

Committee Agenda



**Epping Forest
District Council**

CONSTITUTION WORKING GROUP Thursday, 2nd September, 2021

Place: Virtual Meeting on Zoom

Time: 7.00 pm

Democratic Services Officer V. Messenger Tel: (01992) 564243
Email: democraticservices@eppingforestdc.gov.uk

Members:

Councillors S Rackham (Chairman), M Sartin (Vice-Chairman), D Dorrell, S Heap, S Jones, H Kauffman, J Mclvor, J Philip, C C Pond, J Share-Bernia and J H Whitehouse

1. APOLOGIES FOR ABSENCE

2. SUBSTITUTE MEMBERS

To report the appointment of any substitute members for the meeting.

3. NOTES OF PREVIOUS MEETING (Pages 3 - 6)

To agree the notes of the meeting of the Working Group held on 27 July 2021.

4. TERMS OF REFERENCE & WORK PROGRAMME (Pages 7 - 10)

To review the terms of reference and progress with the achievement of the current work programme for the Working Group.

5. CONSTITUTION - REVISIONS & AMENDMENTS (Pages 11 - 12)

To consider the attached report regarding an amendment to the Constitution to give the Audit and Governance Committee delegated authority for approving the Council's annual Statement of Accounts, with effect from the 2020/21 financial year.

For information: The latest Constitution update of 5 August 2021 is published on the Council's website and can be viewed at this link:

<https://rds.eppingforestdc.gov.uk/ieListMeetings.aspx?CId=638&Info=1>

6. COVID-19 DEVELOPMENT PROJECTS - LOCAL BUSINESS SUPPLIERS PROCUREMENT STRATEGY AND RULES (Pages 13 - 76)

To consider the attached updated Procurement Strategy for 2021 – 2026 and Procurement Rules of Jan 2021. (Please note: Amendments to the Procurement Rules (January 2021) have been made so that any references to EU law have been replaced with relevant UK law).

7. DATE OF NEXT MEETING

To note that the next meeting of the Working Group will be held on 5 October 2021 at 19.00.

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION WORKING GROUP
HELD ON TUESDAY, 27 JULY 2021
IN VIRTUAL MEETING ON ZOOM
AT 7.00 - 7.52 PM**

Members Present: S Rackham (Chairman), M Sartin (Vice-Chairman), D Dorrell, S Heap, H Kauffman, J McIvor, J Philip, C C Pond, J Share-Bernia and J H Whitehouse

Other members present: None

Apologies for Absence: S Jones

Officers Present J Leither (Democratic Services Officer, P Maginnis (Service Manager (Corporate Services)), V Messenger (Democratic Services Officer), J Warwick (Acting Service Director (Contracts)) and G Woodhall (Team Manager - Democratic & Electoral Services)

1. SUBSTITUTE MEMBERS

It was noted that there were no substitute members for this meeting.

2. NOTES OF PREVIOUS MEETING

Councillor M Sartin advised that she had given her apologies for the meeting on 12 March 2020, and her attendance was amended accordingly.

RESOLVED:

That the notes of the meeting of the Working Group held on 12 March 2020 be agreed as a correct record.

3. TERMS OF REFERENCE & WORK PROGRAMME

(a) Terms of Reference

The Working Group noted the Terms of Reference.

(b) Work Programme

Item (4) Part 3 – Scheme of Delegation – Appendix 3 – Delegation to Officers from Full Council

On delegated powers in relation to planning officers, Councillor Heap was pleased this had been added to the work programme.

Councillor C C Pond hoped this was not another attempt to water down the powers of the parish councils because, as Chairman of the Epping Forest Branch of the Essex Association of Local Councils, they would be concerned.

Review of select committees

Councillor J H Whitehouse asked if a review was overdue and should this be included in the work programme.

