

Agenda Item No:	12	
Committee:	Full Council	
Date:	30 September 2024	
Report Title:	Revised Code of Procurement	

COVER SHEET

1 Purpose / Summary

- 1.1 The purpose of this report is to consider the implementation of a New Code of Procurement Policy due to changes in Legislation, namely the Procurement Act 2023. This report was prepared for an implementation date of the 28th of October 2024 but on the 12th of September it was confirmed that the date of implementation has now changed to the 24th of February 2025 to allow the Government to make changes to the National Procurement Policy Statement (NPPS).

2 Key Issues

- 2.1 The Code of Procurement (the Code) defines the regulatory and legal framework for procurement by Fenland District Council (the Council), in that it explains in an appropriate level of detail the Council's legal obligations and sets out internal requirements in relation to procurement. It requires adoption in accordance with the requirements of Section 135(2) of the Local Government Act 1972 and requires updating to reflect the Procurement Act 2023 (the Act) and the regulations made under it. The Act applies to all procurements commenced on or after 24th February 2024. The Public Contracts Regulations 2015, the Utilities Contracts 2016 and the Concession Contracts Regulations 2016 (as appropriate) will continue to apply to all procurements (and contracts awarded) where the procurement commenced before that date.

3 Recommendations

- 3.1 We have assessed that the changes to the (NPPS) are unlikely to impact the content of the Code of Procurement which has been drafted with reference to the Procurement Act 2023 which remains unchanged except for the current removal of the (NPPS). It is recommended that Council agrees to implement the revised Code for adoption on the 24th of February 2025. The Code of Procurement document is as set out in Appendix A.

Wards Affected	All
Forward Plan Reference	<i>[Insert Reference No. From Forward Plan. (It is a legal requirement to include key executive decisions on the forward plan for 28 days before the decision requested in this report is taken).</i>
Portfolio Holder(s)	Cllr Boden – Leader of the Council
Report Originator(s)	Shuan Beales – Purchasing & Procurement Manager Amy Brown – Assistant Corporate Director
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Background Papers	

1 Introduction and Context

- 1.1 The Procurement Act 2023 (the **Act**) is currently intended to come into force on the **24th of February 2024**. The Procurement Team has been working to put the Council in a position to meet the deadline with new policy and guidance. Some new elements are still awaiting government clarity, such as a Central Digital Platform which will be used to administer the procurement cycle covered by the legislation. The key message from the reform of public procurement is “transparency by default”.
- 1.2 Additionally, the Procurement Regulations 2024 expand on the Act’s requirements and, in particular set out the detailed requirements of notices to be given by contracting authorities, to conduct their public procurement in an open, transparent, and informative manner, as well as specifying where and how these should be published. This includes requirements to advertise contracts and to publish information about the outcomes of procurement processes and management of subsequent contracts on the Central Digital Platform. **See Appendix B - Table 1 - Transparency Notices.**
- 1.3 To reflect the changes made by the Act, the Council must amend its Contract Procedure Rules as set out in the Code of Procurement. **Appendix A** sets out a revised Code of Procurement which is recommended to Full Council for adoption.
- 1.4 A guide to the changes is set out in **Appendix B -Table 2 - Summary of the Procurement Code and Act Changes**. The changes reflect new rules in relation, for example, to procedures, much increased transparency notices and reporting requirements including payment compliance and KPIs. In essence, the Code of Procurement structure remains relatively similar.

- 1.5 The Council will need to procure an updated Procurement Portal which will link to the government's Central Digital Platform. This is currently being procured across Cambridgeshire via Cambridgeshire County Council.
- 1.6 Government is promoting the legislation as a means to reduce red tape, support business by simplifying public sector procurement, make it easier for suppliers (especially SMEs) to bid, encouraging innovation, and improving transparency.
- 1.7 The Council recognises the important role it has in shaping the local area, encouraging the local economy and supporting local businesses. In so far as legislation, collaborative procurement and value for money allow, the Council will seek to use local traders to supply goods, services and works, see **Appendix B - Table 3 - Thresholds and Procedures**.
- 1.8 Table 3 also explains the thresholds to which the council determines the procurement procedures to be used "quotes" or "tenders".
- 1.9 The Council requires anyone involved in a procurement process on its behalf to behave with the highest levels of honesty and integrity, in accordance with legislation (including the Act, the Bribery Act 2010), with the Code, Employee Codes of Conduct and fraud avoidance policies.

2 REASONS FOR RECOMMENDATIONS

- 2.1 It is recommended that Full Council adopt the revised Code to ensure that procurement processes remain compliant with legislative requirements effective from the 24th of February 2025. Once the impact of changes to the NPSS are known, these will be utilised to inform updates to the Procurement Strategy and the guidance and training we will offer to support implementation and embedding of the Code.

3 CONSULTATION

- 3.1 There are no formal consultation requirements connected with the proposed changes however feedback has been sought from key stakeholders to include group Leaders and officer colleagues.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Alternative options in the context of this Report include:

- (a) Not making any revisions to the Code of Procurement. This has been ruled out as an option as changes in legislation have necessitated some changes to the Code.
- (b) Revising the Code of Procurement only to reflect legislative changes. This has been ruled out as an option because the changes we have been required to make have also provided an opportunity to refresh the Code of Procurement overall in an ongoing attempt to ensure that it is as user friendly as possible.

5 IMPLICATIONS

5.1 Legal Implications

- 5.2 The Council, as a contracting authority, is required to comply with current public procurement legislation and this will remain the position under the new Act. As noted in section 2 above, the Code explains in an appropriate level of detail the Council's legal obligations and sets out internal requirements in relation to procurement. The Code must be adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972. This new version has been updated to reflect the Act and the regulations made under it.

5.3 Financial Implications

- 5.4 There are no specific financial implications connected with the proposed revisions to the Code of Procurement.

5.5 Equality Implications

- 5.6 There are no specific equality implications connected with the proposed revisions to the Code of Procurement.

6 Appendices

- Appendix A – Revised Code of Procurement
- Appendix B - Tables



Code of Procurement

Updated August 2024

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Contents

Introduction.....	3
1. Interpretation, scope and principles	3
The procurement process	5
2. Step 1 – Buying and internal processes	5
3. Step 2 - Identifying the routes to market	7
5. Step 4 – Identifying Suppliers – the procedures.	12
6. Step 4 – Receiving and opening tenders	16
7. Step 5 – Evaluation of tenders and quotations.	17
8. Step 6 – Awarding contracts.....	18
9. Consultants	19
10. Exemptions	20
11. Contract modifications	22
12. Disposals.....	24
14. Terms and conditions.....	26
18. Review and amendment of the Code	27

Introduction

1. Interpretation, scope and principles

1.1 This Code of Procurement (the **Code**) defines the regulatory and legal framework for procurement by Fenland District Council (the **Council**). It has been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972 and has been updated to reflect the Procurement Act 2023 (the **Act**) and the regulations made under it. The Act applies to all procurements commenced on or after 28th October 2024. The Public Contracts Regulations 2015, the Utilities Contracts 2016 and the Concession Contracts Regulations 2016 (as appropriate) will continue to apply to all procurements (and contracts awarded) where the procurement commenced before that date.

1.2 The Code should be read in the context of the Council's Procurement Strategy 2024-2027.

1.3 In addition, section 13 of the Act requires that the Council must have regard to the National Procurement Policy Statement when undertaking any procurement (of whatever value). This is a link to the Statement:

[National Procurement Policy Statement \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

1.4 This Code requires that all procurements must:

- realise value for money (**VFM**) by achieving the best combination of highest quality of outcome and minimum whole life costs;
- achieve the highest standards of integrity;
- ensure fair and equal treatment of contractors, providers and suppliers;
- operate transparently, subject to any requirement for confidentiality;
- be in accordance with advice from the Procurement Team, Legal and Governance Team and as directed by the Monitoring Officer; and
- comply with all legal requirements, the Council's policies, including the Rules of Procedure and Code of Financial Management.

1.5 What does the Code apply to?

This Code applies to the procurement, commissioning, hire, rental, lease or disposal by the Council of:

- vehicles or plant;
- equipment, furniture and fittings;
- construction and engineering works;
- information and communication technology - hardware and software;
- goods, materials, stationery, services and utilities;
- repairs and maintenance; and
- consultants, agency staff, agents and professional services.

Separate policies apply to other contracts, such as those for the acquisition, leasing or sale of land or for the lending or borrowing of money.

All procurements or sales to which the Code applies must comply with the Code, subject to any overriding requirements of:

- the Council's Rules of Procedure and Code of Financial Management; and
- Laws or regulations applicable to the Council.

1.6 The Council, as a Local Authority within the meaning of the Local Government Act 1972, must comply with all relevant legislation of England and Wales in undertaking any procurement – this covers both the procedures used and how they are managed. This Code does not amount to a complete guide to the Act, so if any officer intends to procure works, goods or services they must confirm what legal requirements apply with the Procurement Team, in accordance with the Code.

