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CONTRACT PROCEDURES RULES

PART 1 General

1. Definitions and interpretation

In these Contract Procedure Rules the following words and expressions shall have the following meanings, save that (except as specifically provided below) expressions defined in the Procurement Legislation and used in these Contract Procedure Rules have the meaning set out in the Procurement Legislation:

Covered Procurement shall be as defined in the Procurement Act 2023 save that, for the avoidance of doubt, such term shall apply only to contracts with a value (estimated in accordance with paragraph 9 of these Contract Procedure Rules) with a value over those thresholds set out in Schedule 1 of the Procurement Act 2023

Financial Procedure Rules the Financial Procedure Rules set out in Part 4 of the Constitution.

ITT invitation to tender in the form available from Legal Services

Officer any officer of the Council designated by their Head of Service to deal with the contract in question

Pre-Procurement Stage the stage of the commissioning process where the subject of a procurement is conceived ending on the earliest of:

- (a) the publishing of an advertisement or notice seeking expressions of interest for the contract, in any form whatsoever;
- (b) an expression of interest or offer being sought or responded to; or
- (c) a contract being entered into or a framework agreement being concluded

Previous Procurement Law means the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 as appropriate

Procurement Documentation shall include RFQ, ITT and other procurement documentation and associated documentation as relevant to the procurement being conducted

Procurement Legislation means the Procurement Act 2023 as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it including the Procurement Regulations 2024.

Procurement Portal an online procurement portal compliant with paragraph 7.1 of these Contract Procedure Rules

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Procurement Strategy the procurement strategy as published by the Council from time to time

Quotes Threshold shall be £12,000 (inclusive of VAT) or other amount as set by Council from time to time

RFQ a request for quotation in the form available from Legal Services

RFW a request for waiver from compliance with these Contract Procedure Rules in the form available from Legal Services

Specification a description of exactly what goods, services, works or outcomes are to be provided under a contract

Suitability Questions means questions to assess whether a potential supplier can meet the minimum standard (e.g. without limitation their legal status, financial capacity or technical ability) required to fulfil the contract which is the subject of the procurement

Tendering Threshold shall be £120,000 (inclusive of VAT) or other amount as set by Council from time to time

Verifying Officer the Senior Solicitor and Monitoring Officer or such other officer appointed by them to open tenders on the Procurement Portal

2. Compliance with the Contract Procedure Rules

- 2.1 Save as provided at paragraph 4 below, these Contract Procedure Rules refer to the selection, award and entry into any contract (such term to mean a contract for the supply, for pecuniary interest, of goods, services or works to the Council (or a Framework)) by the Council and by any person or representative acting on behalf of the Council or Council partnership.
- 2.2 Every contract to be entered into on behalf of the Council shall comply with:
 - (a) domestic legislation, common law and Procurement Legislation (subject to paragraph 2.3 below);
 - (b) the Financial Procedure Rules; and
 - (c) any other policies and procedures of the Council, insofar as they are directly relevant to that contract.
- 2.3 Subject to the Procurement Legislation providing otherwise, there will be a period of transition in terms of procurements and contracts commenced under the Previous Procurement Law and before this was superseded in law by the Procurement Legislation (the “switch over date”) which will proceed as follows:
 - (a) All contracts awarded prior to the switch over date will be subject to the Previous Procurement Law until contract termination.