Councillor M Sartin, Chairman of Overview and Scrutiny, replied that the terms of reference of the select committees in relation to the new portfolios had been discussed by the Joint Meeting of Overview and Scrutiny Chairmen and Vice-Chairmen on 22 July 2021. It had generally been agreed that there was reasonable alignment between the new portfolios and select committees.

Councillor J Philip commented that it was for the Overview and Scrutiny Committee to look at the select committees' terms of reference.

G Woodhall, Team Manager (Democratic and Electoral Services), clarified that it was the prerogative of the Overview and Scrutiny Committee to appoint the select committees for each municipal year as well as determining their terms of reference, including appointing task and finish panels. A review of the current select committees was an issue for Overview and Scrutiny rather than the Constitution Working Group and that was why there was very little in the Constitution on select committees.

RESOLVED:

That the Working Group noted the work programme.

4. CONSTITUTION - REVISIONS & AMENDMENTS

The Constitution had been rewritten during 2016/17, which had substantially reduced its size, but cyclical reviews of the Constitution were not undertaken. It was noted that if it was the conclusion of other committees to identify items for the Constitution Working Group's work programme these would be added throughout the year. Usually recommendations would come via other committees during their normal business for the Working Group to look at a specific item and to decide on the work required.

Councillor C C Pond asked if the role and composition of the Joint Meeting of Development Management Chairmen and Vice-Chairmen could be considered by the Working Group at its first meeting in 2022. In his opinion the committee was not understood, ill-defined and its composition was very narrow. Councillor J Philip did not see its composition as narrow. G Woodhall replied the joint meeting met twice a year and this item could be added to the work programme.

Councillor J H Whitehouse remarked that this joint meeting was not well known by other members unless you were a planning committee chairman or vice-chairman, and could a discussion be held with other members before one of its meetings took place to raise any issues.

It was noted that details of this committee were published as part of the Annual Calendar of Meetings and a forthcoming meeting would be publicised in the Bulletin. The agendas and minutes were also available on the Council's Intranet (Members' Extranet) at this link:

<https://eppingforestintranet.moderngov.co.uk/ieListMeetings.aspx?CId=757&Year=0>

Following discussion it was suggested that any councillor could informally approach the chairman of a planning committee after a meeting and bring an issue to their

attention for raising at the joint meeting. Councillors J Share-Bernia and D Dorrell, who were both members, supported this informal approach as it had merit.

RESOLVED:

That Councillor C C Pond would submit a paper on the role and composition of the Joint Meeting of Development Management Chairmen and Vice-Chairmen for discussion by the Working Group at the meeting in February 2022.

5. COVID-19 DEVELOPMENT PROJECTS - LOCAL BUSINESS SUPPLIERS / PROCUREMENT STRATEGY AND RULES

J Warwick, Acting Service Director (Contracts), introduced the updated Procurement Strategy 2021 – 2026, which supported the Council's objectives under Covid-19 development projects, and the Procurement Rules of January 2021 that had also been updated. Following Cabinet approval on 3 December 2021, both of these had been implemented on 1 January 2021. The new procurement strategy should increase the number of local suppliers. The social value and sustainability evaluation criteria would be used where possible, and a social value template was being used to measure contractors on the benefits they would bring to the District. The Procurement Rules had been updated to ensure these changes would be adopted in everyday practices. A Procurement Checklist guided officers throughout the process, but training had been provided to the Procurement and Contract Development Team. The team was also working with Economic Development to offer EFDC Procurement support to local businesses through Meet the Buyer days or similar events, which helped inform local businesses of the Council's processes.

Unfortunately, the updated Procurement Rules of January 2021, Social Value Proforma for EFDC and Procurement and Contracts Checklist had been omitted from this agenda, so members did not have all the supporting documentation before them and this item would be revisited at the next meeting. It was noted that Cabinet's responsibility covered the Procurement Strategy while the Constitution Working Group's remit was confined to the Procurement Rules, which would replace the February 2018 version currently in the Constitution. However, members raised the following points.

