre-market engagement in order to establish realistic market cost, availability of supply base, innovative solutions, local economy and SME development etc;
- (h) Determining budget and funding, to define a realistic budget for the

Contract to achieve the desired results and then securing the funds to finance and manage the contract, any risk assessments;

- (i) Consideration of any collaborative or partnership working;
- (j) Assess and identify any Conflicts of Interest;
- (k) Selection of the appropriate Procurement process or available public sector Framework Agreements or Dynamic Markets;
- (l) preparing the specification (setting out the requirements), and terms of contract using templates as appropriate as set out in these Rules;
- (m) determine the subsequent Contract management arrangements and Supplier performance criteria;
- (n) where a Contract is to be awarded on both Technical and Commercial (Quality and Price), determining the criteria and evaluation methodology, or establishing such in line with the terms of the relevant Framework Agreement or Dynamic Market.
- (o) considering whether a report is required for budget approval and/or authority to be delegated to the Officer in order to carry out the Procurement;
- (p) considering whether a report is required to award the final outcome of any Procurement.

5.3 The results of this planning stage **must** be properly documented by the Senior Officer responsible for the proposed Procurement (or their nominated deputy) utilising the **Procurement Planning Document**. A Procurement Plan is encouraged for all values of Procurement by each Service Area.

5.4 Consideration **must** be given to whether the proposed Contract could reasonably be supplied under more than one Contract, and whether such Contracts could be appropriately awarded by reference to lots. If such Contracts could be appropriately awarded by reference to lots, arrangements **must** be made for the award of the Contract(s) by reference to lots, or reasons for not doing so **must** be recorded.

5.5 Officers shall undertake a Procurement in a planned and transparent manner, and should not discriminate against Treaty State Suppliers. The Council shall publish a forward-looking Procurement Pipeline and all Heads of Service must provide the Corporate Procurement Manager with their Procurement Forward Workplan when so requested by the

Corporate Procurement Manager and update the Corporate Procurement Manager of any changes as soon as reasonably practicable.

The Corporate Procurement Manager will use the Procurement Forward Workplan to populate the Procurement Pipeline.

- 5.6 Engagement with Suppliers and other persons for the purpose of developing the Council's requirements and approach to the Procurement, designing a procedure, identifying potential Suppliers, identifying likely contract terms and building capacity in the market (together, "**Preliminary Market Engagement**") is permitted.
- 5.7 All Preliminary Market Engagement **must** be proportionate and relevant to the Procurement and be conducted in accordance with the advice of the Corporate Procurement Manager.
- 5.8 When carrying out Preliminary Market Engagement, steps **must** be taken to ensure participating Suppliers are not put at an unfair advantage and competition is not otherwise distorted.
- 5.9 If it is considered that a Supplier's involvement in Preliminary Market Engagement has put the Supplier at an unfair advantage that cannot be avoided, the Supplier **must** be excluded from the Procurement.
- 5.10 Where the value of the Procurement meets or exceeds **£30,000** (inc VAT) for Goods or Services and meets or exceeds **£75,000** (inc VAT) for Works, if Preliminary Market Engagement is carried out, a Preliminary Market Engagement Notice **must** be published before a Tender Notice, or the reasons for not doing so **must** be provided in the Tender Notice.

6 Advice and Risk Assessment

- 6.1 At the outset of a Procurement, the Senior Officer must refer to the Corporate Procurement Manager all proposed Procurements with an estimated value that meets or exceeds **£30,000** (inc VAT) for Goods and Services and that meets or exceeds **£75,000** (inc VAT) for Works, by means of submitting the **Procurement Planning Document**. In addition to these Rules, the Senior Officer **must** follow all guidance issued by the Corporate Procurement Manager in respect of the Procurement.
- 6.2 The advice of the Head of Legal and Democratic Services **must** be sought on all Procurements with an estimated value that meets or exceeds **£75,000** (inc VAT) and for lower value requirements where the complexity of the Procurement requires, for example; the inclusion of bespoke clauses.

- 6.3 For Procurements with an estimated value that meets or exceeds **£30,000** (inc VAT) for Goods and Services and that meets or exceeds **£75,000** (inc VAT) for Works; the Senior Officers shall carry out a risk assessment (proportionate to the nature and value of the proposed Contract). The risk assessment shall be included within the **Procurement Planning Document** at the outset and thereafter maintained and updated throughout the Procurement . The decision maker **must** be informed of any risks identified and of the contingency measures in place.
- 6.4 When carrying out any risk assessment in respect of a proposed Procurement, compliance with these Rules **must** be documented.

7 Personal Data

- 7.1 In carrying out any Procurement, the Senior Officer **must** take all steps, including incorporation of appropriate detail into the Tender documentation and Contract, to ensure that the personal data of individuals is protected in accordance with Data Protection Legislation.
- 7.2 The Senior Officer **must** ensure the Councils' obligations and risks, in respect of personal data, are considered and indemnities are sought where appropriate.

8 Community Benefits / Social Value

- 8.1 Community Benefits / Social Value clauses within contracts are used to build a range of economic, social or environmental conditions into the delivery of a contract and the Council **must** maximise the Community Benefits / Social Value to be obtained through its Procurement activity in line with any guidance or policies created.
- 8.2 All Contracts exceeding **£1,000,000** (inc VAT) or such other value determined by the Council **must** include a contractual obligation on the successful Supplier to deliver Community Benefits / Social Value.
- 8.3 For all Contracts below the figure determined in **Rule 8.2**, the inclusion of Community Benefits / Social Value as a contractual obligation is optional but shall be considered.
- 8.4 In all cases where Community Benefits / Social Value are being delivered, there **must** be a contractual requirement for the successful Supplier to provide monitoring information on the Community Benefits / Social Value and the named contract manager (**'Contract Manager'**) as part of the contract management process should monitor the delivery of Community Benefits / Social Value.

- 8.5 Regard **must** be given to the Welsh Government guidance on Community Benefits / Social Value and such other guidance as may be issued from time-to-time on the approaches to delivering Community Benefits / Social Value through Council contracts.
- 8.6 Advice and guidance on Community Benefits / Social Value is available from the Council's Community Benefits Officer.

9 Declaration and Conflict of Interest

- 9.1 No member, employee or agent of the Council shall improperly use their position to obtain any personal or private benefit from any contract entered into by the Council.
- 9.2 Members and employees of the Council shall comply with the requirements of Section 117 of the Local Government Act (1972) and, as appropriate, the Employee Code of Conduct and Members Code of Conduct set out in the Constitution in respect of the declaration of interests in contracts with the Council.
- 9.3 Such interests **must** be declared to the Head of Legal and Democratic Services for inclusion in the appropriate registers.
- 9.4 All reasonable steps **must** be taken to identify and keep under review in relation to a Procurement, any potential, perceived or actual conflicts of interest. A conflict of interest arises where there is a conflict between the interests of a person acting in relation to or influencing the decisions of a Procurement exercise, and/or those associated with that person, and the interests of the Procurement itself.

All Officers who act in relation to a Procurement or may be able to influence the decisions of a Procurement **must** complete a Confidentiality and Conflict of Interest Declaration specific to the Procurement.

Advice should be sought from the Head of Legal and Democratic Services where any concerns arise.

10 Welsh Language

- 10.1 Procurement Documentation **must** state that Tenders or Quotations may be submitted in Welsh.
- 10.2 Procurement Documentation **must** be published in Welsh, where the subject matter of the Tender or Quotation suggests that it should be produced in Welsh, or anticipated audience, and their expectations, suggests that the document should be produced in Welsh.