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- (b) All contracts that have already had a contract notice or voluntary transparency notice (such term as defined by the Previous Procurement Law) issued prior to the switch over date will be subject to the Previous Procurement Law until contract end. Any contract that issues a Tender Notice (formerly contract notice) or Transparency Notice (formerly a voluntary notice) after the switch over date will be subject to the Procurement Legislation.
 - (c) All contracts called-off from a framework agreement (such term as defined by the Previous Procurement Law) initiated before the switch over date, will be subject to the Previous Procurement Law, even if the call off occurs after the switch over date.
 - (d) All contracts awarded using a dynamic purchasing system (such term as defined by the Previous Procurement Law) launched before the switch over date, and will be subject to Previous Procurement Law, even if the call off occurs after the switch over date.
- 2.4 It shall be a condition of any contract between the Council and any person who is required to supervise a contract on behalf of the Council (where that person is not an Officer), that in relation to such a contract they shall comply with the requirements of these Contract Procedure Rules as if they were an Officer. Failure to comply with the Contract Procedure Rules may result in the termination of any contract between the Council and any person who is required to supervise a contract on behalf of the Council.
- 2.5 Any non-compliance or breach of these Contract Procedure Rules shall follow the following procedure:
- (a) It will be reported immediately on discovery to the dedicated procurement email address and escalated to the Senior Solicitor & Monitoring Officer and the Head of Governance.
 - (b) The Senior Solicitor & Monitoring Officer will undertake an investigation, where deemed necessary, with the investigation findings reported to the Senior Management Team.
 - (c) Investigation findings will be referred to Human Resources where any breach of these Contract Procedure Rules requires further action in accordance with human resources policies, including disciplinary action.
- 2.6 In the event of failure by Officers to comply with the Contract Procedure Rules, the Council may invoke its disciplinary policy and procedure depending on all the circumstances of any such failures.
- 2.7 In the event that the Council expects to pay more than £100m for Relevant Contracts in the coming financial year it must publish a Pipeline Notice within 56 days of the start of the new financial year. Subject to the

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Procurement Legislation, such notice must include information about each contract over £2m where they expect to publish a Tender notice or transparency notice during the 18 months from the start of the financial year (i.e. including competed or direct award contracts, but not exempt contracts).

3. Delegated Authority

- 3.1 Any procurement carried out on behalf of the Council may be undertaken only by those Officers with the appropriate delegated authority to carry out such tasks as set out in the Council's scheme of delegation and such Officers authorised by Council and which have been notified and recorded in the register held by Members Services.

4. Exemptions and exceptions from the Contract Procedure Rules

- 4.1 Subject to the requirements of the Procurement Legislation the following contracts shall be exempt from the requirements of these Contract Procedure Rules:
- (a) contracts of a value less than the Quotes Threshold; and
 - (b) contracts which are, in the opinion of the Senior Solicitor and Monitoring Officer, subject matter Exempted Contracts pursuant to Part 2 of Schedule 2 of the Procurement Act 2023.
- 4.2 Subject to the requirements of the Procurement Legislation, contracts which are, in opinion of the Senior Solicitor and Monitoring Officer, counter party Exempted Contracts pursuant to Part 1 of Schedule 2 of the Procurement Act 2023 shall be exempt from the requirements of Part 3 only of these Contract Procedure Rules.
- 4.3 Save as provided in the Procurement Legislation, an exception from the provisions in these Contract Procedure Rules relating to the selection, award and entry into contracts may be made (in each case providing that the decision maker is satisfied that the exemption is justified on special circumstances and details of those special circumstances are recorded at the time the exception is given) by:
- (a) resolution of the Council;
 - (b) resolution of the Strategy and Resources Committee;
 - (c) an urgent decision of Chief Executive in accordance with Article 11.8 of Part 2 of the Constitution; or
 - (d) by authorisation via a RFW in accordance with paragraph 12.2 below.