- Strategies should go to a select committee to be scrutinised, so Stronger Council should have been provided with an update to scrutinise. J Warwick replied he did provide updates to the select committee and would continue to do so in future when requested.
- What was the social value matrix based on? There were many toolkits being used but the Procurement and Contracts Team had created this specifically for the benefit of the Council and was an ongoing piece of work. The Council was also a member of the Essex Procurement Hub.
- Procurement had to work within several controls including EU legislation, but was this EU legislation still relevant? J Warwick replied that at the time the strategy was written and submitted to Cabinet, the UK still came under EU legislation. He would ask the Team Manager (Procurements and Contracts), S McNamara, if this was the latest legislation.

- In terms of the Working Group and who could change the criteria, it was not clear if this was by delegated authority, by a Cabinet decision or an officer decision, and on the social value elements did this come under the Procurement Rules or was this a regulation. It was noted that these criteria were detailed in the Procurement Rules.
- Regarding sustainability and climate change in the Procurement Strategy 2021 – 2026 and the use of environmentally friendly goods wherever possible and practicable, what about being financially viable as well? If the uplift in cost was 10% that might be agreeable but if substantially higher, was this practicable? J Warwick replied that he would liaise with the Team Manager (Procurement and Contracts) and come back on this.
- On whether use of hempcrete might be financially viable, it was noted that the Working Group could only look at the Procurement Rules, not policy.

RESOLVED:

- (1) That the item be revisited at the next meeting with all the documentation before members;
- (2) That J Warwick / S McNamara inform members at the next meeting whether EU legislation was still relevant to the Procurement Rules and Strategy; and
- (3) That J Warwick / S McNamara apprise members on the use of environmentally friendly goods wherever possible and practicable in relation to being financially viable.

6. DATE OF NEXT MEETING

After the meeting and in discussion with the Chairman, an extra meeting of the Working Group was organised to be held virtually on **2 September 2021 at 19.00**.

It was noted that the meeting of the Working Group originally scheduled for 5 October 2021 at 19.00 would still go ahead.

CONSTITUTION WORKING GROUP

TERMS OF REFERENCE

Title: Constitution Working Group

Status: Working Group

Terms of Reference:

- (1) To review any aspect of the authority's constitutional arrangements as requested by the Council;
- (2) To undertake general reviews of specific elements of the Constitution in order to ensure that the authority's constitutional arrangements complement current legislative requirements and decisions made by the Council; and
- (3) To consider any proposals of the Monitoring Officer for necessary revision to any element of the Constitution.

Reporting:

The Working Group shall report directly to the Council in connection with its Terms of Reference and the achievement of its work programme.

Chairman: Cllr S Rackham

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Constitution Working Group
(Chairman – Councillor S Rackham)
Work Programme 2021/22

Item	Timescale	Progress	Officer / owner
(1) Constitution	Ongoing	To consider the ongoing review of the Constitution to ensure alignment with the Council's management structure.	N Boateng
(2) Procurement Rules 2021	27 July 2021 2 September 2021	To consider the new Procurement Rules (agreed by Cabinet Dec 2020); and To be continued from July 2021 meeting.	J Warwick / S McNamara
(5) Statutory Statement of Accounts – change of delegated authority for approving	2 September 2021	Change of delegated authority for approving Statutory Statement of Accounts from Council to Audit & Governance Committee (Council (Minute no 27) recommendation made to Constitution Working Group at 29.07.21 meeting).	A Small / N Boateng
(3) Article 4 – The Full Council Terms of Reference	5 October 2021	To review Article 4 – The Full Council Terms of Reference sub-para (c).	N Boateng (report due)
(4) Part 3 – Scheme of Delegation – Appendix 3 – Delegation to Officers from Full Council	5 October 2021	To discuss the delegated powers in relation to Planning Officers.	N Boateng (report due) (incl. N Richardson)
(6) Joint Meeting of Development Management Chairmen and Vice-Chairmen	3 February 2022	To reconsider the composition and function of the twice annual Joint Meeting of Development Management Chairmen and Vice-Chairmen (Minute no 4).	Cllr CC Pond (report due) N Boateng (incl. N Richardson)