10.3 Where a Tender or Quotation has been submitted in Welsh, it **must** be treated no less favourably than a submission in English (including, amongst other matters, in relation to the closing date and time for receiving submissions, and in relation to time-scales for informing Suppliers of decisions).

10.4 If a Tender or Quotation has been submitted in Welsh, and it is necessary to conduct interviews as part of the evaluation process, the Council **must** offer to provide a translation service from Welsh to English to enable the Supplier to use the Welsh language at the interview.

If the Supplier wishes to use the Welsh language at interview, provide a simultaneous translation service for that purpose (unless the Council conducts the interview in Welsh without a translation service).

10.5 When informing a Supplier of the decision in relation to a Tender or Quotation, this **must** be in Welsh if the Tender or Quotation was submitted in Welsh.

10.6 Where relevant to the subject matter of the Contract, Contracts **must** contain provision requiring the Supplier to comply with all applicable requirements of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards issued to the Council.

11 Pre-Qualification and Exclusion (applies to all)

11.1 The Council shall only enter into a Contract with a Supplier if it is satisfied as to the Supplier's competencies.

Conditions of participation **must**:

- (a) be related to a Supplier's legal and financial capacity, or technical ability, to perform the contract;
- (b) be a proportionate means of ensuring a Supplier's relevant capacity or ability, having regard to the nature, complexity and cost of the Contract;
- (c) allow for equivalents (when requesting particular qualifications or memberships, for example);
- (d) allow for international equivalents to UK standards;
- (e) be distinct from award criteria: focus only on the Supplier's credentials, and not their Tender;

11.2 Conditions of participation **must not**:

- (a) require Suppliers to submit audited annual accounts unless they're

required to under the Companies Act 2006 or an overseas equivalent;

- (b) require Suppliers to have insurances needed to deliver the contract in place prior to Contract award;
- (c) break any rules on technical specifications;
- (d) require particular qualifications without allowing for equivalents;
- (e) require Suppliers to have been awarded a Contract by a specific public body.

11.3 During a Procurement, a Supplier may be identified as an Excluded Supplier or an Excludable Supplier following assessment against the Exclusion Grounds and Exclusion Grounds Guidance Note issued by the Head of Legal and Democratic Services. A Procurement may require that a Supplier is assessed against the Exclusion Grounds.

11.4 A Tender submitted by an Excluded Supplier **must** be disregarded by the Council. A Tender submitted by an Excludable Supplier, may be disregarded at the discretion of the Council.

11.5 An assessment of a Supplier against the Exclusion Grounds and a decision as to the exclusion of a Supplier from a Procurement **must** be undertaken in consultation with the Head of Legal and Democratic Services.

12 Estimating Contract Value

12.1 The estimated value of a Contract shall be the value of the whole cost of the Contract, inclusive of value added tax, which the Council expects to be payable under the Contract, including (where applicable) amounts already paid by the Council, over its full duration (not the annual value).

12.2 Where the value of the Contract cannot be estimated, for example because the duration of a Contract is unknown the value of the Contract shall be treated as an amount of more than the Threshold amount for the type of Contract. If there is uncertainty over calculating the estimated value of the proposed Contract then the advice of the Corporate Procurement Manager **must** be sought.

12.3 In determining the value of the whole cost which the Council expects to pay, the Senior Officer shall take account, where relevant:

- (a) the term/period of the proposed Contract;
- (b) any rights to renew the Contract / extend the Contract period;
- (c) any prize, payment, premium, fees, commission, interest or other

form of remuneration payable under the proposed Contract or in respect of the proposed Procurement (i.e. for Concession Contracts this shall be the maximum amount the Supplier could expect to receive under or in connection with the Contract including where applicable, amounts already received).

- 12.4 No Works or requirements for Goods or Services may be artificially split to avoid compliance with these Rules or Procurement Legislation.
- 12.5 In considering if the proposed Contract meets or is over Threshold, due regard **must** be given to the ‘methods for calculating the estimated value of a Procurement’ set out in Procurement Legislation and advice should be taken from the Head of Legal and Democratic Services and the Corporate Procurement Manager.
- 12.7 When determining the value for Framework Agreements, Dynamic Markets, mixed Procurements or Concessions Contracts, advice of the Head of Legal and Democratic Services and Corporate Procurement Manager **must** be sought.

13 Authorisation for Procurement

Prior to commencing a Procurement, authority should be in place.

Authority **must** be obtained from the relevant decision maker as set out in the table below.

The relevant decision maker is as set out in the table below:

Contract type	Estimated Contract Value or Actual Contract Value	Decision Maker
Goods / Services	£0 - £299,999	Head of Service
Goods / Services	£300,000 - £1,999,999	Head of Service in consultation with Cabinet member
Goods / Services	£2,000,000 and above	Cabinet
Works / Concessions / Light Touch Contracts	£0 - £299,999	Head of Service
Works / Concessions / Light Touch Contracts	£300,000 - £4,999,999	Head of Service in consultation with Cabinet member
Works / Concessions / Light Touch Contracts	£5,000,000 and above	Cabinet (Delegated authority may be granted, if so authorised by Cabinet to the

		Chief Executive, Director or Head of Service to make the final award if so determined by Cabinet)
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14. Notices (to be published on Sell2Wales)

- 14.1 The Corporate Procurement Manager shall co-ordinate any notices required to be published dependent on the Procurement and will provide advice to Officers where a notice will be required (see **Annex 3**).
- 14.2 For Goods, Services and Works Contracts, a Below Threshold Tender Notice **must** be published to advertise a Contract of an estimated value of **£30,000.00** (inc. VAT) and above, unless Officers intends to invite Quotations or Tenders from a closed group of pre-selected suppliers, (i.e. suppliers on a Framework) or from one or more targeted Suppliers, so long as Officers do not advertise the Procurement in any other way (for example in a newspaper or on a local website or portal). In these circumstances, only the Contract Details Notice is mandatory once the Cis awarded (see **Rule 14.3**).
- 14.3 A Contract Details notice **must** be published as soon as reasonably practicable after entering into a Contract with an estimated value of not less than **£30,000** (inc VAT).

15 Circumstances where Contracts may be awarded without a new competition

- 15.1 A Contract may be awarded directly to a Supplier that is not an Excluded Supplier where any of the following justifications apply:
- (a) Production of a prototype, or supply of other novel Goods or Services for the purpose of testing such novel Goods or Services, researching the validity of such novel Goods of Services, or otherwise for the purpose of other research, experiment, study or development;
 - (b) The creation or acquisition of a unique work of art or artistic performance;
 - (c) Where the Supplier, and only the Supplier, enjoys an exclusive right, including any intellectual property right, to provide or supply the Goods, Services or Works, and where there are no reasonable alternatives to those Goods, Services or Works;