1.7 Local Trade

The Council recognises the important role it has in shaping the local area, encouraging the local economy and supporting local businesses. In so far as legislation, collaborative procurement and value for money allow, the Council will seek to use local traders to supply goods, services and works (see Table 1 at paragraph 3.3).

Speak to the Procurement Team about what the Council is allowed to do in this regard. There are some legal constraints, but regulations made under the Act do allow below-threshold contracts to be limited to suppliers that are either based within the UK or based within a particular County or London Borough.

1.8 Who does the Code apply to?

The Code applies to anyone acting in accordance with delegated authority on behalf of the Council, including any authorised employee, consultant or agency (**purchaser**).

Throughout the Code, reference to a contractor means any person, company or supplier(s) who has been, wishes to be or may be awarded a contract for works, goods or services by the Council.:

1.9 Conduct

The Council requires anyone involved in a procurement process on its behalf to behave with the highest levels of honesty and integrity, in accordance with legislation (including the Act, the Bribery Act 2010), with the Code, Employee Codes of Conduct and fraud avoidance policies. Any failure to do so may result in disciplinary action and, potentially, criminal investigation.

Anyone involved in a procurement exercise on behalf of the Council or in any related decision making must inform the Monitoring Officer and the Procurement Team immediately if they have any personal or business interests which could result in there being a conflict of interest in or in connection with that procurement exercise. Failure to do so is a breach of the Employee Code of Conduct and an offence in accordance with section 117 of the Local Government Act 1972. Such failure may result in disciplinary action against the officer. The Monitoring Officer may require that the

interest declared prevents participation in the procurement process.

The procurement process

2. Step 1 – Buying and internal processes

2.1 Delegated authority

In the interest of efficiency, CMT should delegate buying authority to people who can demonstrate skills and knowledge appropriate to the task. Each senior manager must keep a list of names of people who can make purchases, specifying a maximum financial limit for each transaction that is within those limits set out in table 1 at paragraph 3.3. The list must be copied to the Corporate Director and Chief Finance Officer to aid financial control. The purchaser is responsible for ensuring that there is sufficient approved funding for any procurement and, if the proposed contract exceeds the approved budget, must seek supplementary budget approval or otherwise ensure that approved sums are not exceeded.

2.2 ICT purchases

In order to safeguard the integrity of the Council's Information and Communication Technology (ICT) network, purchases of ICT software and hardware that forms part of any of the ICT network should be purchased only following advice from the Corporate Director and Chief Finance Officer or the ICT Manager, and in accordance with the Council's ICT strategy.

2.3 Consultants

The rules on procurement by the consultants/agency staff the Council engages are set out in section 9.

In addition, you should ensure that any consultant or agency staff is not deemed to be employed by the Council (if contracting as an individual) or to be an employee for tax purposes (if contracting through their own company). Please seek advice from the Procurement Team and HR to complete a "check employment status for tax (CEST) tool" before placing an order.

2.4 Procurement Cards

The Procurement Team may purchase low value goods and services by using a procurement credit card. The limits on the credit card are set by the Chief Accountant

2.5 Internet purchasing

Goods may be purchased from the internet by authorised signatories only, either by the use of an official order, where accepted, or by submitting a request, on form PC1, to the Procurement Team to purchase an item(s) using a procurement card. (A copy of form PC1 can be obtained from the Procurement Team).

- Discuss your direct internet purchasing requirements with the Procurement

Team before placing an order. These are the routes and methods in conjunction with an Agresso Order:

- Via the Print room for stationery and ICT consumables. See [Print, Post and Design - Intranet MVC \(fenland.gov.uk\)](#)
- Via the Purchasing Manager for any ESPO or CCS framework or marketplace purchases.
- From any web supplier, direct via authorised signatories only, who will accept an official FDC order.
- From any web supplier via the Procurement Team who have access to credit facilities by use of Government Procurement Cards.

The Council does not permit the use of its IT equipment or mobile phones to carry out any personal purchases via the internet.

2.6 Ordering of Works, Goods and Services

All purchases should be made using the Council's Procure to Pay System (Agresso) and all orders should be approved by the relevant officer in accordance with the authorisation levels set by CMT.

2.7 Efficient procurement

Every effort should be made to make the best use of the Council's buying power by aggregating purchases whenever possible to benefit from economies of scale.

2.8 Existing corporate contracts.

Corporate contracts (i.e. supplies or services provided across Council departments) exist to rationalise the number of suppliers supplying the same service or product, for instance cleaning or catering, and to make efficiency gains surrounding the administration of the quotation and tendering processes. Where the Council has procured a contract for a service, such as cleaning or catering where the supplier can provide that service across the whole of the Council, then all similar requirements for that type of service must use that existing corporate contract, subject to availability, quality and vfm assessment. (See paragraph 10 for exemptions.)

Where the Council wishes to establish a supply relationship with a number of companies who provide similar goods or services it can create a framework agreement.

A framework agreement is where a limited number of companies can supply a specific service to the whole Council, and this will usually be created for corporate use by the Procurement Team. All purchases for this service will be acquired via the framework agreement, which will be reviewed every three years. Once the Council has created a framework agreement all services requiring such a service must use the framework agreement.

All corporate contracts should be regularly reviewed and tendered with the assistance of the Procurement Team.

A list of corporate contracts can be found on the Procurement Pages on the Council's intranet.

3. Step 2 - Identifying the routes to market

3.1 Procurement value calculation

The purchaser must calculate the value of the contract being procured. This means the estimated maximum monetary value over a contract's full duration. This is an accumulation of the 'whole life' costs of the contract, i.e. any cost associated with the procurement must be included to determine which procurement category should be used. It is, therefore, an aggregated value and not a single annual value. For aggregation purposes, where it is not possible to assess the maximum value of the contract e.g. because there is no specific contract length, purchasers should treat the contract value as being at least that of the relevant threshold in the Act for the purpose of this calculation. It is therefore advisable to make the best valuation based on the available information.

The value of a procurement should be calculated so that it includes VAT, if applicable.

On no account should any requirement be split or any calculation made in an attempt to avoid using the proper procedure under this Code and the Act.

Having determined the proposed contract total value purchasers should then follow one of the procedures set out in paragraph 3.3, table 1.

3.2 Secondhand purchases and purchases from auctions

There may be circumstances where the purchase of previously used goods will result in better vfm or allow the purchaser to remain within the allocated budget. This is permitted, subject to the following processes and rules:

- There must be documentary evidence that the goods being purchased are fit for purpose.
- Price comparisons must be sought for similar goods, in line with procurement thresholds outlined in table 1 at paragraph 3.3.
- Maintenance or replacement options must be covered either by the supplier or by in-house Council expertise.
- The condition of the goods must be assessed by the officer likely to be using the goods, to ensure the goods are fit for purpose.
- Warranties included in the procurement must be used to cover repair, maintenance or return of goods as appropriate.

All other procurement procedures, as set out within this Code, must be adhered to.

3.3 Before starting the procurement process; -

- Notify the Procurement Team of all prospective tenders, other than those that fall within Category A (as defined at table 1 below).
- The Procurement Team will;
 - review the proposed procurement against other contracts/purchases made by other services (to co-ordinate spend and achieve improved deals through discount for bulk.)
 - update and maintain their 'Contracts Database' and transparency register
 - advertise requirements via the central digital platform where required.

- Seek advice from the Procurement Team about;
 - Existing corporate contracts
 - Government frameworks and dynamic purchasing arrangements
 - Buying consortia
 - Existing suppliers on the Council's 'Supplier Database'
 - Collaborative opportunities
 - Following correct procedures
 - In-house service providers
 - Local suppliers
 - Social Enterprises
 - Whether a large contract could reasonably be divided into smaller lots
 - Value for Money (vfm)
 - Engaging the market before formal tendering – there are various legal requirements that must be complied with and different ways to ensure the most effective pre-market engagement.

Thresholds and procedures

Category	Estimated total value of procurement		Requirement	Exemptions
	Supplies & Services	Works		
A	Below £6,000, including VAT	Below £12,000 (including VAT)	An official order with at least one estimate (ideally more), including one from a local supplier if possible. See section 5.1.	Not applicable.
B	Between £6,000 and below £30,000 (in each case, including VAT)	Between £12,000 and below £120,000 (in each case including VAT)	At least three competitive quotations, including one quotation from a local supplier if possible. See section 5.2.	See section 10.
C	Between £30,000 and below £214, 904 (in each case including VAT)	Between £120,000 and below £214904 (in each case including VAT)	Competitive tenders but must not use a separate suitability stage to reduce the number of bidders invited to tender. See section 5.3.	See section 10.

C 1		Between £214,904 and below £5,372,609 (in each case including VAT)	Competitive tenders using either the Open Procedure or the Competitive Flexible Procedure. See section 5.4.	See section 10.
D	At least £214,904 (including VAT)	At least £5,372,609 (including VAT)	Competitive tenders using either the Open Procedure or the Competitive Flexible Procedure and the provisions in the Act for above threshold contracts must be complied with. See section 5.5.	See section 10.
E	Social and other "light touch" services		See section 5.8.	See section 10.
F	Concession contracts		See section 5.9.	See section 10.
G	Utilities contracts		See section 5.10.	