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- 4.4 Whenever an exception is made under paragraph 4.3(a), (b) or (c) above, the Senior Solicitor and Monitoring Officer should make arrangements for an item to be placed on the agenda of the next meeting following of the Governance Committee for that Committee to note the details of the exception and the reasons for it.
- 4.5 Where authorisation is given to waive these Contract Procedure Rules in accordance with paragraph 4.3 above and a direct award to a named supplier is authorised then, along with any other requirements in the Procurement Legislation, the following must take place::
- (a) for Covered Procurements, a Transparency Notice must be published:
 - (i) before entering into a contract awarded directly including reasons as provided in Schedule 5 of the Procurement Act 2023;
 - (ii) when switching to a direct award procedure if no suitable bids are received during a competitive process (save where this is a 'user choice' direct award as provided in Schedule 5 of the Procurement Act 2023); or
 - (iii) for newly created framework agreements that will exceed the maximum term length specified in section 47 Procurement Act 2023;
 - (b) for Notifiable Below-Threshold Contracts, the details of the award shall be published via a Contract Details Notice in compliance with the Procurement Legislation and as soon as "reasonably practicable" after entering into the contract; and
 - (c) in all cases, details of the contract entered onto the Contract Register as required by paragraph 25 below.
- 4.6 The Senior Solicitor & Monitoring Officer must keep a record of all cases where an exemption from these Contract Procedure Rules has been requested and authorised or declined and will report these to the Senior Management Team on a six-monthly basis.
- 4.7 A contract can be reserved for a specified supplier or supplier type if:
- (a) the supplier is a Supported Employment Provider; or
 - (b) below threshold Light Touch Contracts for the provision of temporary accommodation or facilities, can be reserved for suppliers with a physical presence within the borders of the district of North Devon.
- 4.8 For the avoidance of doubt the exemptions referred to in this paragraph 4 do not provide an exemption to the best value duty on the Council in section 3 of the Local Government Act 1999 to make arrangements to secure

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continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

5. Equality

- 5.1 In the procuring of works, services and supplies, organisations that are awarded tenders are acting on behalf of the Council and will be expected to comply with current equality legislation in the same manner as the Council, in both employment and service delivery.
- 5.2 In accordance with the requirements of the Public Services (Social Value) Act 2012; where the Council is conducting a Covered Procurement for services full consideration must be given, and, where appropriate, consultation undertaken and conclusions recorded, at the Pre-Procurement Stage in respect of:
 - (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the Council's area; and
 - (b) how the Council may act with a view to securing that improvement in conducting the process of procurement.

6. Procurement Strategy and the National Procurement Policy Statement

- 6.1 Save as provided at paragraph 4.1 above, the strategic procurement themes as provided within the Procurement Strategy must be considered and taken into account as appropriate at the Pre-Procurement Stage particularly as well as generally in the procurement of contracts for all works, services and supplies.
- 6.2 In conducting a procurement pursuant to these Contract Procedure Rules Officers must have regard to the National Procurement Policy Statement.

7. Procurement Portal

- 7.1 The Council shall at all times maintain an effective Procurement Portal which must:
 - (a) be an appropriate and secure system for transmitting Procurement Documentation and receiving responses to such Procurement Documentation;
 - (b) be capable of recording evidence and an audit trail of all activity in respect of a procurement; and
 - (c) be capable of preventing:

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- (i) the opening of tenders until the deadline for the receipt of tenders has passed; and
- (ii) the editing of, or otherwise tampering with, tenders at any point.

PART 2

Before entering into a contract/procurement

8. Preparation

- 8.1 In the case of every contract Officers must ensure that they have sufficiently planned the procurement of a contract by:
- (a) estimating its value in accordance with paragraph 9 below; and
 - (b) taking preparatory action as required in the Pre-Procurement Stage as appropriate to the complexity and value of the contract.

9. Estimating contract value

- 9.1 The calculation of the estimated value of a procurement shall be as estimated by the Officer and carried out in accordance with Schedule 3 of the Procurement Act 2023.
- 9.2 As the Council is comprised of separate operational departments, account must be taken of the total estimated value for all of those departments.
- 9.3 Contracts for works, services and supplies, or any combination of them, are not to be split or subdivided with the effect of preventing them from falling within the scope of either these Contract Procedure Rules or the Procurement Legislation.