- (d) Where there is an absence of competition for technical reasons, such that only a particular Supplier can supply the Goods, Services or Works required, and where there are no reasonable alternatives available to those Goods, Services, or Works;
- (e) The supply of additional or repeat Goods, Services or Works by an existing Supplier to the Council, which are intended as an extension to, or partial replacement of, the existing Goods, Services or Works already supplied, and where a change of Supplier would result in the Council receiving Goods, Services or Works that are different from, or incompatible with, the existing Goods, Services or Works; and either:
 - (i) the difference in incompatibility would result in disproportionate technical difficulties in operation or maintenance; or
 - (ii) the difference in incompatibility would result in significant additional costs to the Council such that supplying the additional Goods, Services or Works from the existing Supplier can be shown to represent Value for Money.
- (f) The supply of Goods, Services or Works by an existing Supplier that are similar to existing goods, services or works where:
 - (i) the existing Goods, Services or Works were supplied under a Contract that was awarded in accordance with a Competitive Tendering procedure within the period of **5 (five)** years ending with the day on which the transparency notice was published; and
 - (ii) the Tender Notice or any Tender document in respect of that earlier Contract set out the Council's intention to carry out a subsequent procurement of similar Goods, Services or Works in reliance on this Direct Award justification.
- (g) The supply of Goods on a commodity market;
- (h) The award of the Contract to a particular Supplier will ensure terms particularly advantageous to the Council due to the fact that a Supplier, whether or not the one to whom the Contract is to be awarded, is undergoing insolvency proceedings;
- (i) Urgency where the Goods, Services or Works to be supplied under the Contract are strictly necessary for reasons of extreme and unavoidable urgency (urgency is unavoidable if it is not attributable to any act or failure to act by the Council); and as a result the public

Contract cannot be awarded on the basis of a competitive tendering procedure;

- (j) Direct Award to protect life where secondary legislation has been made authorising the Direct Award;
- (k) Switching to a Direct Award where no or no suitable tenders or requests to participate have been received in that competitive Tendering procedure and the Council considers that the award of a Contract using a competitive tendering procedure is not possible;
- (l) Contracts awarded under an established Framework Agreement, Dynamic Market or orders placed under an established Contract where these are compliant with Procurement Legislation and where the award is in accordance with the terms of the Framework Agreement, Dynamic Market or Term Contract

These may be external Framework Agreements where the Council is named as able to use it, or internal (i.e. Council established) Framework Agreements, Dynamic Market or Term Contracts in accordance with **Rule 14**.

For all external arrangements, the Corporate Procurement Manager should be consulted prior to the Procurement.

- (m) Goods, Services and Works procured by another public body on behalf of, or for the joint benefit of the Council and other parties, and provided that, in such case, the other public body's Procurement or Contract Procedure Rules and Procurement Legislation is complied with. Advice should be sought from the Head of Legal and Democratic Services on the establishment or review of any collaboration or joint working arrangements in this instance.
- (n) Light Touch Contracts that are supplied for the benefit of a particular individual and in respect of which the Council would, in awarding a Contract for their supply, be required legally to have regard to the views of the individual or a person providing care to the individual (their carer), in relation to who should provide the Services., and the individual or carer has expressed a preference as to who should supply the Services, or the nature of the Services is such that only one supplier is capable of providing the Services and the Council considers that it is not in the best interests of the individual to award the Contract under a competitive tendering procedure.

- 15.2 When placing reliance on the exemptions stated above the Senior Officer should ensure that the best possible Value for Money is obtained for the Council and for Procurements with an estimated value meeting the Threshold or exceeding it, advice should be sought from the Head of Legal and Democratic Services.

16 Framework Agreements or Dynamic Markets

- 16.1 The Council is able to access a number of its own as well as external Framework Agreements and Dynamic Markets for types of Goods, Services and Works.
- 16.2 The Corporate Procurement Manager will maintain a register of the arrangements in **Rule 16.1**, which may be referenced against the Council's own Corporate Contracts Register, referenced in **Rule 37**, and can provide advice on their use and any exceptions granted.
- 16.3 It is the responsibility of the Service Area requiring the Procurement to ascertain whether there is a compliant arrangement or other corporate purchasing agreement in place by liaising with the Corporate Procurement Manager. If such arrangement exists, then Service Areas **must** use these unless deemed appropriate to use an alternative source by the relevant Senior Officer of a Service Area.
- 16.4 When using external or Council Framework Agreements or Dynamic Markets, all guidance issued in relation to their use **must** be followed by the Service Area. The stated award criteria, weightings and the Terms and Conditions specified **must** be used in order to be compliant with Procurement Legislation. It is the responsibility of the Service Area requiring the Procurement to ensure that all supporting documentation necessary, including any risk assessment and/or business case for Direct Award without competition, is assembled and completed, before placing reliance on it.
- 16.5 Where Goods, Services or Works are regularly required, and arrangements described in **Rule 12** are not available, consideration **must** be given to establishing a term arrangement, either by means of a Framework Agreement, Dynamic Market, or Term Contract, and the advice of the Corporate Procurement Manager **must** be obtained.

17 Collaborative and Joint Working Arrangements

- 17.1 Any consortia procurement arrangements **must** be approved for use by the Head of Legal and Democratic Services before reliance is placed on such arrangement.

17.2 Before proceeding with any proposed joint working arrangements, legal advice should be sought from the Head of Legal and Democratic Services.

18 Process for carrying out Procurement

18.1 Where possible, Goods, Services and Works **must** be obtained via existing approved arrangements including:

- (a) Council Framework Agreements or Dynamic Markets; and
- (b) Framework Agreements, Dynamic Markets and other corporate arrangements approved for use by the Corporate Procurement Manager.

18.2 Goods and Services - Value up to £10,000 (inc VAT)

18.2.1 For Procurements with an estimated value of up to **£10,000** (inc VAT):

- (a) the minimum requirement is that **1 (one)** written Quotation is obtained although competition is encouraged. It is, however, still necessary for the Service Area to be satisfied and able to demonstrate that it has obtained Value for Money;
- (b) The Service Area **must** keep an appropriate file record evidencing matters, including that relevant competency and capability assessments have been undertaken.

18.3 Goods and Services – Value £10,000 to £30,000 (inc VAT)

18.3.1 For Procurements with a value of **£10,000** up to **£30,000** (inc VAT) then:

- (a) a minimum of **3 (three)** written Quotations must be requested from suitable Suppliers.
- (b) It is considered to be in the interests of the Council to seek **3 (three)** written Quotations and the Senior Officer is satisfied and able to demonstrate that Value for Money has been obtained; however **1 (one)** written Quotation may be relied upon in circumstances where limited response is received providing the Senior Officer is satisfied and able to demonstrate that Value for Money has been obtained.
- (c) The Service Area **must** keep an appropriate file record evidencing matters, including that relevant competency

and capability assessments have been undertaken.

18.4 Goods and Services – Value £30,000 (inc VAT) up to but not including Threshold for Goods and Services

18.4.1 For Procurements with an estimated value of **£30,000** (inc VAT) up to the Thresholds for Goods and Services then:

- (a) all requirements **must** be advertised on Sell2Wales and conducted via the Council's approved eTendering system as per **Rule 19**.
- (b) the Council's **Procurement Planning Document** and **Contract Award Form** **must** be used to record the Procurement actions taken for Goods and Services that are up to but not including **£30,000** (inc VAT).

18.5 Threshold Goods, Services and Special Regime Contracts

18.5.1 In the case of Procurements that fall under the Procurement Legislation, the advice of the Corporate Procurement Manager and Head of Legal and Democratic Services **must** be sought at the outset to determine the Procurement to be followed by completing a **Corporate Procurement Notification Form**;

- (a) the Procurement will be carried out in accordance with the advice received; and
- (b) the requirements of Procurement Legislation will take precedence over any requirements set out in these Rules.