3.4 Use of public sector frameworks, dynamic purchasing systems and dynamic markets

Organisations such as Eastern Shires Purchasing Organisation (ESPO(Pro5)) and Crown Commercial Services (CCS), have a vast range of pre-tendered frameworks, dynamic purchasing systems and (under the Act will have) dynamic markets for works, goods and services available to Local Government. Suppliers have been competitively evaluated and quality assessed. The Council can access these catalogues in order to identify suppliers for its own needs, subject to the requirements of the Code.

These centrally procured arrangements, regardless of value, including above threshold values under the Act, enable contracts to be called off without the need for full processes for quotations and tenders. This improves administrative efficiency and reduces the time needed to acquire works, goods or services. N.b. that these frameworks must match the Council's requirement exactly.

If there is more than one pre-tendered supplier that can supply the works, goods or services required, then the Council will usually be required to operate a 'mini competition' which involves obtaining a price/quotation from all suppliers capable of supplying the requirements. The rules for use of these arrangements are not all the same and the Procurement Team should be consulted to offer advice and guidance in this area.

If a framework or other pre-tendered arrangement that the Council is entitled to use is available, then a purchaser may use that arrangement instead of the relevant procedure matching the contract value set out in table 1 at paragraph 3.3. Local external framework agreements, i.e. through the County Council or other Cambridgeshire Councils should be used where appropriate (e.g. for temporary staff

or printing framework agreements).

3.5 Cambridgeshire Procurement Group and collaborative/shared contracts

Collaboration exists between Cambridgeshire councils Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Regulations/Code of Procurement of the leading organisation (but does not necessarily comply with this Code), will be deemed to comply with this Code but will require an exemption in accordance with Section 10. However, advice must be sought from the Procurement Team in the first instance.

In general, to use this type of contract the Council's specification, including terms and conditions, and price (budget availability), must be matched.

In order to ensure the Council's contracts are available to other Cambridgeshire councils the following statement must (where relevant and appropriate) be included in all tender and contract documentation for category D procurements:

"It is possible that the contract may be extended to encompass the requirements of one or more of Cambridgeshire's five District Councils, Peterborough City Council and/or Cambridgeshire County Council at some point during the lifetime of the contract. It will be the responsibility of the appropriate Council to make this decision.

The District Councils are as follows:

- *Cambridge City Council;*
- *East Cambridgeshire District Council;*
- *Fenland District Council;*
- *Huntingdonshire District Council;*
- *South Cambridgeshire District Council*

The terms and conditions of this contract, as awarded, will apply to any of the named councils above should they so wish to utilise the procurement of goods, services or works within this contract.

3.6 Externally compiled lists.

Only those lists containing details of contractors that are compiled and maintained by an external organisation in a manner approved by the Corporate Director and Chief Finance Officer or Procurement Manager shall be adopted as approved lists of tenderers, e.g. Constructionline. Any approved list of tenderers shall be reviewed periodically and at least prior to the third anniversary of its initial or further adoption and must be again approved by the Corporate Director and Chief Finance Officer or Procurement Manager.

Adoption of such lists must be notified to the Corporate Director and Chief Finance Officer or Procurement Manager to be registered as a source for procurement.

For each use of the list, where the transaction falls into Category C, invitations to tender for a contract should be sent to no less than six entrants by means of the application of pre-determined and objective tenderer selection criteria.

In using a list, where tenders are for similar goods, services or works, i.e. have been tendered for previously within the last 9 months, then, to show fair competition, the new tender can include the best two returns from the previous tender and must include two new tenderers to replace the two lowest placed tenderers from the previous tender. The two remaining tender places can be taken by either local suppliers or tenderers from a previous tender. However, where possible, at least one of the six tenderers should be a local supplier.

Where the total is expected to fall into Category D, tenders may be invited using the standing list but each requirement must also be advertised under the Act.

4. Step 3 - Procurement process practicalities – the preparation stage

4.1 Advertising on the central digital platform

All invitations to tender must be advertised on the Government's central digital platform in line with required timescales.

4.2 Electronic procurement via a portal

This option may be available or may be offered as part of a collaborative procurement. Please seek advice from the Procurement Team before commencing the procurement process.

Otherwise, quotes for category A and B procurements can be requested and received via e-mail.

Otherwise, tenders for Category C, D, E and F procurements can be distributed via the Council's procurement portal, email via procurement@fenland.gov.uk or the postal system. Tender responses can be received via the Council's procurement portal, email via procurement@fenland.gov.uk or the post in the method described in this Code. In all cases seek procedural advice from the Procurement Team.

N.b. that all procurements with a value of at least £30,000 (including VAT) must be advertised via the Government's central digital platform. Please speak to the Procurement Team about this.

4.3 Checking all tenders

The Procurement Team must be given all draft tender documentation at least one week prior to sending out to enable the Team to:

- review the documents
- ensure standardisation and consistency
- check the process

The Local Government Transparency Code 2015 requires local authorities to publish quarterly details of every invitation to tender for contracts to provide goods or services valued at over £5000 (excluding VAT). Notify the Procurement Team of any relevant invitation to tender.

5. Step 4 – Identifying Suppliers – the procedures.

5.1 Category A Procurement

For contracts for services or supplies valued below £6,000, and £12,000 for works (including VAT in each case), competitive quotations are not required under this Code, though it is always good practice to seek more than one quote if other suppliers are available. Officers must in all instances ensure the Council is receiving vfm. If an officer is unsure of vfm when only one quote is received, they should either consult with the Procurement Team or obtain further quotes.

An official order relating to at least one estimate must be completed. An estimate from a local supplier should be included if possible. It is good practice to obtain more than one estimate/quotation. Officers must be sure that they have obtained vfm.

5.2 Category B Procurement

For contracts for services or supplies valued between £6,000, and below £30,000, and for works between £12,000, and £120,000 (in each case including VAT), at least three written quotations must be invited, specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment before a formal purchase order is issued. At least one quotation should be obtained from a local supplier if possible.

E-mailed quotations or framework options are acceptable in these cases.

If the Council is not bound to accept the lowest quote then this must be set out in correspondence to those suppliers intending to submit quotes. Officers must in all instances ensure the Council is receiving vfm.

5.3 Category C Procurement

For contracts for services or supplies valued at between £30,000 and £214,904 for goods or service, or between £120,000 and £5,372,609 for works (including VAT in each case) this Code requires that an advertised tender procedure must be conducted. See paragraph 5.4 for further information in relation to contracts for works between £214,904 and below £5,372,609).

Under the Act, where a Category C procurement is advertised, the Council must not use a separate suitability stage to reduce the number of bidders invited to tender. It may request suitability information, but may not apply this until the preferred bidder is selected.

Before competitively tendering a Category C contract, the Council must consider any barriers that SMEs may face, and how they might be reduced or removed.

Under the Act, there is no requirement to publish a notice if the Council advertises to a closed group of pre-selected suppliers (e.g. suppliers on a framework) or from one or more targeted individual suppliers, provided that the procurement is not advertised in any other way such as in a newspaper or a local website or portal. Quotes in accordance with this code would also not trigger a requirement to publish a below threshold tender notice. Quotes/targeted suppliers as routes to markets are only permitted under this Code if exempted in accordance with Section 10.

Officers must in all instances ensure the Council is receiving vfm.

In most instances, a procedure equivalent to the Open procedure (described below at paragraph 5.6 is likely to be the most appropriate route to market.

Please discuss with the Procurement Team which is the most appropriate procedure.

5.4 Category C1 Procurement

This applies to works contracts between £214,904 and below £5,372,609 (in each case including VAT).

The requirements set out in respect of Category C apply, but the purchaser may restrict the submission of tenders by reference to suppliers' suitability to perform the contract.

Please discuss with the Procurement Team which is the most appropriate procedure.

5.5 Category D Procurement

This applies to transactions valued (inclusive of VAT) as at least £214,904 for goods/services and £5,372,609 for works (including VAT). The Act requirements for above threshold procurements must be complied with. Under the Act, the contract may be awarded following the Open procedure, Competitive flexible procedure or, in specific circumstances, by direct award. The Act requirements are very detailed and consequently, advice should be sought from the Procurement Team prior to the start of the procurement process.

Whichever form of procedure is chosen, the procedure must be proportionate having regard to the nature, complexity and cost of the contract.

In any case, an advertisement must be placed on the central digital platform and the advertisement should specify a time limit (usual will be a minimum of 25 days) for the return of initial responses/tenders.

In addition, section 12 of the Act requires that (for Category D procurements) the Council must have regard to the importance of:

- (a) delivering vfm;
- (b) maximising public benefit;
- (c) sharing information for the purpose of allowing suppliers and others to understand the Council's procurement policies and decisions;
- (d) acting, and being seen to act, with integrity.

In carrying out a category D procurement, the Council must have regard to the fact that SMEs may face particular barriers to participation, and consider whether such barriers can be removed or reduced.

In carrying out a Category D procurement, the Council must treat suppliers the same unless a difference between the suppliers justifies different treatment. If it does consider that different treatment is justified in a particular case, the Council must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.