10. Pre-Procurement Stage

- 10.1 The Pre-Procurement Stage shall include:
- (a) ensuring that an appropriate Specification (relevant to the value of the contract) is prepared or otherwise put in place;
 - (b) the identification of relevant contract terms;
 - (c) where a contract is not exempt from the requirements of Part 3 of these Contract Procedure Rules pursuant to paragraph 4.2 above:
 - (i) the preparation of all relevant Procurement Documentation (including, where applicable, an ITT prepared in accordance with paragraph 13.5 below); and
 - (ii) the engagement of all relevant officers (as appropriate to the value and/or complexity of the contract or procurement) to advise and assist; and

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- (d) any other preparation which the relevant Head of Service and/or the Senior Solicitor and Monitoring Officer deems appropriate.
- 10.2 The Pre-Procurement Stage may, where the relevant Head of Service deems it fit, include conducting Preliminary Market Engagement with a view to preparing the procurement and informing economic operators of the Council's procurement plans and requirements save that where such Preliminary Market Engagement relates to a Covered Procurement then a Preliminary Market Engagement Notice must be published setting out that it intends to, or already has, engaged with suppliers pre-tender in accordance with Procurement Legislation.
- 10.3 Such consultations referred to in paragraph 10.2 may include seeking or accepting advice from independent experts, authorities or from market participants. Such advice can then be used in subsequent planning and conduct of contract and the procurement procedure provided that a suitable audit trail is maintained on the relevant Officer's file and the advice does not, in the opinion of the Senior Solicitor and Monitoring Officer, have the effect of distorting competition and does not breach the Procurement Legislation.
- 10.4 Where an economic operator has advised the Council, or has been otherwise involved, in the Pre-Procurement Stage for a specific procurement and then wishes to participate in that procurement process that economic operator cannot automatically be banned from participating however appropriate measures must be taken to ensure, to the satisfaction of the Senior Solicitor and Monitoring Officer, that competition will not be distorted by the participation of that economic operator. Such measures shall include:
- (a) providing all potential suppliers with relevant information exchanged or arising out of the economic operator's prior involvement; and
 - (b) where the procurement process involves tendering, the provision of adequate time limits for the return of tenders.

An economic operator must be excluded on the basis of their prior involvement where, in the opinion of the Senior Solicitor and Monitoring Officer, there would otherwise be a breach of the Procurement Legislation.

- 10.5 For all Covered Procurements, if it is deemed appropriate to do so by the relevant Head of Service wishing to notify suppliers of an upcoming tender, a Planned Procurement Notice can be published on the Central Digital Platform between 40 days and 12 months (or other period as

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provided by the Procurement Legislation) before a planned tender's publication.

- 10.6 For all Covered Procurements it shall be a duty, before publishing a tender notice, to consider whether the goods, services or works to be supplied under the contract could reasonably be supplied under more than one contract, and whether such contracts could appropriately be awarded by reference to lots. Where it is determined that a contract could reasonably be awarded by reference to lots then this must happen or reasons provided, for the approval of the Senior Solicitor and Monitoring Officer, as to why not.

PART 3 Procurement

11. Procurement generally

11.1 Save as provided in paragraph 12 below:

- (a) all Procurement Documentation shall only be transmitted to interested parties via the Procurement Portal except in extenuating circumstances and with the authority of the relevant Head of Service; and
- (b) suppliers should also be required to respond to, or ask questions/ seek clarification about, Procurement Documentation via the Procurement Portal except where a procurement is being conducted separately of the Procurement Portal in accordance with paragraph 11.1(a) above.

11.2 Oral communication between Officers and potential suppliers is permitted provided it does not affect essential elements of the procurement and provided that a record is kept of decisions made.

11.3 Contracts will be awarded based on the most advantageous offer to the Council. In appropriate circumstances the lowest price alone may be considered the most advantageous solution for the Council. Where it is considered that lowest price is in the best interests of the Council, advice should be sought from procurement advisors and approval provided by the relevant Head of Service prior to quotation/tender documents being issued.

11.4 In carrying out any procurement, but particularly a Covered Procurement or the procurement of a Notifiable Below-Threshold Contracts, the Council must:

- (a) have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and consider whether such barriers can be removed or reduced; and
- (b) check the Debarment List where appropriate in each procurement and exclude (or have a discretion to exclude) suppliers, if they are on the Debarment List.