18.6 Works Value up to £10,000 (inc VAT)

18.6.1 For Procurements with an estimated value of up to **£10,000** (inc VAT) the minimum requirement is the **1 (one)** written Quotation is obtained, although where practical, competition is encouraged.

It is, however, necessary for the Service Area to be satisfied and able to demonstrate that it has obtained Value for Money.

18.6.2 The Service Area **must** keep an appropriate file record evidencing matters, including that relevant competency and capability assessments have been undertaken.

18.7 Works Value £10,000 to £75,000 (inc VAT)

18.7.1 For Procurements with a value of **£10,000** up to **£75,000** (inc VAT) then:

- (a) the requirement should be openly advertised on Sell2Wales;
- (b) if it is not practicable to comply or a Senior Officer determines otherwise then:
 - i. a minimum of **3 (three)** written Tenders **must** be requested from suitable providers; or
 - ii. **1 (one)** written Tender may be relied upon in circumstances where it is not considered to be in the interests of the Council to seek **3 (three)** written Tenders and the Senior Officer is satisfied and able to demonstrate that Value for Money has been obtained.
- (c) The **Procurement Planning Document** **must** be used to record the actions taken and the circumstances where it is not considered to be in the interests of the Council you seek **3 (three)** written Tenders and the reasoning to support this.

18.8 **Works Value £75,000 (inc VAT) up to but not including Threshold for Works contracts**

18.8.1 For Procurements with a value of **£75,000** (inc VAT) up to but not including the Threshold for Works, then:

- (a) All requirements **must** be advertised on Sell2Wales;
- (b) the Council's **Pre-Tender Report** and **Contract Award Report** **must** be used to record the procurement actions taken on all Works Procurements that are up to but not including the Threshold for Works.

18.9 **Threshold Works**

18.9.1 In the case of Procurements that fall under the Procurement Legislation, then:

- (a) the advice of the Corporate Procurement Manager and Head of Legal and Democratic Services **must** be sought at the outset to determine the Procurement Process to be followed and at all subsequent stages of the Procurement;

- (b) the Procurement Process will be in accordance with the advice received; and
- (c) the requirements of Procurement Legislation will take precedence over any requirements set out in these Rules.

19 Electronic Tendering

19.1 From **1st April 2025** (or such latter date as the Corporate Procurement Manager may direct), all Procurements with a value of **£10,000** (inc VAT) or above **must** be conducted using the Council's approved eTendering system. It is the responsibility of the Senior Officer of each Service Area to ensure that their staff comply with this rule. For the avoidance of doubt, any reference to the use of the eTendering system shall not apply prior to the **1st April 2025**.

19.2 Any Officer required to use the Council's approved eTendering system must notify the Council's Procurement Team so that they may be given access to the system. Similarly, it is the responsibility of the relevant Senior Officer to notify the Corporate Procurement Manager of changes to any Officer's eligibility to use the system (e.g. staff leaving or disciplinary measures) at the earliest opportunity so that the user access can be deactivated.

19.3 Where **Rule 19.1** applies, all Tenders including all supporting documentation **must** be received via the Council's approved eTendering system.

No formal communication shall be made outside of the system unless previously agreed with the Head of Legal and Democratic Services.

19.4 In exceptional circumstances, and only with the prior agreement of the Senior Officer of the Service requiring the Procurement and the Head of Legal and Democratic Services, hard copy Tenders may be accepted and the provisions in these Rules complied with.

20 Contents of Tenders

The ITT must include details of the Council's requirements for the particular contract including:

- (a) a specification of the Services, Goods or Works being procured and instructions on whether any variants are permissible;
- (b) the Procurement timetable including the tender closing date and time, which shall allow a reasonable period for the Suppliers to prepare their Tenders;

- (c) the Council's Standard Terms and Conditions;
- (d) the evaluation criteria including attached weightings;
- (e) the Form of Tender;
- (f) pricing mechanism and instructions for completion;
- (g) whether the Council is of the view that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply;
- (h) form and content of method statements to be provided;
- (i) rules for submitting Tenders;
- (j) any further information, which will inform or assist Suppliers in preparing Tenders.

20.2 Every Supplier submitting a Tender will be required to sign a declaration to the effect that:

- (a) they have not and will not inform any other person of the amount of their Tender;
- (b) they have not fixed the amount of any Tender in accordance with a price fixing arrangement;
- (c) they accept that the Council is entitled to cancel the Contract and to recover from them the amount of any loss resulting from such cancellation if it is discovered that there has been any corrupt or fraudulent act or omission by them which in any way induced the Council to enter into the Contract;
- (d) acknowledging that the Council is not bound to accept the lowest or any Tender, that the Procurement may be abandoned at any stage during and that they are liable for their own costs and expenses.

20.3 In respect of proposed Procurements with an estimated value in excess of **£30,000** (inc VAT) for Goods and Services including Special Regime Contracts and over **£75,000** (inc VAT) for Works, the Service Area **must** consult the Corporate Procurement Manager for advice regarding the Procurement Documentation (ITT, Specification, evaluation criteria and weightings etc).

20.4 Prior disclosure of the award criteria and weightings is a fundamental requirement that **must** be complied with for all the Council's Procurements. Any particular scoring or weighting attributable to any criteria or sub-criteria **must** be clearly stated.

21 Receipt, Custody and Opening of Electronic and Hard Copy Tenders

21.1 Where these Rules require and even when the Rules do not require but it is practicable, the Council's approved eTendering system **must** be used. After the Tender closing date and time has passed, Tenders **must** be opened in accordance with guidance issued by the Corporate Procurement Manager, and the record kept shall, as a minimum, meet the requirements set out in the guidance document issued by the Corporate Procurement Manager.

21.2 In exceptional circumstances, where the Council's approved eTendering system is not being used (with the prior agreement of the Corporate Procurement Manager), then the following procedure **must** be adhered to for the submission of hard copy Tenders.

(a) The Head of Legal and Democratic Services will be responsible for the receipt, custody and opening of such Tenders. After the Tender closing date and time has passed, Tenders for the same procurement will be opened consecutively at the same session in the presence of at least **2 (two)** employees designated for the purpose and a Cabinet Member.

(b) The Head of Legal and Democratic Services will nominate one employee and the Senior Officer will nominate the other employee.

(c) Both employees **must** be independent to the letting of the Contract.

(d) When opened, all Tenders will be recorded in a Tender register and the Tenders and register will be initialled and dated by designated employees present at the time. The opened Tenders will then be sent to the Evaluation Panel.

21.3 Tenders received after the Tender Closing Date and Time may only be opened and considered following consultation with the Head of Legal and Democratic Services.

Any such decisions **must** demonstrate good reason why it is considered appropriate to accept the late Tender submission and the decision recorded.

22 Tender Evaluation

22.1 For each Procurement with an estimated value that meets or exceeds **£30,000** (inc VAT) in respect of Goods and or Services including Special Regime Contracts and that meets or exceeds **£75,000** (inc VAT) in respect of Works; the Senior Officer of the Service Area requiring the Procurement

shall form an evaluation team ('**Evaluation Panel**') with responsibility for evaluating Tenders.

Written records of the membership of the Evaluation Panel and evaluation undertaken **must** be kept.