5.6 Open Procedure

The Open procedure is a single stage procedure where anyone can submit a tender. The Council must base its decision to award the contract solely on the single tender, subject to disregarding any tenders in accordance with the Act. It requires the following process:

5.7 Competitive Flexible Procedure

The competitive flexible procedure is non-prescriptive, so the Council has the flexibility to apply a procedure suitable to its specific requirements. In most cases, the procedure will be multi-staged with, for example, a first stage inviting tenders and then a price negotiation stage for bidders selected after the first stage.

5.8 Category E - Light touch contracts

These services are specified in Schedule 1 to the Procurement Regulations 2024, such as contracts for social care, cultural or sporting services, training services, catering services, administrative services. The requirements of the Act (other than those specifically applying to below threshold contracts – see paragraph 5.3) do not apply to light touch contracts below £663,540 (including VAT). The tender processes for above threshold light touch contracts are similar to non-light touch contracts but there are some flexibilities and different rules. Please speak to the Procurement Team if you are planning to award a light touch contract. The principles in this Code in respect of Categories A and B apply to contracts for light touch contracts of the same values and in respect of Category C up to £663,539.99 and in respect of Category D above that value (subject to the light touch contract specific provision in the Act).

5.9 Category F - Concession contracts

A concession contract is a contract for the supply, for pecuniary interest, of works or services to a contracting authority where at least part of the consideration is a right for the supplier to exploit the works or services and under the contract the supplier is exposed to a real operating risk. An operating risk is a risk that the supplier will not be able to recover its costs in connection with the supply and operation of the works or services, where the factors giving rise to that risk are reasonably foreseeable and arise from matters outside the control of the parties.

Valuation rules under the Act are specific to concession contracts, but their award is otherwise broadly subject to the main requirements of the Act for above threshold contracts (i.e. at least £5,372,609 (including VAT)). This applies to concessions for both works and services. The provisions applying to regulated below-threshold contracts do not apply to concession contracts. Please speak to the Procurement Team if you are planning to award a concession contract. This Code requires that services or works concession valued at least the values set out for Category C contracts will be subject to an advertised tender process and the principles for Category D contracts shall apply to above threshold concession contracts.

5.10 Category G - Utilities Contracts

A utilities contract is a contract for the supply of goods, services or works wholly or mainly for the purpose of a "utility activity". The award of a utilities contract is exempt from some notices requirements and benefits from certain special rules. The

provisions relating to below-threshold contracts do not apply.

The Council carries out utility activities in relation to Wisbech Port and thus will be awarding utilities contracts. Otherwise, it is unlikely that the Council will be entering into a utilities contract for the purposes of the Act, except in the context of a project e.g. if the Council is engaging in a project to build and combined heat and power plant. Please speak to the Procurement Team if you think you may be planning to award a utilities contract.

5.11 Conditions of participation

A contracting authority can only set conditions to the extent they are considered a proportionate means of ensuring suppliers have either:

- The legal and financial capacity to perform the contract; or
- The technical ability to perform the contract.

N.b. the requirement for these to be applied only at award stage for Category C contracts.

This Code requires that sufficient vetting shall be undertaken to ensure that all successful bidders:

- will comply with minimum standards of insurance;
- have the necessary Health & Safety policy and performance and (where applicable) membership of the Contractor's Health and Safety Scheme or equivalent health and safety standard;
- are financially viable based on a risk-based assessment;
- have an appropriate environmental policy;
- comply with equalities legislation and policy; and
- possess the experience and capacity required.

The Procurement Team will provide an appropriate questionnaire for the purpose of vetting bidders.

Certain criteria for works contracts must be applied, regardless of value, and a contractor may only be selected who: -

- can confirm a business contact address and telephone number
- will have an acceptable level of public liability insurance.
- is registered for tax and holds a valid certificate (where appropriate).
- is capable of undertaking the work safely and competently and is a member of a recognised trade association, e.g., NICEIC or ECA for electrical installation works or Gas Safe for gas installation works.

A contractors' pack must be completed (and this is available from the Assets team).

5.12 Award Criteria

Tender documentation must state how submitted tenders will be evaluated and what weighting/multiplier, if any, will be applied to the calculation.

The Act requires that award criteria must relate to the subject matter of the contract and:

Commented [SJ1]: CDM, contractor's pack? Check with Works department for requirements

Commented [SB2R1]: Yes we have a contractors pack

- Be sufficiently clear, measurable and specific.
- Not break the rules on technical specifications.
- Be a proportionate means of assessing tenders.

Advice from the Procurement Team should be sought prior to the start of the procurement process.

6. Step 4 – Receiving and opening tenders

6.1 Category B transactions

For Category B transactions this Code shall be applied so that fair and ethical procedures ensure that the most advantageous arrangement is obtained for the Council and that no potential contractor is treated any less fairly than another.

6.2 Category C or D transactions

Where tenders or quotations for Category C or D transactions are invited, in accordance with this Code, no tender or quotation will be considered unless:

- it has been sent electronically to procurement@fenland.gov.uk e-mail address, an e-vault, which the Procurement Manager has sole access to once the tender expiry date has been reached.
- contained in a plain envelope which shall be securely sealed and shall bear the word “Tender” or “Quotation” followed by the subject to which it relates. Contractors shall be notified accordingly. The envelope shall not bear any distinguishing matter or mark intended to indicate the identity of the sender. Such envelopes shall be addressed impersonally to the Procurement Manager.

6.3 Opening tenders

All envelopes or e-mails received shall be kept securely and shall not be opened or accessed until the time appointed for their opening. All tenders or quotations invited in accordance with this Code shall be opened at one time only and by at least two officers, one of whom must be an officer from the Procurement Team.

All tenders or quotations upon opening shall be recorded in writing on either a tender or quotation opening record, as is appropriate. The Form of Tender or Quotation and any accompanying documentation shall be marked with the date of opening and signed by at least two officers present at the opening. The tender or quotation opening record shall also be signed by at least two officers present at the opening. The Procurement Manager shall retain the original opening record.

6.4 Late quotes and tenders

Generally, any tenders or quotations received after the specified time must be rejected by the Council. However, where it is fair and proportionate to accept that tender (for example, if there has been an unforeseen internet problem affecting the transmission of tenders)) then a late tender may be accepted at the discretion of the Procurement Manager. If a tender is rejected then the tender or quotation may only be opened to ascertain the name of the contractor, but no details of the tender or quotation shall be considered.

7. Step 5 – Evaluation of tenders and quotations.

7.1 Single tenders

For transactions in category B or C, single tenders may only be accepted after a waiver has been obtained for this purpose under the procedure set out in Section 10 of this Code.

7.2 Category A or B procurements

Where written quotations are invited for transactions in category A or B then the bidder submitting the lowest price bid should be awarded any resulting contract, unless alternative pre-determined criteria are used. In which case the tender providing the most advantageous arrangement to the Council according to the pre-determined criteria shall be selected.

7.3 Category C or D procurements

For transactions in category C or D, a more complex best value tender evaluation procedure based on the identification of the Most Advantageous Tender (**MAT**) should be used in preference to a price-only evaluation, where appropriate.

This evaluation involves scoring tenders objectively, by a panel selected from officers and/or independent experts. The panel must be chosen by the appropriate member of CMT, using criteria that should:

- (a) be pre-determined and listed in the invitation to tender documentation
- (b) be strictly observed at all times throughout the tender process
- (c) reflect the principles of best value/vfm
- (d) almost always include price (check with the Procurement Team)
- (e) consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account
- (f) measure achievement of technical requirements where appropriate
- (g) be capable of objective assessment
- (h) be weighted according to their respective importance
- (i) include, where applicable, the quality of the tenderers' proposals to transfer staff under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 (as amended)
- (j) avoid discrimination or perceived discrimination on the basis of nationality, or other discrimination contrary to the Council's Equality Policy.

Where this evaluation methodology is used, any resulting contract must be awarded to the tenderer who submits the most advantageous tender, i.e., the tender that achieves the highest score in the objective assessment.

7.4 Arithmetical Errors

Contractors may be permitted to alter their tenders or quotations after the date specified for their receipt but before the acceptance of the tender or quotation, where examination of the tender or quotation documents reveals arithmetical errors or discrepancies which affect the tender or quotation figure. The contractor shall be given details of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing this offer in writing.

8. Step 6 – Awarding contracts

8.1 Recording results

The results of the tender evaluation process should be recorded and retained by the Procurement Manager in accordance with this Code.

8.2 Contract authorisation/signing

Contracts must only be signed by a member of CMT or officers authorised to do so by a member of CMT. In nominating authorised officers, consideration shall be given to length, value and complexity of contract. All contract awards of at least £30,000 must be published on the central digital platform.

8.3 Formal written contract for Category C or D

A formal written contract with appropriate terms must be agreed for any procurement of supplies, services and works falling into Category C or D.

8.4 Letters of intent

Letters of intent provide a contractor with the authority to proceed prior to the award of a contract. Use of this type of process is considered a 'high risk' and consequently can only be used under exceptional circumstances.