12. Obtaining Quotations

12.1 Subject to 12.2 below (or unless the relevant Head of Service determines that a tender process contained in paragraph 13 is appropriate in relation

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to the proposed contract) where the Council intends to enter into a contract with an estimated value equal to or in excess of the Quotes Threshold but less than the Tendering Threshold:

- (a) quotations shall be obtained from more than one supplier using an RFQ;
- (b) quotations must be:
 - (i) based on the same Specification (prepared in accordance with paragraph 10.1 above) and contract terms (which shall be in accordance with paragraph 22 below);
 - (ii) based on the same evaluation criteria as selected within the RFQ and evaluated on a like for like basis; and
 - (iii) documented and recorded with the evaluation process and the decision to award recorded by the budget holder.

12.2 Where an Officer considers that they are unable to comply with paragraph 12.1 because:

- (a) it is not appropriate in the circumstances for quotes to be obtained from more than one supplier;
- (b) only one compliant quote was returned; or
- (c) the quotation evaluated as successful is not acceptable for any reason

the Officer may only set aside the requirements of paragraph 12.1 with the approval of the Head of Paid Service, the Senior Solicitor & Monitoring Officer, the Chief Financial Officer or any Head of Service as defined by paragraph 4.1 of Part 3 of this Constitution, such approval to be sought and recorded on a RFW. Once approved, a copy of the RFW shall be held on the relevant file of the Officer undertaking the procurement for at least the duration of the contract and the Officer must ensure compliance with paragraph 4.5 above.

12.3 The budget holder shall be responsible for notifying Legal Services when a contract is awarded with such award published:

- (a) on the Contract Register with details as required in accordance with paragraph 25 below; and
- (b) where it constitutes a Notifiable Below-Threshold Contract, in accordance with paragraph 14.3.

13. Lower value tendering under the Contract Procedure Rules

13.1 An Officer is not precluded from inviting tenders for a contract at any value however (subject to paragraph 4 above) they are compelled to do so where the value of the contract has a value estimated (in accordance with

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paragraph 9 above) to be in excess of the Tendering Threshold. When a contract is to be procured by tendering (and the procurement is not a Covered Procurement where paragraph 15 will apply) they must comply with the following rules in this paragraph 13.

13.2 A notice advertising the tendering opportunity and containing, as a minimum the information set out in paragraph 13.3 and, where appropriate, published in accordance with paragraph 14 below.

13.3 The notice shall:

- (a) express the nature and purpose of the contract;
- (b) invite tenders for its execution;
- (c) state the last date and time when tenders will be received, save where otherwise required by the Procurement Legislation there is no minimum period that tenders should remain open for; and
- (d) identify the form of the contract.

13.4 An ITT (prepared in compliance with paragraph 13.5) including a Specification and contract terms (or at least making specific reference to the applicable contract terms), all with content as agreed with the Senior Solicitor and Monitoring Officer, shall be published on the Procurement Portal with the notice set out in 13.2.

13.5 An ITT must include full details of the Council's requirements for the contract which it is procuring and shall set out:

- (a) where deemed appropriate to a procurement by the relevant Head of Service, Suitability Questions that are (in the opinion of the Senior Solicitor and Monitoring Officer):
 - (i) relevant to the subject matter of the procurement;
 - (ii) proportionate;
 - (iii) limited to assessing whether minimum standards of suitability, capability, legal status and/or financial standing are met; and
 - (iv) compliant with the Procurement Legislation; and
- (b) the evaluation criteria pursuant to which the Council will award the contract although it may, if the Officer deems it fit, allow for the submission of variant bids to encourage supplier innovation.

14. Lower value tendering notices

14.1 Save as provided in paragraph 11 above and where otherwise required in the Procurement Legislation, there are no requirements to publish a notice of a tender opportunity for a contract that is not estimated (in accordance

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with paragraph 9 above) as being above the value of a Notifiable Below-Threshold Contract.