- 22.2 The Evaluation Panel shall evaluate Tenders in accordance with the predetermined evaluation criteria. The evaluation criteria shall be strictly observed (and remain unchanged) at all times throughout the Contract award procedure.
- 22.3 As a general rule, no adjustment or qualification to any Tender(s) submitted is permitted. Errors found during the Tender evaluation shall be dealt with in one of the following ways:
- (a) If the error is not arithmetical the Supplier shall be given details of the error(s) and shall be given the opportunity of confirming without amendment or withdrawing the Tender; or
 - (b) If an arithmetical error is found, the responsible officer shall correct the error(s) provided that, apart from these genuine arithmetic error(s), no other adjustment revision or qualification is permitted. An appropriate record **must** be kept.

23 Tender Clarification and Abnormally Low Tenders

- 23.1 Where a Procurement is conducted pursuant to Procurement Legislation, there are restrictions on the use of post-Tender clarifications and legal advice must be sought before determining whether any clarification would be appropriate.
- 23.2 The Senior Officer, following consultation with the Corporate Procurement Manager and in accordance with any requirements set by the Corporate Procurement Manager (regarding records to be kept) may seek clarification from Suppliers in respect of their Tenders provided this does not involve discrimination. A record of all clarifications needs to be maintained including minutes of any clarification interviews.
- 23.3 All valid clarifications and questions from Suppliers **must** be resolved before opening the Tenders. A valid clarification may be a question that was submitted by a Supplier in line with the Tender guidance and within the deadline given for any clarification requests.
- 23.4 Consideration **must** be given by the Senior Officer as to whether any Tender received by a Supplier is abnormally low. Abnormally low shall be taken to mean a Tender whose price is considered significantly lower than

most of or the average of all Tenders in the same Procurement process. Where the Officer considers a Tender has an abnormally low price it **must** notify the Supplier that it considers the price to be abnormally low and **must** give the Supplier reasonable opportunity to demonstrate that it will be able to perform the Contract for the price offered. Where it demonstrates to the Officer's satisfaction that it will be able to perform the Contract for the price offered, the Council may not disregard the tender on the basis of abnormally low price.

If the Supplier does not satisfy the Council, their Tender may be disregarded. A Tender should only be disregarded on these grounds after consulting the Head of Legal and Democratic Services.

Records of all communications with Suppliers which are made prior to Contract Award and concern the Procurement or Contract **must** be retained.

Communications must be electronic.

24 Notification of Results, De-briefing and Standstill Period

- 24.1 Following a Procurement that meets or is over Threshold, the Contract cannot be entered into before the end of the mandatory standstill period (**8 working days** beginning on the day the Contract Award Notice is published) and cannot be entered into before the end of any standstill period longer than **8 working days**, where such longer period has been provided for in the Contract Award Notice.
- 24.2 Where there is no legal requirement for a mandatory standstill period, a voluntary standstill may be provided for and must not be less than **8 working days** with the day the Contract Award Notice is published.
- 24.3 Before publishing a Contract Award Notice, an assessment summary **must** be provided to each Supplier that submitted an assessed Tender, which includes information about the assessment of the tender, and if different, the Most Advantageous Tender (MAT) submitted.
- 24.4 If any additional information is to be disclosed to Suppliers, this must be agreed in advance with the Corporate Procurement Manager, taking into account the requirements of any legislation relating to the disclosure of information.

25 Awarding Contracts and Letters of Intent

- 25.1 A Contract must be awarded to the Supplier that submits the Most Advantageous Tender (MAT).

- 25.2 The award criteria is the criteria to evaluate Tenders against for the purpose of awarding a Contract to the Most Advantageous Tender (MAT).
- 25.3 Award criteria are the criteria, which have been set for the competitive procedure. Award criteria **must**:
- (a) relate to the subject matter of the Contract;
 - (b) be sufficiently clear;
 - (c) be measurable and specific;
 - (d) must not be discriminatory (in particular with respect to requirements regarding technical specifications); and
 - (e) be a proportionate means of assessing Tenders, having regard to the nature, complexity and cost of the Contract.
- 25.4. When setting award criteria, it **must** be specified how Tenders are to be assessed against them, and where there is more than **1 (one)** criterion their relative importance **must** be indicated.
- 25.5 Additional considerations apply to the setting of award criteria for Light-Touch Contracts and the guidance of the Corporate Procurement Manager should be followed for such Procurement processes.
- 25.6 For all Procurements valued at or exceeding **£30,000** (inc VAT) per annum, the decision to award a Contract shall be made using the Council's **Contract Award Report** or Cabinet Report when requiring Cabinet authorisation for accepting a Tender or Quotation. The Senior Officer must ensure, prior to seeking such a decision, that sufficient funds are in place to meet all Contract payments and if any funding is being obtained from third parties that any conditions attaching to such funding have been complied with.
- Any Contract that is awarded using third party funding should include funding conditions so as to allow the Council to claw-back funding, where required and not cause the Council to be in breach of the conditions of the funding to the Council.
- 25.7 A letter of intent is not an appropriate substitute for a formal Contract but in exceptional circumstances can be issued as an interim measure until a formal Contract has been executed. Letters of intent shall only be used with the prior agreement of, and in a form approved by, the Head of Legal and Democratic Services.
- 25.8 Save for exceptional circumstances, no successful Supplier should be asked to provide any Services, supply any Goods or carry out any Works

(including preliminary Works) until the Contract is concluded or the Services, Goods or Works concerned are covered by a letter of intent. Should the Senior Officer for the Service Area concerned make any decision to the contrary, such decision shall contain a full risk assessment as to the possible implications to the Council of the Supplier being allowed to start before the Contract Terms and Conditions have been finalised or a letter of intent issued.

- 25.9 For Contracts with a value that meets or exceeds **£30,000** (inc VAT) but is below **£100,000** (inc VAT), Service Areas may use an appropriate standard Form of Contract issued or approved for use by the Head of Legal and Democratic Services.
- 25.10 For Contracts with a value that meets or exceeds **£100,000** (inc VAT), Service Areas **must** take the advice of the Head of Legal and Democratic Services on the Form of Contract to be used, though wherever appropriate, industry standard forms will be used.
- 25.11 It is essential that the Goods, Services or Works are procured on the Council's Standard Terms and Conditions and not those submitted by the Supplier unless authorised by the Head of Legal and Democratic Services.
- 25.12 Contract documents, along with all associated related documents, must be retained for a minimum of **6 (six)** years from the contract end date and, if the Contract is concluded under seal, for a period of **12 (twelve)** years from the Contract end date for the purpose of any audit requirements. Where the Contract was funded, or partly funded, through some form of external grant then further grant specific conditions, as regard to retention of documents may apply and must be adhered to.
- 25.13 As minimum contracts **must** set out;
- (a) the work, materials, services or supplies to be carried out or provided and standards required;
 - (b) the price to be paid (or, as appropriate, the sums to be received) with a statement of discounts, or other deductions, and where not known, the basis upon which the final Contract sum is to be calculated;
 - (c) the time or times within which the Contract is to be performed; and
 - (d) the commencement and termination dates of the Contract.
- 25.14 The following Contract terms are implied into every Contract for Goods, Services or Works that have a value of £30,000.00 (inc. VAT) or more:

25.14.1 Any sum due to be paid under the Contract by the Council must be paid before the end of the period of 30 days beginning with—

- (a) the day on which an invoice is received by the contracting authority in respect of the sum, or
- (b) if later, the day on which the sum first became due in accordance with the invoice.