Letters of intent must be in a form approved by the Council's Legal Team and must be signed by the member of CMT responsible for the relevant service.

This requirement applies to both new contracts and contract extensions.

8.5 Awarding above threshold contracts

All awarded contracts that are above threshold contracts under the Act should be formally notified to the Corporate Director and Chief Finance Officer.

8.7 Assessment summary

Before entering an above threshold contract, the Council must give an assessment summary to each contractor that submitted an assessed tender. The summary must contain information about the Council's assessment of the tender and the most advantageous tender submitted. An assessment summary given to an unsuccessful supplier must include:

- The award criteria.
- How the successful contractor scored against each award criterion.

- How the contractor scored against each award criterion to the extent that the tender was assessed against that criterion.
- Any other explanation of why the contract is not being awarded to the contractor e.g. disqualification, failure to meet pass/fail criteria.

8.8 Contract award notice and standstill period

After giving the assessment summaries (but before entering into an above threshold contract), the Council must publish a contract award notice. This triggers the start of a mandatory 8 working day standstill period.

Light touch contracts, awards under frameworks or by reference to dynamic markets and certain other awards do not need a standstill period.

8.9 Contract details notice

The Council, after entering into a public contract must publish:

- A contract details notice confirming that it has entered into a contract.
- For contracts over £5 million, a copy of the contract.

9. Consultants

9.1 Procurement and purchasing authorisation

Only permanent employees of the Council can have any procurement and purchasing authorisation.

Therefore, consultants, agents, contractors, professional advisors and agency staff, have no authority to:

- Authorise Official Orders.
- Make any verbal or written commitment on behalf of the Council.
- Authorise invoices for payment

Exemptions to the above can be approved by the Corporate Director and Chief Finance Officer, but in so doing must form part of the terms and conditions of their contract/relationship/employment by the Council.

It shall be a condition of the engagement of any consultants, agents, contractors, professional advisors and agency staff who are to be responsible to the Council for the award or supervision of a contract on its behalf, that in relation to that contract they shall:

- comply with this Code as though they were an employee of the Council;
- at any time during the carrying out of the contract produce to CMT, on request, all the records maintained by them in relation to the contract; and
- on completion of the contract transmit all records that they have produced or received that relate to the contract to the appropriate member of CMT.

10. Exemptions

10.1 Act exemptions

Certain contracts are exempted from the application of the Act. These include:

- Land and buildings. Contracts for the acquisition of land or buildings, or an interest or right over them.
- Financial services. Loan contracts in any currency, investment or ancillary services from investment firms or qualifying credit institutions, or services by the Bank of England.
- Alternative dispute resolutions. Contracts for arbitration, mediation, conciliation or similar services.
- Legal services. Contracts for legal representation in or advice in connection with judicial or other dispute resolution proceedings, notary services or legal services provided by someone legally required to provide them.
- Employment. Contracts of employment or worker's contract, or a public office appointment.
- Emergency services. Contracts for a specified list of not-for-profit emergency services, such as fire extinguishing, search and rescue or ambulance services for medical emergencies.
- National security. Contracts which the contracting authority considers exempt for national security reasons.
- Vertical contracts between a contracting authority and a person solely or jointly controlled by it, or by another contracting authority that controls the awarding contracting authority.
- Horizontal public to public contracts - between contracting authorities, in certain circumstances.

Save where specifically mentioned elsewhere in this Code or where other Council policies apply, the principles in this Code do not apply to these contracts. Contact the Procurement Team for advice.

10.2 Direct awards under the Act

The justifications are set out in Schedule 5 to the Act:

- The supply of prototypes or the testing, viability research or development of other novel (that is, developed at the request of the contracting authority) services
- The creation or acquisition of a unique work of art or artistic performance
- Only one supplier can supply the goods, works or services because of intellectual property or other exclusive rights and there are no reasonable alternatives
- Only one supplier can supply the goods, works or services due to the absence of competition for technical reasons and there are no reasonable alternatives
- The extension or partial replacement of existing goods, services or works by the existing supplier where a change in supplier would result in receiving different or incompatible goods or services, resulting in disproportionate technical difficulties in operation or maintenance

- The supply of similar goods, services or works by an existing supplier where the existing contract was awarded competitively to the existing supplier in the last five years and the tender notice for the award specifically mentioned the contracting authority's intention to use this direct award justification
- Goods purchased on a commodity market
- A contract on particularly advantageous terms because the supplier is undergoing insolvency proceedings
- The goods, services or works are strictly necessary because of extreme and unavoidable urgency and cannot be awarded in a competitive tendering procedure
- Where deemed necessary by regulations to protect life, health or public safety
- Where the contract is for the supply of user choice services, as designated by regulations and supplied for the benefit of the individual. To apply, the individual to receive the services must have expressed a preference of supplier or there must be only one supplier capable, and the contracting authority must consider that it is not in the best interests of the individual to competitively award the contract

Please contact the Procurement Team if you wish to award a contract using any of these justifications. The competitive procurement route is not required if one of these justifications applies but the other principles set out in this Code may apply, depending on contract value.

10.3 Category B or C exemptions

Purchasers may apply an exemption under the Code from steps 3 and 5 for Category B or C when:

- a) work to be executed or goods, services or materials to be supplied consist of repairs to or the supply of parts of existing proprietary machinery, equipment, hardware or plant and the repairs or the supply of parts cannot be carried out practicably by alternative contractors.
- b) specialist suppliers, consultants, agents or professional advisers are required and:
 - there is no satisfactory alternative; or
 - evidence indicates that there is likely to be no genuine competition; or
 - circumstances are such that a specialist needs to be assigned with urgency to mitigate against a legal, regulatory and/or financial claim and delay would worsen the claim.
- c) the work is of a short-term nature to enable services to continue; short term is defined as a maximum of 3 months.
- d) the work is of a one-off emergency nature to prevent danger or harm to any person.
- e) a tendering exercise has been performed in accordance with this Code and only one tender has replied and has met the Council's specified requirements in accordance with Step 3 of this Code.
- f) it is in the best interest of the Council to employ consultants or suppliers already

contracted or previously contracted, within the last 12 months, following valid tendering procedures from other Council's or partners, to be employed for further work associated with, but not critical to an existing project.

- g) a decision is taken by the Corporate Director and Chief Finance Officer, which is supported by the relevant Portfolio Holder, to suspend formal tendering procedures. All reasoning surrounding this decision must be clearly minuted and copied to the Procurement Manager.
- h) Where a contract is to be entered into through collaboration with other Local Authorities or other public bodies and where a competitive process has been followed that complies with the Contract Regulations/Code of Procurement of the leading organisation, whether or not it complies with this Code. Appropriate checks will be carried out by the Procurement Team to ensure this Council's interests are safeguarded.
- i) For purchases made at public auctions.

In each case, the award must be in accordance with the Act and, as appropriate in the circumstances, legal advice has been obtained.

Vfm should still be considered in any instance.

10.4 Applying exemptions

To exercise any of the above exemptions the purchaser shall compile and retain a record:

- setting out the reasons for the decision; and
- evidencing approval by the relevant member of CMT and (in the case of g)) the Corporate Director and Chief Finance Officer (or a nominated authorised signatory from within the Finance Service for procurements under Act threshold limits); and
- evidencing any action taken to ensure that vfm and (in the case of a negotiated contract) that the most advantageous arrangement has been obtained from the negotiations with the contractor.

10.5 Corporate contracts

An exemption not to use a corporate contract where one exists for the relevant services or supplies must be obtained in writing from the appropriate member of CMT along with documented valid reasoning. Documentary copies must be forwarded to the Procurement Team.

10.6 Advice on exemptions

In the first instance, advice and decisions on applying exemptions will come from the Procurement Team.

11. Contract modifications

11.1 The Act provides that contracting authorities may only vary public contracts (or contracts that will become public contracts i.e. go over the threshold as a result of the modification) in one of these circumstances:

- The modification is a "permitted modification" under Schedule 8.
- The modification is not a "substantial modification".
- The modification is a "below-threshold modification".
- The contract is a light touch contract.

These deal with changes to the terms and extensions to the length of the contract.

11.2 A permitted modification

This is where:

- the change is provided for in the contract and the tender or transparency notice and would not change the overall nature of the contract.
- there are unforeseeable circumstances that could not reasonably have been foreseen before award, the modification would not change the overall nature of the contract and would not increase the estimated value of the contract by more than 50%.
- additional goods, services or works are needed and using a different supplier would result in supplies that were different from, or incompatible with, those already in the contract. Using a different supplier must also result in disproportionate technical difficulties in operation or maintenance or other significant inconvenience and substantial duplication of costs for the Council. The variation must also not increase the estimated value of the contract by more than 50%.
- there is a transfer on corporate restructuring. This includes the sale of a business, either because of insolvency or planned strategy.
- it is because of urgency and the protection of life.
- it results from materialisation of a known risk. This is to manage a known risk which has materialised through no fault of the contracting parties but prevents the contract from being delivered to the Council's satisfaction. The Council must consider that it would not be in the public interest to award a new contract and the amendments must not increase the estimated value of the contract by more than 50%. A "known risk" must have been identified in the tender or transparency notice along with the possibility of modification.