14.2 Where an Officer wishes to procure a Notifiable Below-Threshold Contract, the Officer must ensure that a Below Threshold Tender Notice is published in accordance with the Procurement Legislation. This paragraph 14.2 shall not apply if tenders are only invited from particular or preselected suppliers (i.e. suppliers on a Framework) or from one or more targeted individual suppliers, provided the Council does not advertise the procurement in any other way (for example in a newspaper or on a local website or on the Portal save that, for the avoidance of doubt, the seeking of quotes from particular named suppliers does not constitute “advertising” the procurement).

15. Covered Procurements

15.1 Subject to paragraph 4 above, where, at the time of the decision to purchase goods, services or works on behalf of the Council, it is reasonably estimated (in accordance with paragraph 9 above) that a contract will be of a value in excess of the relevant threshold provided in Procurement Legislation to make it a Covered Procurement, then the Procurement Documentation must be prepared in accordance with the Procurement Legislation and in full consultation with the Senior Solicitor and Monitoring Officer.

15.2 To commence a ‘competitive tendering procedure’ for a Covered Procurement a Tender Notice (prepared in full consultation with the Senior Solicitor and Monitoring Officer), must be published in accordance with the Procurement Legislation identifying which procedure the Council intends to use which can either be, at the discretion of the relevant Head of Service (in consultation with the Senior Solicitor and Monitoring Officer), as a single stage Open Procedure or a Competitive Flexible Procedure. The Council must publish the Procurement Documents, including all Associated Tender Documents, with the Tender Notice.

15.3 If the Council opts not to award a contract following publishing a Tender Notice or Transparency Notice, a Procurement Termination Notice must be published as soon as reasonably possible.

15.4 The Council must put in place measures and processes to identify and keep under review actual and potential conflicts of interest. It must also mitigate conflicts of interest and address circumstances which are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest (‘perceived conflict of interest’) when carrying out a Covered Procurement.

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16. Receipt of tenders

16.1 In accordance with the notice requirements set out in paragraphs 14 and 15.4, a procurement must be placed on the Procurement Portal and therefore, in accordance with paragraph 11, except where the relevant Head of Service determines the position should be otherwise (subject to the provisions of the Procurement Legislation), tenders must also be received through the Procurement Portal and should not be paper based.

16.2 Any tender received after the time and date specified in the ITT shall be rejected and shall not be considered under any circumstances.

16.3 Where the relevant Head of Service determines that a tendering process should be paper based the following tender receipt procedure shall be followed:

- (a) Every ITT shall contain a paragraph that makes it clear that no tender will be accepted unless:
 - (i) it is enclosed in a plain sealed envelope which shall bear the word "Tender" – followed by the subject to which it relates; and
 - (ii) the envelope does not include any other name or mark which is capable of identifying the sender.
- (b) Tenders received and accepted by the Council shall be kept in the custody of the Senior Solicitor and Monitoring Officer until the time and date specified for their opening.
- (c) Where a Tender is received after the specified deadline, the time of receipt will be recorded and, in addition, the tender envelope shall be stamped as 'Late'. Once all other tenders to which the contract relates have been opened the late tenders will be opened and stamped as 'Late'. The appropriate Officer can then inform the late tenderer that its tender was received after the deadline and therefore was not considered.

17. Opening of tenders

17.1 Tenders to be opened via the Procurement Portal shall be opened by a Verifying Officer at one time and only in accordance with the requirements of the Procurement Portal.

17.2 Paper based tenders shall be opened at one time and only in the presence of:

- (a) one Member; and

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- (b) one person from the Member Services team (or such other team as the Head of Paid Service may otherwise direct); and
- (c) one of the following:
 - (i) the project leader of the project to which the contract relates; or
 - (ii) the Head of Service/budget holder with responsibility for the function to which the contract relates; or
 - (iii) any other Officer nominated by either of them to perform such a role.

17.3 Details of any paper based tenders received, including the name of the organisation submitting the tender and the amount of the bid, shall be recorded in a register kept by the Member Services team.

18. Evaluation of tenders

18.1 All tenders, whether subject to the Regulations or otherwise, will be evaluated in accordance with the evaluation criteria set out in the ITT and upon no other basis whatsoever.