25.14.2 The term in subsection 25.14.1 does not apply if the Council—

- (a) considers the invoice invalid, or
- (b) disputes the invoice.

25.14.3 On receiving an invoice from a payee, the Council must notify the payee without undue delay if—

- (a) it considers the invoice invalid, or
- (b) it disputes the invoice.

25.14.4 The Council may rely on a payment made by a third party to satisfy the term in subsection 25.14.1 only with the agreement of the payee.

25.14.5 For the purposes of the terms 25.14.1 and 25.14.4, an invoice is valid if it sets out the minimum required information and meets any other requirement set out in the Contract.

25.14.6 The minimum required information is—

- (a) the name of the invoicing party,
- (b) a description of the Goods, Services or Works supplied,
- (c) the sum requested, and
- (d) a unique identification number.

25.14.7 No Contract term that seeks to restrict or override the terms implied by this Rule 25.14 will take effect.

26 Execution (Completion / Signing / Sealing) of Contracts

26.1 Subject to **Rule 25.2**, Contracts with a value that meets or exceeds **£75,000** may only be signed on behalf of the Council by the Head of Legal and Democratic Services or nominated officers.

26.2. **Rule 25.1** does not apply to any Contract formed by the placing of an order, following compliance with these Rules, using or under:

- (a) the Council's electronic Purchase-to-Pay system;
 - (b) a Framework Agreement approved for use by the Corporate Procurement Manager; or
 - (c) a Dynamic Market put in place by the Council;
- and the Officer may sign the Contract.

26.3 Any Contract with a value that meets or exceeds **£100,000** (inc VAT) **must** be completed under seal unless authorised otherwise by the Head of Legal and Democratic Services. The Council's seal may only be affixed to a contract in the presence of the Head of Legal and Democratic Services or nominated officers.

27 Contract Management

27.1 Once the Contract has been awarded, the Senior Officer (of the Service Area concerned) **must** identify and nominate an individual (referred to as the **Contract Manager**), who will manage the day-to-day aspects of the Contract for its term.

27.2 The day-to-day management of the Contract shall be undertaken by the Contract Manager and shall include monitoring and reporting (including making use of the Council's reporting tools on the Council's Electronic Procurement system) in respect of:-

- (a) performance;
- (b) compliance with specification and Contract terms;
- (c) cost;
- (d) any Value for Money/best value requirements;
- (e) user satisfaction;
- (f) risk management; and
- (g) delivery of agreed Community Benefits / Social Value.

27.3 For all Contracts, it is the responsibility of the Contract Manager to raise any incidents of poor performance immediately with the Supplier and seek rectification. In instances of particularly poor performance, or persistent poor performance, the Contract Manager should consider the appropriate course of action to take under the Contract, taking advice as appropriate from the Head of Legal and Democratic Services.

27.4 Where the total value of the Contract meets or exceeds **£100,000** (inc VAT), the Contract Manager **must** make a written report to the Senior

Officer evaluating the extent to which the Contract is meeting the objectives set. This should be done normally when the Contract is completed but for Term Contracts, such report should be prepared annually.

- 27.5 The setting and measuring of Key Performance Indicators (KPIs) should be considered for all Contracts to monitor Supplier performance. The inclusion of KPIs will depend on the subject matter, complexity and value of the Contract. KPIs should be designed around the most important deliverables under the Contract. They must clearly link to the wider objectives under the Contract and should also include minimum satisfactory standards and performance escalation protocols, should these not be met.
- 27.6 The inclusion of at least three KPIs is required for all Contracts valued over **£5,000,000** (inc VAT). Once set, details of the KPIs shall be included in the Contract Details Notice.
- 27.7 Performance against the KPIs in such contracts **must** be assessed against a standardised rating system and information about the Supplier's performance against them **must** be published via a Contract Performance Notice on at least an annual basis for the life of the Contract.

28 Contract Variation

- 28.1 Depending upon the nature of the variation proposed, the terms of the Contract concerned and scope of the original Procurement undertaken, Contract variations have the potential to amount to a new Contract, and so can constitute a single Tender award without advertisement.
- 28.2 In all cases of Contract variation, careful consideration **must** be made of the impact of any increase to the value of the Contract in relation to the current Threshold level.
- 28.3 The advice of the Corporate Procurement Manager and Head of Legal and Democratic Services should be obtained, if there is any uncertainty as to whether a variation is permissible.
- 28.4 Contract and Framework Agreements under Threshold may be varied without a new Procurement Process where either:
- (a) the variations have been provided for in the initial procurement documents in clear, precise and unequivocal terms (i.e. the Contract conditions provide for; extension of the Contract term, price variation, fluctuation clauses or options, additional works, good and services) and these do not alter the overall nature of the Contract or

the contract cannot be performed to the satisfaction of the Council and the modification goes not further than to remedy that fact;

- (b) the circumstances causing the need for variation were unforeseen, the variation does not alter the overall nature of the contract and provided that any increase in the price does not exceed 10% of the value of the original contract value for goods or services or 15% for works (advice of the Corporate Procurement Manager must be sought before placing reliance on this rule);
- (c) there is a change in Supplier that was provided for in the Contract, or as a result of a merger, acquisition, insolvency or similar of the original Supplier, which the new Supplier fulfils the original criteria for qualitative selection, provided this does not lead to other substantial variations or is aimed at circumventing the Regulations;
- (d) they do not materially change the scope of the Contract;
- (e) the modification is necessary for extreme urgency or protection of life; or
- (f) they do not materially change the economic balance of the Contract in favour of the Supplier;
- (g) the Contract is a Light Touch Contract.

28.5 Contracts meeting and over Threshold may only be varied in accordance with Procurement Legislation, and advice from the Head of Legal and Democratic Services should be sought before determining this and the Corporate Procurement Manager shall co-ordinate any notices required to be published.

28.6 A decision to extend the Contract period (term) may only be made before the original expiry date, where it is in accordance with the Terms and Conditions of the original Contract and contemplated by the original Procurement.

29 Variations Authorisation

29.1 The decision to authorise a proposed Contract variation shall be made, as appropriate, by Cabinet or the Officers listed below.

Decisions to authorise variations shall be recorded in writing and actioned by the following:

Head of Service	Variation (or aggregate value of all variations made to the Contract) of up to £30,000 or 10% of the Contract price (whichever is deemed lower)
Director	Variation (or aggregate value of all variations made to the Contract) up to £250,000
Director (with consent of relevant Cabinet Member)	Variation (or aggregate value of all variations made to the Contract) up to £1,000,000
Cabinet	Variation (or aggregate value of all variations made to the Contract) over £1,000,000

- 29.2 As soon as it becomes known or apparent (whichever is the earlier) that the total cost of a Contract, including variations, will or is likely to exceed the Contract sum by more than 5%, the Director of Finance **must** be informed for financial monitoring purposes. In such circumstances, a report must be prepared, which must address the reasons for increased cost, an analysis of options considered to reduce cost to budget and the funding options considered to meet any budget shortfall, together with an indication of how any additional costs will be paid for.
- 29.3 Any variation to the original Contract **must** be in the best interests of the Council and for continued delivery of services.

30 Assignments and Novation

- 30.1 Any proposals by a Senior Officer to agree to assign or novate its own or any Supplier's obligations under a Contract **must** be referred to the Head of Legal and Democratic Services at the earliest possible instance for advice.