11.3 Substantial modification

A substantial modification is one which may:

- Increase or decrease the term of the contract by more than 10%.
- Materially change the contract scope (that is, provide for services, works or goods not already provided for under the contract).
- Materially change the economic balance of the contract in favour of the supplier.

11.4 Below-threshold modifications

Changes are permitted where all of these apply:

- Do not increase or decrease the value of the contract by more than 10% (for goods or services) or 15% (for works).
- Are not a permitted modification or non-substantial modification.
- Do not materially alter the scope of the contract.
- The aggregated value of below-threshold modifications is below threshold. This is for the type of contract. As now, contracting authorities will therefore need to determine the value of any below-threshold modifications cumulatively throughout the term, to ensure that their total value falls below the relevant financial threshold.

11.5 Contract change notices

The Council must publish a contract change notice before it varies a public contract. This is not required if :

- The contract is a light touch contract; or
- The change:
 - increases or decreases the contract value by less than 10% (goods or services) or 15% (works);
 - increases or decreases the term by 10% or less than the maximum provided for on award,

unless the variation involves a permitted change in supplier.

Contract change notices may specify a voluntary standstill period, which must not be less than 8 working days from the date the notice is published. Where a contract notice is required and the contract is worth (before or after the modification) more than £5 million, the Council must publish a copy of the modified contract or the modification itself within 90 days of the change.

11.6 Contract modifications permitted under this Code

Contract modifications may only be made:

- if they are permitted by the Act;
- they are approved in writing by the appropriate member of CMT (Complete form CE1 obtained from the Procurement Team);
- budgetary provision is available;
- in the case of an extension, if continuing with the existing contract can be shown to provide better value for money than re-tendering on the basis of identifying possible suppliers; and
- appropriate contract change notices are then published if required by the Act.

11.7 As noted at paragraph 1.1, the Public Contracts Regulations 2015, the Utilities Contracts 2016 and the Concession Contracts Regulations 2016 (as appropriate) will continue to apply to all procurements (and contracts awarded) where the procurement commenced before 28th October 2024. Therefore the rules on modifications to those contracts are as set out in the earlier legislation and not in the Act. The rules set out in this Code at paragraph 11.6 apply to modifications to those contracts, with the relevant earlier legislation being substituted for “the Act”.

12. Disposals

12.1 Competitive processes similar to those used for buying supplies must be applied to

the disposal of surplus or obsolete goods, although separate procedures apply to the sale of land and/or property.

In principle:

- (a) competitive bids must be invited for all goods whose estimated value falls into Category A, except where the item is unlikely to attract any interest, in which case written approval must be sought from the Procurement Manager before disposal.
- (b) if the estimated value of the goods falls into Category B then a minimum of three bids must be invited.
- (c) if the estimated value of the goods falls into Category C or D then a professional valuation should be obtained, a minimum of 3 sealed bids must be invited and opened in accordance with the procedure in Step 4 of this Code.

12.2 In case of doubt, professional advice should be sought when making valuations. For higher value items, sale by auction should be considered as an alternative to sealed bids, but care should be taken to evaluate the full cost of the process.

12.3 In all cases, the highest bid received must be accepted, unless it can be demonstrated that an alternative bid is more economically advantageous overall to the Council in which case the reasoning for the decision should be recorded and prior approval sought from the Corporate Director and Chief Finance Officer or Procurement Manager.

12.4 Public Auction can be used for items of any value where deemed most likely to achieve greatest interest in the goods for disposal. In the case of auction then a reserve value should be agreed with the Corporate Director and Chief Finance officer or Procurement Manager prior to sale commencement or in accordance with a valuation process approved by the Corporate Director and Chief Finance Officer or Procurement Manager.

12.5 Disposal by auction can be made either by a professional auction house or an internally managed formal auction process.

12.6 The Council's intranet may be used for an internally managed auction process

13. Prompt Payment Requirements

13.1 The Act imports implied payment terms into above threshold contracts (other than concession contracts) that require the Council to pay sums due within a minimum of 30 days of issue of a valid undisputed invoice or, if later, the due date. The Council must notify suppliers if it considers the invoice is invalid or disputed without undue delay.

13.2 This means that in dealing with suppliers the Council must:

- Pay suppliers through the Council's Procure to Pay system (Agresso), on time within 30 days.
- Provide suppliers with clear and easily accessible guidance on payment procedures ensuring there is a system for dealing with complaints and disputes

which is communicated to suppliers advising them promptly if there is any reason why an invoice is in dispute.

- Contractors should be required to pass this through the entire supply chain.

13.3 Before committing to suppliers wishing to operate shorter payment terms than the usual 30 days, the Chief Finance Officer should be notified of the alternative requirement to ensure that the terms can be met.

14 Terms and conditions

14.1 All orders placed by the Council shall be on the Council's Terms and Conditions or industry standard terms and conditions used by the Council, including compliance with the requirements of the Prompt Payment requirements (see section 13).

14.2 Where a contractor formally insists on trading on Terms and Conditions other than those of the Council, these must be approved, prior to an order being placed, by the Assistant Director, Legal and Governance, except for:

- Any call off from a public sector procured framework agreement, dynamic purchasing system or dynamic market by the Council.
- Orders for less than £5,000, where goods or services are purchased on a retail basis on terms available to the general public.
- Orders for software where the licence is for a 'standard' product, but not where customisation, development or on-site service is required for a 'standard' product.

15 Performance bonds

15.1 Where a contract is estimated to exceed Act thresholds and is for the execution of the works by a particular date or series of dates or in cases where the relevant member of CMT so decides, the contractor shall supply a performance bond in the sum of 10% of the contract sum or such lower amount as the Corporate Director and Chief Finance Officer shall certify as the maximum loss which could be suffered by the Council. The surety shall be a substantial bank or insurance company approved for that purpose by the relevant member of CMT and approved by the Corporate Director and the Chief Finance Officer.

15.2 A parent company guarantee may be given in lieu of the provision of a performance bond if the relevant member of CMT, the Corporate Director and the Chief Finance Officer agree.

15.3 The requirement for a bond or a guarantee may be waived if the relevant member of CMT, the Corporate Director and the Chief Finance Officer agree, provided that their reasons for agreeing a waiver are set out.

16 Retaining documentation

16.1 Purchasers should record and retain quotations and tenders obtained to provide evidence of competition, fairness, vfm to the Council and the basis of decisions made.

16.2 Document retention guidelines will be supplied by the Procurement Team, including statutory requirements as appropriate.

17 Transparency

- 17.1 The table in the Appendix sets out various notices required under the Act.
- 17.2 All intentions to tender will be logged by the Procurement Team before any formal documentation, supplier contact or advertisement has commenced, in line with the Act and the Code.
- 17.3 Once a contract has been awarded, whether following a tender process or not, the details of that contract must be notified to the Procurement Team and these details will be recorded on the Council's Contracts Database and Transparency Register.

18 Review and amendment of the Code

- 18.1 The Council's Monitoring Officer is authorised to make amendments from time to time to ensure that this Code is consistent with legislative requirements, best practice guidance issued from central government and changes to the Council's policies, procedures and personnel.
- 18.2 A formal review and update of the Code will take place before 31st March 2029.

19. Governance – approval of contracts

- 19.1 At the commencement of any procurement exercise it is important to identify the correct level of approval required. This will ensure that contract awards are not delayed and that the Council is fully compliant with its wider governance obligations.
- 19.2 Generally, a procurement exercise can commence on the authority of the relevant service lead and following any required liaison with CMT and/or portfolio holders. In that instance, arrangements need only be made for approval of the contract at the point of award. This will either be by Full Council, Cabinet, a Cabinet Member or an Officer. In some instances, particularly where a substantial change is being proposed (e.g. the outsourcing of a service), it is good practice to present the options to the decision maker prior to the commencement of the procurement process to ensure that the proposal is likely to be support at the final decision making stage. Advice as to which approach to choose can be taken from the Monitoring and/or Deputy Monitoring Officers.
- 19.3 On every occasion there should be a fully documented record of the decision. Where the decision is taken by Full Cabinet or Council, this will be in the form of a Report. Cabinet Member and Officer decisions are recorded in either a Cabinet Member Decision or Officer Decision Notices. Templates are available on request from Member Services.
- 19.4 There are publication and transparency requirements surrounding the publication of Reports and Decision Notices and it is therefore important to contact Member Services at the very earliest opportunity to ensure that you have time to comply with them. For example, Cabinet and Council Reports are published at least 5 working days before the respective meeting is due to take place. Similarly, a Cabinet Member must receive the draft Cabinet Member Decision Notice at least 3 working days before they are required to finalise their decision. All decisions executive decisions (i.e.

those taken by Cabinet, Cabinet Members or officers on their behalf) must be published for 5 working days prior to them being implemented. The Procurement Team will indicate how long the procurement process is likely to take and Member Services can advise you of the dates of scheduled meetings of Cabinet and Council as well as the practicalities of publishing decision notices.