18.2 For each Covered Procurement, or where the value of the contract to be awarded exceeds the Tendering Threshold, the project leader or the Head of Service/Business Unit Manager will form an evaluation panel with responsibility for evaluating the tenders in accordance with paragraph 18.1.

18.3 All contracts will be awarded on the basis of the offer that represents the most advantageous for the Council as determined in the ITT.

18.4 An Officer shall require tenderers to explain the price or costs proposed in their tender where such a tender appears to be abnormally low in relation to the works, supplies or services being procured.

18.5 Prior to the award of any contract:

- (a) due diligence will be carried out to ensure that the tenderer has the experience and/or financial means to perform the contract. For the sake of clarity, this includes contracts for the provision of advice or consultancy services; and
- (b) following the conclusion of an evaluation the Council must provide an Assessment Summary to each supplier that submitted an assessed tender. As part of this, unsuccessful bidders must be provided information on "the most advantageous tender submitted" (i.e. why the successful supplier was chosen).

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19. Award of contract

- 19.1 Where an Officer has awarded a contract with a value in excess of the value of a Notifiable Below-Threshold Contract they must, regardless of how the contract was initially advertised, publish the details of the award via a Contract Details Notice in compliance with the Procurement Legislation and as soon as "reasonably practicable" after entering into the contract.
- 19.2 Where an Officer has awarded a contract with a value in excess of the value to require it to be a Covered Procurement, the Council must publish a Contract Award Notice in accordance with the Procurement Legislation before entering into a contract (save where this is a 'user choice' contract as provided in Schedule 5 of the Procurement Act 2023).
- 19.3 When a contract is awarded pursuant to a Covered Procurement a Standstill Period of 8 working days must be held before the Council can enter into a contract, unless the contract is being awarded for extreme and unavoidable urgency, direct award to protect life, or as otherwise provided by Procurement Legislation. In these circumstances, the Officer may choose to hold a voluntary Standstill Period but should consult with the Monitoring Officer and appropriate Head of Service before determining this. For the avoidance of doubt, a Standstill Period is not required for call off contracts from Frameworks, contracts pursuant to a Dynamic Market or Light Touch Contracts but a voluntary Standstill Period may be held.
- 19.4 Where, following evaluation of bidding suppliers, the Council intends to award a contract to a bidding supplier who was not the winning tenderer the opinion of the Senior Solicitor and Monitoring Officer must be sought and followed and, where a decision is taken by the Head of Service to proceed, the procedure set out in paragraph 4.3 above shall apply including the publication of relevant information/notices as set out in paragraph 4.6 above.
- 19.5 For Covered Procurements, within 30 days of a Contract Award Notice (or 120 days for awards of Light Touch Contracts), the Council must publish notification that said contract has commenced.
- 19.6 Letters of intent must only be used in exceptional circumstances and after consultation with, and the approval of, the Senior Solicitor and Monitoring Officer.
- 19.7 Where a contract is estimated to be worth over £5 million then, within 90 days of the contract's commencement (or 180 days for Light Touch Contracts), a copy of the contract must be published. This doesn't apply to

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'user choice' direct awards (as provided in Schedule 5 Procurement Act 2023), or as otherwise provided by the Procurement Legislation.

PART 4 Collaborative procurement

20. Collaborative procurement

20.1 The Council may, following consultation with and approval of the Senior Solicitor and Monitoring Officer, procure goods, services or works via a Framework or a Dynamic Market.

20.2 The Officer must ensure that the Council is clearly identified in the call for competition for the Framework or Dynamic Market and may only award a contract to the supplier(s) appointed on such Framework or Dynamic Market and in accordance with the terms of the Framework or Dynamic Market.

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PART 5 Contracts

21. Contract terms generally

21.1 Every contract the Council enters into shall be in writing.

21.2 Where a contract requires execution it shall be executed in accordance with Article 12 of this Constitution.

22. Terms and conditions of contract

22.1 Subject to paragraph 22.2 below, contract terms and conditions should form part of the Procurement Documentation that is published when seeking quotes or tenders and as such (save insofar as such terms are developed as appropriate during or following the procurement process) should form the basis of the contract with the successful supplier to the exclusion of any supplier terms and conditions that are provided in soft or hard copy.