31 Termination of Contract

- 31.1 For any Contract that meets or exceeds **£30,000** (inc VAT) in value, early termination shall be approved by the appropriate decision maker, provided always that the advice of the Head of Legal and Democratic Services is first sought. Contracts of a lesser value may be terminated early (prior to the expiry date) by agreement with the Supplier or in accordance with the termination provisions set out in the Contract.

Advice should be sought from the Head of Legal and Democratic Services on termination provisions if so required.

31.2 For any Contract exceeding **£5,000,000** (inc VAT) in value, early termination shall be approved by Cabinet unless the matter relates to a Council function, in which case matters shall be reported to Council.

32 Contract End

32.1 Where a Contract has a duration of more than **12 (twelve)** months, then at an appropriate point but generally at least six months prior to the end of the Contract term, the Contract Manager should review the Supplier's performance and consider what, if any, replacement arrangements are required and should consult the Corporate Procurement Manager in good time.

32.2 Some Contracts may require active steps to be taken to end the Contract (e.g. serving of notices no later than a certain number of months prior to the end of the Contract) and/ or steps to be taken to decommission the Contract arrangements. The Senior Officer of the Service Area concerned is responsible for ensuring that where appropriate, matters are diarised and appropriate steps taken to bring Contracts to an end and sufficient time allowed to put in place any replacement arrangements that may be required including proposed Procurement process.

33 Payments on Account and Contract Payments

33.1 Payments on account should only be made upon certification by the person designated under the Contract for that purpose (**'the Appropriate Person'**).

The Appropriate Person will keep detailed records of any such payment, which shall be open to inspection by the Director of Finance.

33.2 The Senior Officer of the relevant Service Area shall make arrangements to retain adequate details relating to all contract payments made to allow for a proper audit of all such payments.

33.3 All payments made **must** comply with the process as set out in Financial Procedure Rules and shall be paid within **30 (thirty)** days of an undisputed invoice.

34 Bonds, Securities, Liquidated and other damages

34.1 The Senior Officer of the Service Area requiring the Procurement is responsible for ensuring that a risk assessment is undertaken, to determine if a performance bond or performance guarantee is required. If appropriate, the advice of the Council's Director of Finance should be sought.

34.2 Consideration should also be given to the appropriateness of including in the Contract a provision for liquidated damages to be paid by the Supplier in case the terms of the Contract are not duly performed.

35 Parent Company Guarantee or Financial Guarantee

- 35.1 The Senior Officer of the Service Area requiring the Procurement is responsible for seeking a Parent Company or Financial Guarantee;
- (a) where a Supplier is a subsidiary of a parent company and the award is based on evaluation of the parent company;
 - (b) the financial status of the Supplier (having regard to the proposed Contract) warrants the same; and/or
 - (c) the Director of Finance recommends.

36 Records

- 36.1 To ensure appropriate records are maintained, the Council's approved eTendering system **must** be used wherever practicable or specifically required by these Rules.
- 36.2 For all Procurement activity where the Council's approved eTendering system is not used, Service areas **must** keep appropriate records. As a minimum the records kept must detail:
- (a) which parties were selected to Tender;
 - (b) to whom the Contract was awarded and the reasons for so doing (lowest price or offer which represents best value to the Council) so that best value and the integrity of the process can be demonstrated;
 - (c) the value of the Contract;
 - (d) the start and expiry date of the Contract; and
 - (e) details of whether the Contract is a one-off or expected to be renewed.

37 Corporate Contracts Register

- 37.1 The Head of Legal and Democratic Services shall maintain a Corporate Contracts Register, which will record details of all Contracts that meet or exceed **£30,000** (inc VAT) for Goods and Services, and **£75,000** (inc VAT) for Works awarded by the Council.

Senior Officers **must** ensure that Officers within their Service Area complete the Corporate Contracts Register for any new Contracts awarded as soon as possible and no later than **10 (ten)** days following the

award of a Contract, and **must** ensure that Officers maintain and update the record during the lifetime of the Contract.

Annex 1: Definitions

Term	Definition
Community Benefits / Social Value	<p>The delivery of social, economic and environmental benefit, through effective application of Community Benefits clauses in public contracts.</p> <p>Mandatory on all contracts with a value greater than £1m and optional, but encouraged, on contracts below £1m</p>
Concession Contract	<p>A Contract between the Council and Supplier, where the consideration in the Contract consists of the Supplier's right to exploit the work or services, that are the subject of the contract, or that right to exploit together with a payment</p>
Conflict of Interest	<p>A personal, professional or financial interest of an Officer or elected member or a Supplier which may be direct or indirect</p>
Conflicts of Interest Declaration	<p>A declaration completed by Officers specific to a Procurement in a form approved by the Corporate Procurement Manager</p>
Contract	<p>Any form of agreement (including, without limitation); Framework Agreements; purchase orders produced for the supply of Goods, provision of Services or carrying out of Works and or concession and utility contracts.</p>
Contract Manager	<p>Officer with conduct of the Contract for the Procurement</p>
Contract Award Form	<p>The document which is used to confirm the award of Contract and the governance arrangements associated with the same as copy of which will be available on the Council's intranet</p>

Contract Procedure Rules/ Rules	These contract standing orders and Procurement rules as may be amended from time to time
Corporate Contract Register	The register maintained (in such form as determine from time to time) by the Head of Legal and Democratic Services, which lists all Contracts (except arrangements in respect of land) concluded by the Council with a value of £30,000 (inc VAT) or greater
Corporate Procurement Manager	The officer delegated as the Council's Corporate Procurement Manager or any officers under their supervision or management to whom they delegate authority to carry out any of the obligations, duties or activities required to be performed by them under these Rules or to act in their absence
Corporate Procurement Notification Form	The form used to provide notification to the Corporate Procurement Manager of forthcoming Procurements
Council	Neath Port Talbot County Borough Council
Council Constitution	The Constitution of the Council
Council Policies	Policies of the Council which may be adopted and updated from time to time
Data Protection Legislation	<p>(a) the UK GDPR;</p> <p>(b) the Data Protection Act 2018 (and regulations made thereunder) to the extent that it relates to processing of personal data and privacy;</p> <p>(c) all applicable law about the processing of personal data and privacy; and</p> <p>(d) (to the extent that it applies) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such</p>

	data (General Data Protection Regulation) as it has effect in EU law.
Debarment List	A list published by UK or Welsh Government of excluded (where a mandatory exclusion ground applies) or excludable (where a discretionary exclusion ground applies) Suppliers
Director of Finance	The officer delegated under the Constitution as being the Director of Finance or any officers under their supervision or management to whom they delegate authority to carry out any of the obligations, duties or activities required to be performed by him/her under these Rules or to act in their absence
Dynamic Market	Arrangements for the purpose of the Council awarding Contracts by reference to Suppliers' participation in the arrangements
Electronic Procurement	The Procurement of all Goods, Services and Works conducted using the Council's approved eTendering system
Employee Code of Conduct	The Council's Employee Code of Conduct available on the Council's Intranet
Excludable Supplier	Where a discretionary exclusion ground applies to the Supplier or an associated or connected person, and the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or the Supplier or an associated person is on the Debarment List by virtue of a discretionary exclusion ground
Excluded Supplier	Where a mandatory exclusion ground applies to the Supplier or an associated or connected person, and the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or the Supplier or an associated person is on the