19.5 Where the predicted cost of the award is £100,000 or over or is likely to have a significant impact on one or more wards, an entry must also be included in the Forward Plan as the decision will be classed as a 'key decision'. More information about the limits on how much officers, individual members and Cabinet are authorised to spend can be found in the Constitution. Advice as to any aspect of the governance process can be sought from the Monitoring or Deputy Monitoring Officer.

19.6 Where this Code requires a written contract to be entered into, this must be arranged in accordance with the relevant delegated authorities. Contracts must be entered into as a deed where this is a legal requirement and also where the Monitoring Officer considers that this is appropriate. Member Services will arrange for deeds to be executed as required.

Appendix

List of Notices under Procurement Act 2023 (PA23)

Reference to a regulation is a reference to The Procurement Regulations 2024

Links are to Government guidance

Name of Notice	Further information	Required?
Qualifying Planned Procurement Notice	<p>Optional notice, which goes further than the pipeline notice to provide a transparent view of upcoming procurement</p> <p>See section 15: planned procurement notices See regulation 16: planned procurement notices See regulation 18 (and as incorporated into regulations 19 - 22)</p> <p>https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-planned-procurement-notice-html</p>	No
Preliminary Market Engagement Notice	<p>Can be used instead of PINs where pre-market engagement takes place. This notice must be published before a Tender or Transparency notice</p> <p>See section 17</p> <p>https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-preliminary-market-engagement-html</p>	<p>Yes, where</p> <ul style="list-style-type: none"> <input type="checkbox"/> Preliminary market engagement is undertaken; and <input type="checkbox"/> There are no justifiable reasons for not doing so
Pipeline Notice	<p>This notice is to provide the market with a transparent view of current and future procurement opportunities.</p> <p>See section 93 for when a Pipeline Notice applies See regulation 15 for what to include in a pipeline notice</p> <p>https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-plan-phase/guidance-pipeline-notice-html</p>	<p>Yes, by 26th May each financial year if anticipated annual spend on non exempt contracts is more than £100 million. <i>N.b. that (on the basis of 24/25 spend levels) this requirement will not apply to the Council.</i></p>
Tender Notice	<p>This notice must be published to invite tender proposals.</p> <p>See section 21 See regulation 18 : tender for open procedure See regulation 19: tender for competitive flexible procedure See regulation 20: tender for frameworks See regulation n 21: tender for dynamic markets See regulation 22 tender for qualifying utilities market</p>	<p>Yes, if undertaking a competitive tendering procedure.</p>
Regulated Below Threshold Contracts Notice	<p>This notice must be published where a contract falls below the threshold (unless an exemption applies).</p> <p>See section 87 for when Below Threshold Contracts Notice applies</p> <p>https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-below-threshold-contracts-html See regulation 36</p>	<p>Yes, if both:</p> <p>Contract value is at least £30,000 (including VAT); and Contracting authority is inviting tenders for the contract (unless tenders are requested only from pre-selected or particular suppliers)</p>

<i>Modification Notice</i>	<i>This notice must be published following the substantial modification of a tender. See section 31</i>	Yes
<i>Dynamic Market Notice</i>	<i>This notice must be published before establishing a dynamic market. See section 39</i>	Yes
<i>Transparency Notice</i>	<i>This notice must be published before awarding a contract under section 41 or 43 See section 44</i>	Yes with a few exceptions
<i>Contract Award Notice</i>	<i>This notice must be published for all contracts awarded but before entry into the contract. See section 50</i>	Yes, with a few exceptions
<i>KPIs</i>	<i>See section 52</i>	Yes, if contract exceeds £5million, but not required for frameworks, private utilities, concession contracts or light touch contracts.
<i>Contract Details Notice</i>	<i>This notice must be published after the contract has been entered into See section 53 Under the regulations, the required content varies depending on the type of contract.</i>	Yes, including for certain regulated-below-threshold contracts
<i>Copy of contract</i>	<i>See section 53(3)</i>	Yes, if the contract is more than £5 million.
<i>Procurement Termination Notice</i>	<i>This notice must be published as soon as reasonably practicable if a contracting authority decides not to award the contract after publishing a tender or transparency notice. See section 55</i>	Yes
<i>Exclusion Notice</i>	<i>This notice must be published if a contracting authority decides to disregard a tender or exclude, replace or remove a supplier. See section 59</i>	Yes
<i>Contract Change Notice</i>	<i>This notice must be published to alert the contracting parties of any intended changes to the contract. See sections 75 & 76, 77 See regulation 40</i>	Yes, but not for light touch contracts – and with a copy of the contract if the value (before or after the modification) exceeds £5 million
<i>Contract Termination Notice</i>	<i>This notice must be published to notify intent to terminate the contract. See section 80 for when a Contract Termination Notice applies See regulation 41</i>	Yes
<i>Payments compliance notice</i>	<i>See section 69, regulation 38. A requirement to publish prescribed information about payments made or due to suppliers under public contracts in the preceding six month period.</i>	Yes
<i>Information about significant payments</i>	<i>See section 70. A quarterly requirement to publish specified information about payments made over £30,000 under a public contract.</i>	Yes, but not for concession contracts

<i>Contract performance information</i>	<i>See 71, regulation 39. Relating to KPIs and performance information</i>	<i>Yes, but not for light touch contracts</i>
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APPENDIX B - TABLES

TABLE 1 – TRANSPARENCY NOTICES

List of Notices under Procurement Act 2023 (PA23)

Reference to a regulation is a reference to The Procurement Regulations 2024

Links are to Government guidance

Name of Notice	Further information	Required?
Qualifying Planned Procurement Notice	<p>Optional notice, which goes further than the pipeline notice to provide a transparent view of upcoming procurement</p> <p>See section 15: planned procurement notices</p> <p>See regulation 16: planned procurement notices</p> <p>See regulation 18 (and as incorporated into regulations 19 - 22)</p> <p>https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-planned-procurement-notice-html</p>	No
Preliminary Market Engagement Notice	<p>Can be used instead of PINs where pre-market engagement takes place. This notice must be published before a Tender or Transparency notice</p> <p>See section 17</p> <p>https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-preliminary-market-engagement-html</p>	<p>Yes, where</p> <ul style="list-style-type: none"> <input type="checkbox"/> Preliminary market engagement is undertaken; and <input type="checkbox"/> There are no justifiable reasons for not doing so
Pipeline Notice	<p>This notice is to provide the market with a transparent view of current and future procurement opportunities.</p> <p>See section 93 for when a Pipeline Notice applies</p> <p>See regulation 15 for what to include in a pipeline notice</p> <p>https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-plan-phase/guidance-pipeline-notice-html</p>	<p>Yes, by 26th May each financial year if anticipated annual spend on non exempt contracts is more than £100 million. N.b. that (on the basis of 24/25 spend levels) this requirement will not apply to the Council.</p>

Name of Notice	Further information	Required?
<i>Tender Notice</i>	<i>This notice must be published to invite tender proposals. See section 21 See regulation 18 : tender for open procedure See regulation 19: tender for competitive flexible procedure See regulation 20: tender for frameworks See regulation n 21: tender for dynamic markets See regulation 22 tender for qualifying utilities market</i>	<i>Yes, if undertaking a competitive tendering procedure.</i>
<i>Regulated Below Threshold Contracts Notice</i>	<i>This notice must be published where a contract falls below the threshold (unless an exemption applies). See section 87 for when Below Threshold Contracts Notice applies https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-below-threshold-contracts-html See regulation 36</i>	<i>Yes, if both: Contract value is at least £30,000 (including VAT); and Contracting authority is inviting tenders for the contract (unless tenders are requested only from pre-selected or particular suppliers)</i>
<i>Modification Notice</i>	<i>This notice must be published following the substantial modification of a tender. See section 31</i>	<i>Yes</i>
<i>Dynamic Market Notice</i>	<i>This notice must be published before establishing a dynamic market. See section 39</i>	<i>Yes</i>
<i>Transparency Notice</i>	<i>This notice must be published before awarding a contract under section 41 or 43 See section 44</i>	<i>Yes with a few exceptions</i>
<i>Contract Award Notice</i>	<i>This notice must be published for all contracts awarded but before entry into the contract. See section 50</i>	<i>Yes, with a few exceptions</i>
<i>KPIs</i>	<i>See section 52</i>	<i>Yes, if contract exceeds £5million, but not required for frameworks, private utilities, concession contracts or light touch contracts.</i>

Name of Notice	Further information	Required?
<i>Contract Details Notice</i>	<i>This notice must be published after the contract has been entered into See section 53 Under the regulations, the required content varies depending on the type of contract.</i>	<i>Yes, including for certain regulated- below-threshold contracts</i>
<i>Copy of contract</i>	<i>See section 53(3)</i>	<i>Yes, if the contract is more than £5 million.</i>
<i>Procurement Termination Notice</i>	<i>This notice must be published as soon as reasonably practicable if a contracting authority decides not to award the contract after publishing a tender or transparency notice. See section 55</i>	<i>Yes</i>
<i>Exclusion Notice</i>	<i>This notice must be published if a contracting authority decides to disregard a tender or exclude, replace or remove a supplier. See section 59</i>	<i>Yes</i>
<i>Contract Change Notice</i>	<i>This notice must be published to alert the contracting parties of any intended changes to the contract. See sections 75 & 76, 77 See regulation 40</i>	<i>Yes, but not for light touch contracts – and with a copy of the contract if the value (before or after the modification) exceeds £5 million</i>
<i>Contract Termination Notice</i>	<i>This notice must be published to notify intent to terminate the contract. See section 80 for when a Contract Termination Notice applies See regulation 41</i>	<i>Yes</i>
<i>Payments compliance notice</i>	<i>See section 69, regulation 38. A requirement to publish prescribed information about payments made or due to suppliers under public contracts in the preceding six month period.</i>	<i>Yes</i>
<i>Information about significant payments</i>	<i>See section 70. A quarterly requirement to publish specified information about payments made over £30,000 under a public contract.</i>	<i>Yes, but not for concession contracts</i>

Name of Notice	Further information	Required?
<i>Contract performance information</i>	<i>See 71, regulation 39. Relating to KPIs and performance information</i>	<i>Yes, but not for light touch contracts</i>

TABLE 2 – SUMMARY OF PROCUREMENT CODE AND ACT CHANGES

Summary of the Act and Code changes, Impact/Risk.