22.2 Paragraph 22.1 shall not apply:

- (a) where a Framework or Dynamic Market is being utilised in which case the applicable call off or other contract as provided by such Framework or Dynamic Market must be used;
- (b) insofar that such terms are inconsistent with the implied terms provided by the Procurement Legislation; and/or
- (c) where the applicable Head of Service, in consultation with the Senior Solicitor and Monitoring Officer considers that alternative or varied terms are appropriate.

23 Contract management

23.1 For contracts procured via a Covered Procurement or Convertible Contracts or as otherwise provided by the Procurement Legislation:

- (a) within 30 days of the last 'reporting period' (as defined by section 69(3) of the Procurement Act 2023), the Council must indicate whether they have made a payment under a current contract, or that a sum owed by the Council became payable. This does not apply to Concession Contracts;
- (b) the Council must publish a Contract Performance Notice:
 - (i) At least once every 12 months to report on performance against Key Performance Indicators set in the contract;
 - (ii) Within 30 days where a supplier has breached a public contract, and that breach has led to termination, award of damages or a settlement agreement.
- (c) within 30 days of a contract's

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termination, a Contract Termination Notice must be published. This includes expiry, after termination by either party, after obligations have been discharged, both parties have decided to rescind the contract, or after being set aside by a court order. This does not apply to 'user choice' direct awards (as referred to in the Procurement Legislation).

24. Changes to contracts/Framework Agreements

24.1 A contract or Framework Agreement may only be varied or changed without re- advertisement if an Officer can show, to the satisfaction of:

- (i) the Senior Solicitor & Monitoring Officer; or
- (ii) the Head of Paid Service, or the Chief Financial Officer or any Head of Service as defined by paragraph 4.1 of Part 3 of this Constitution (in each case in consultation with the Senior Solicitor & Monitoring Officer)

that (having regard, where relevant, to any additional requirements set out in the Procurement Legislation) the modification is:

- (a) a permitted modification under Schedule 8 of the Procurement Act 2023
- (b) not a Substantial Modification, or
- (c) a Below-Threshold Modification.

24.2 For contracts awarded pursuant to a Covered Procurement, or which were not estimated to be of a value to make them a Covered Procurement but a modification made during the life of the contract will make it above this threshold (called a “convertible contract” in the Procurement Legislation), then (save where a contract is a “user choice” contract as provided by the Procurement Legislation) a Contract Change Notice must be published in accordance with the Procurement Legislation including details of modifications made to a live contract if said modifications:

- (a) increase or decrease the value of a goods or services contract by over 10%;
- (b) increase or decrease the value of a works contract by over 15%; or
- (c) increase or decrease the contract's maximum term by over 10%.

24.3 If the change as provided in paragraph 24.2 is a Qualifying Modification, the Council must publish a copy of the contract as modified (or details of the modification) within 90 days.

25. Register of contracts

NDDC CONSTITUTION

Part 4

25.1 In accordance with the Local Government Transparency Code 2015 (and any subsequent or similar statutory requirement) the Senior Solicitor and Monitoring Officer shall keep and maintain a register of all contracts awarded by the Council of a value in excess of £5,000 including at least the following detail:

- (a) reference number;
- (b) title of the agreement
- (c) the Council department responsible;
- (d) description of the goods, services or works being provided;
- (e) the name and details of the supplier;
- (f) the sum to be paid over the length of the contract or the estimated annual spending or budget for the contract;
- (g) Value Added Tax that cannot be recovered;
- (h) start, end and review dates;
- (i) whether or not the contract was the result of a RFQ or an ITT; and
- (j) whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, the relevant registration number must be provided.

25.2 It shall be the responsibility of Officers to monitor their contracts and ensure that the Senior Solicitor and Monitoring Officer is provided with correct, up to date and appropriate information to allow full compliance with paragraph 25.1.