	Debarment List by virtue of a mandatory exclusion ground
Exclusion Grounds	Those set out in the Procurement Act 2023 and include mandatory grounds (serious, high-risk scenarios and include specific offences, misconduct and infringement) and discretionary grounds (situations that may pose unacceptable risks such as insolvency, professional misconduct, misconduct in relation to labour and the environment, breach of contract and poor performance) occurring within specified time periods
Framework Agreement	A framework agreement for one or more Suppliers and an open framework with the minimum of two Suppliers
Goods	All products, goods, supplies, substances and materials that the Council purchases, hires or otherwise obtains
Government Guidance	Applicable Welsh Government and Cabinet Office guidance, which shall include WPPNs and PPNs
Grant	A sum of money paid or to be paid by the Council to a third party, and in respect of which the Council does not require the recipient to provide the Council with any Services, or Goods or carry out any Works for the Council's direct benefit. The Grant(s) may be conditional (e.g. obligation to spend the Grant(s) in a particular manner, to account for that spend and repay the Grant(s) if the Grant(s) conditions are breached)
Head of Legal and Democratic Services	The officer delegated under the Constitution as being the Head of Legal and Democratic Services or any officers under their supervision or management to whom they delegate authority to carry out any of the obligations, duties or

	activities required to be performed by him/her under these Rules or to act in their absence
ITT	Invitation to Tender
Key Performance Indicators (KPIs)	Contractual targets against which a Supplier's contract delivery can be objectively measured
Light Touch	Services as defined in Schedule 1 of the Procurement Regulations 2024 and include health, social and related services, administrative social, educational, healthcare and cultural services and compulsory social security services
Most Advantageous Tender (MAT)	The Tender that both satisfies the Council's requirements and is the winning Tender when assessed against the award criteria and the assessment methodology
Officer or Officers	Means an employee of the Council
Procurement	The process by which the Council manages the acquisition of all its Goods, Services and Works, in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the Council, but also to society and the economy, whilst minimising damage to the environment. It includes the identification of need, options appraisal, consideration of options, the actual quotation or tender process. Supplier selection, award and the subsequent contract management and review of the contracts through to the end of a contract or the end of the useful life of the asset, or disposal of the asset
Procurement Act 2023	The Procurement Act 2023 as may be amended from time to time

Procurement Forward Workplan	The Council's forward work programme in respect of its Procurements
Procurement Guidance	The guidance issued by the Head of Legal and Democratic Services or Corporate Procurement Manager or such other person authorised by them
Procurement Legislation	All relevant UK Government and Welsh Government legislation applicable to the Council's Procurements including the Procurement Act 2023 and the regulations made thereunder (including but not limited to the Procurement Regulations 2024 and the Procurement (Wales) Regulations 2024), and the Social Partnership and Public Procurement (Wales) Act 2023 and the regulations made thereunder
Procurement Pipeline	The collection of individual Procurements of an estimated value of more than £30,000 (inc VAT) for Goods and Services or £75,000 (inc VAT) for Works that make up the Council's procurement pipeline over the next 18 months commencing on the first day of the financial year, the first being the 1st April 2025
Procurement Planning Document	The Procurement planning document issued to all officers by the Corporate Procurement Manager
Procurement Regulations 2024	The companion legislation and schedules that add further detail to the Procurement Act 2023 as may be amended from time to time
Procurement Strategy	The Council's Procurement Strategy approved on the 11th September 2024
Purchase Order	An electronic order raised and authorised via the P2P, or such other electronic system in force for the time being

Purchase to Pay / P2P	The Council's electronic system of processing payments
Quotation	a potential Supplier's informal quotation in response to the Council's requirements for Goods, Services or Works
Tender	a potential Supplier's formal tender documentation and submission in response to the Council's requirements for Goods, Services or Works
Tender Record Form	The template that will be issued to Service Areas by the Corporate Procurement Manager
Reserved Procurement Arrangement	A Procurement under a UK central government arrangement, for example the Crown Commercial Services
Rules	Means these Contract Procedure Rules
Senior Officer	The Chief Executive, Directors or Heads of Services or any officers under their supervision or management to whom he/she delegates authority to carry out any of the obligations, duties or activities required to be performed by him/her under these Rules or to act in their absence
Service Area	The respective service area of the Council
Services	Includes all services, which the Council purchases or otherwise obtains including advice, specialist consultancy work, agency staff and all those activities constituting Services in the Procurement Legislation
Small and medium enterprise / SME	Suppliers that have fewer than 250 staff, and have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million
Socially Responsible Procurement Duties	The duties as set out in the Social Partnership and Public Procurement (Wales) Act 2023

Special Regime Contracts	A Concession Contract, a Light Touch Contract, a utilities Contract, or defence and security Contract
Supplier	Means any supplier, contractor or provider withwhom the Council enters into a Contract for the carrying out of Works, provision of Services or the supply of Goods
Tender	A Suppliers submission for a Contract including all documentation required by any ITT
Terms and Conditions	Terms and conditions issued or approved by the Head of Legal and Democratic Services. The Procurement Act 2023 will imply certain terms into most Contracts and the Socially Responsible Procurement Duties prescribe certain model clauses
Threshold(s)	The thresholds prescribed in the Procurement Act 2023 for Goods, Services, Works, Special Regime and Concession Contracts as may be amended from time to time (see Annex 2)
Transitional Arrangements	The Procurement Act 2023 comes into effect on 24th February 2025 . Procurements commenced prior to this date and existing Contracts will continue to be subject to the requirements of the previous regime i.e. the Public Contracts Regulations 2015, Concession Contracts Regulations 2016 or the Utilities Contracts Regulations 2016 as relevant. Certain existing Council arrangements will have to finish by February 2029
Treaty State Suppliers	A Supplier from a country that has an international agreement with the UK that covers the contracting authority carrying out the Procurement, the Goods, Services or Works being procured and the provisions of Procurement Legislation are within scope of that agreement

Value for Money	The optimum combination of whole-of-life costs in terms of not only generating efficiency savings and good quality outcomes for the organisation, but also benefit to society, the economy, and the environment, both now and in the future
Variation(s)	Any alteration to a Contract including, additions, omissions, substitutions, alterations or changes of any other nature
VAT	Value Added Tax
VCSE/s	Organisations with a social or environmental purpose, including, voluntary organisations, charities, public service mutual, social enterprises, and other non-profits
Wales Procurement Policy Statement (WPPS)	The Wales Procurement Policy Statement as issued by the Welsh Ministers from time to time
Works	Includes all works of new construction and repairs in respect of physical assets (buildings, roads, etc.) including all those activities constituting works for the purposes of the Procurement Legislation

Annex 2 – Threshold table

The thresholds currently prescribed in the Procurement Act 2023 for Goods, Services, Works, Special Regime Contracts

	Type of contract	Threshold amount
1	Defence and security contract that is a works contract	£5,336,937
2	Defence and security contract that is a concession contract	£5,336,937
3	Defence and security contract not within row 1, 2 or 8	£426,955
4	Utilities contract that is a works contract	£5,336,937
5	Utilities contract that is a light touch contract	£884,720
6	Utilities contract not within row 3, 4 or 5	£426,955
7	Light touch contract that is a concession contract	£5,336,937
8	Light touch contract not within row 5 or 7	£663,540
9	Concession contract not within row 2, 6 or 7	£5,336,937
10	Works contract not within row 1, 4 or 9	£5,336,937
11	Contract for the supply of goods, services or works authority not within any other row	£213,477

Annex 3 – Notices

To be included once made available from UK Government and Welsh Government