<ul style="list-style-type: none"> • Consolidation – the Act consolidates the current procurement regimes under one Act. 	<ul style="list-style-type: none"> • Procurement Team do not consider this will impact teams except for Wisbech Port where separate guidance will be required as falls under Utility Requirements.
<ul style="list-style-type: none"> • Terminology – a move away from familiar EU Directive language and terms. 	<ul style="list-style-type: none"> • New guidance will familiarise officers to new terminology and a move away from familiar EU Directive language and terms.
<ul style="list-style-type: none"> • Procurement Objectives – authorities must have regard to the importance of (a) delivering value for money; (b) maximising public benefit; (c) sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions; and (d) acting, and being seen to act, with integrity. Authorities must also treat suppliers the same unless a difference between the suppliers justifies different treatment. 	<ul style="list-style-type: none"> • This will mean a full update of “selling to the council” guides, how we procure to suppliers. A common procurement portal across Cambridgeshire will also make procurements more accessible and transactionally similar. The procurement officer post will support this implementation.
<ul style="list-style-type: none"> • Less prescriptive procedures – there will be (i) Open, (ii) Competitive Flexible Procedure, and (iii) Limited Tendering (i.e. direct award). 	<ul style="list-style-type: none"> • Less prescriptive procedures does not mean less procurement administration. It merely allows the Council to have more control over how it packages Invitation to tenders and applies competitive procedures. Direct awards still come with strict limitations.
<ul style="list-style-type: none"> • Framework Agreements – introduction of the concept of an “open framework”. Open frameworks can be for a period of eight years but, amongst other things, must provide for the frameworks to be “opened” at least once during the first three years and then at least once during each five-year period. 	<ul style="list-style-type: none"> • New Framework rules will in theory make managing them easier and more flexible. As we use “off the shelf Framework Agreements (for example) through ESPO/CCS there should be little impact or risk.
<ul style="list-style-type: none"> • Direct Award – introduction of the ground to protect life where a Minister of the Crown considers it necessary and as such introduces regulations that a direct award is permitted. 	<ul style="list-style-type: none"> • Helpful but unlikely to be relevant to FDC due to nature of business services.

<ul style="list-style-type: none"> • Debarment – introduction of a debarment list. If a supplier is listed on the debarment list, they are considered an “excluded supplier”, and must be excluded. 	<ul style="list-style-type: none"> • Additional administration for the Procurement Team but impact and risk are deemed to be low due to the value of our procurements. Therefore, limited reporting and simply a checking procedure to be implemented.
<ul style="list-style-type: none"> • MAT – authorities are to award a contract to the “most advantageous tender” (a move away from the EU’s “most economically advantageous tender”/MEAT). 	<ul style="list-style-type: none"> • This means price is not necessarily a determining factor so we can link this to evaluation stages using the new competitive flexible procedure.
<ul style="list-style-type: none"> • Whole-lifecycle – more focus on the contract lifecycle as a whole compared to the current regime. e.g. for certain contracts the need to set KPIs and annually publish an assessment of performance against such KPIs. 	<ul style="list-style-type: none"> • This will impact the Procurement Team on larger contracts such as Grounds Maintenance where it is likely there will be additional reporting of KPIs and performance direct to the central digital platform. Larger = £5M + over contract term.
<ul style="list-style-type: none"> • Modifications – introduction of new modification “gateways”/“safe-harbours” including (i) materialisation of a known risk, and (ii) specific defence contract safe-harbours e.g. to enable authorities to take advantage of developments in technology. 	<ul style="list-style-type: none"> • This gives slightly more flexibility to modify contracts procured under the Act but the differences are not material.
<ul style="list-style-type: none"> • Transparency – additional transparency requirements e.g. publishing “contract change notices” prior to modifying contracts, and “contract termination notices”. 	<ul style="list-style-type: none"> • This is the largest impact of the legislation with as many as 14 reporting notices depending on a variety of procedures and spend thresholds. This will be sent direct to the government central digital platform. Greater time for procurement planning and being evermore compliant will be extremely important. In effect most supplies and services procurements worth at least £30K (including VAT) will be centrally published through to an award notification.
<ul style="list-style-type: none"> • Standstill – the new regime will have an eight-working days standstill period and the automatic suspension will only be available if a claim is brought (and the contracting authority is notified) within those eight working days. 	<ul style="list-style-type: none"> • No additional Impact to FDC.

<ul style="list-style-type: none"> Conflicts of Interest 	<ul style="list-style-type: none"> Greater emphasis by the Procurement Team in regard to conflicts of interest reporting and identifying procurement fraud. Procurements for supply/services contracts worth at least £30K (including VAT) will require officers to self-certify when conducting procurements and scoring of bids. Procurement Team to work with internal audit on fraud initiatives.
<ul style="list-style-type: none"> Procurement Review Unit (PRU) 	<ul style="list-style-type: none"> This is a central government unit whose role includes overseeing compliance with the Act and operating a supplier debarment list (i.e. suppliers who may or must be barred from bidding). It does not replace the ability to challenge a procurement through the courts.
<ul style="list-style-type: none"> Additional Payment Reporting 	<ul style="list-style-type: none"> There will be a quarterly requirement to publish details of individual payments of at least £30K (including VAT where these are made under “above threshold” contracts.
<ul style="list-style-type: none"> Code Structure 	<ul style="list-style-type: none"> The code has been structured to reflect a more logical “start to finish and beyond” of a procurement.
<ul style="list-style-type: none"> Detailed Explanations 	<ul style="list-style-type: none"> There are now more detailed explanations about how to carry out procurements.
<ul style="list-style-type: none"> When to contact procurement 	<ul style="list-style-type: none"> Added scenarios and circumstances where the procurement team should be consulted.
<ul style="list-style-type: none"> Cambridgeshire Wide Procurement 	<ul style="list-style-type: none"> Consideration and flexibility on adding other Cambridgeshire Councils onto contracts.
<ul style="list-style-type: none"> Transparency Reporting 	<ul style="list-style-type: none"> More detailed information on transparency reporting requirements.

<ul style="list-style-type: none">• Light Touch, Concessions and Utilities	<ul style="list-style-type: none">• More detailed information on these types of contracts.
<ul style="list-style-type: none">• Direct Awards	<ul style="list-style-type: none">• More detailed information on when contracts can be awarded directly.
<ul style="list-style-type: none">• Governance	<ul style="list-style-type: none">• Inclusion in the code of governance procedures.

TABLE 3 – THRESHOLDS AND PROCEDURES

Category	Estimated total value of procurement		Requirement	Exemptions
	Supplies & Services	Works		
A	Below £6,000, including VAT	Below £12,000 (including VAT)	An official order with at least one estimate (ideally more), including one from a local supplier if possible. See section 5.1. of code	Not applicable.
B	Between £6,000 and below £30,000 (in each case, including VAT)	Between £12,000 and below £120,000 (in each case including VAT)	At least three competitive quotations, including one quotation from a local supplier if possible. See section 5.2. of code	See section 10. of code
C	Between £30,000 and below £214, 904 (in each case including VAT)	Between £120,000 and below £214904 (in each case including VAT)	Competitive tenders but must not use a separate suitability stage to reduce the number of bidders invited to tender. See section 5.3. of code	See section 10. of code
C1		Between £214,904 and below £5,372,609 (in each case including VAT)	Competitive tenders using either the Open Procedure or the Competitive Flexible Procedure. See section 5.4. of code	See section 10. of code

D	At least £214,904 (including VAT)	At least £5,372,609 (including VAT)	Competitive tenders using either the Open Procedure or the Competitive Flexible Procedure and the provisions in the Act for above threshold contracts must be complied with. See section 5.5. of code	See section 10. of code
E	Social and other "light touch" services		See section 5.8. of code	See section 10. of code
F	Concession contracts		See section 5.9. of code	See section 10. of code
G	Utilities contracts		See section 5.10. of code	