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Report to Constitution Working Group

Date of meeting: 2 September 2021

Portfolio: Finance, Qualis Client and Economic Development

Subject: Constitution - Revisions and Amendments



**Epping Forest
District Council**

Officer Contact for Further Information: N. Boateng (01992 564323)

Democratic Services Officer: V. Messenger (01992 564243)

Recommendation/Decision Required:

- (1) That the Constitution Working Group considers amending the Council Constitution to give the Audit and Governance Committee delegated authority for approving the Council's annual Statement of Accounts, with effect from the 2020/21 financial year.**

Executive Summary

Regulation 9(2) of the Accounts and Audit Regulations 2015 requires the Council to consider, either by way of a committee or – by the members meeting as a whole – the Statement of Accounts, and approve the Statement of Accounts, by a resolution of that committee or meeting.

The Council's legal responsibilities in respect of the Regulations are reflected within the Constitution. In particular, the Council's Terms of Reference (Article 4) requires full Council approval of the Council's Statement of Accounts under Section 1(c).

Council approval of the Statement of Accounts follows on from the detailed consideration given by the Audit and Governance Committee following the completion of the external audit. In forming its recommendation to full Council, the Committee takes account of the findings in the external auditor's report, which is presented alongside the audited Statement of Accounts.

Regulation 20 of the Accounts and Audit (Amendment) Regulations 2021 has now amended Regulation 10 of the 2015 Regulations and requires the Council to publish its 2020/21 Statement of Accounts and supporting documents (together with any external audit certificate or opinion) by 30th September 2021 (moving the deadline forward from the 30th November requirement for the 2019/20 Statement of Accounts).

The legislative timetable is currently very difficult for both the Finance team and the external auditors to achieve, partly due to the two-step process in place for approving the audited Statements required by the Constitution as currently drafted. Streamlining the process by delegating authority for approving the Statement of Accounts to the Audit and Governance Committee would therefore be potentially advantageous. Thus:

- ***2020/21 Statement of Accounts*** – the Council has faced major challenges in preparing its Statement of Accounts in both 2018/19 and 2019/20 following a sudden and substantial loss of senior Finance staff in 2019, with audit opinions being issued late in both years; the problem has been exacerbated by resourcing difficulties with the auditors. Although substantial improvements have been made by the Finance team over the last 18 months – due to the late running 2019/20 audit, and additional (Covid-related) accounting complexities – issuing the audit opinion for 2020/21 in accordance with the statutory deadline will, once again, prove challenging. A shortened approval process would ameliorate the pressure for the Finance team and the external auditors alike; and

- **2021/22 Statement of Accounts (and future Statements)** – it appears likely that the statutory timetable for publishing and auditing the Statement of Accounts will be tightened further in 2021/22 with the Council being required to publish its draft Statement of Accounts by 30th June 2022 at the latest, with the audit opinion deadline remaining at 30th September 2022. It appears unlikely that meeting this timetable will prove a major problem (given ongoing improvements) even with the current two-step process. However, substantial operational efficiencies can be gained by *exceeding* the legislative timetable; securing the benefits from an enhanced preparation and audit process for the Statement of Accounts for 2021/22 and beyond, is a key strategy embedded within the ongoing transformation process, in the Council's Finance function.

Delegating the approval of the Statement of Accounts to the Audit and Governance Committee (a practice common at many comparable councils) will not reduce the robustness of the scrutiny and approval process; the Committee is well resourced for, and is experienced in, this role. In contrast, the usual size of full Council's agenda, and its broader membership, is not always conducive to giving the Statements the degree of scrutiny they require.

Having considered the merits of potentially changing the current two-step approval process, full Council – at its meeting on 29th July 2021 – approved a recommendation that the Constitution Working Group should consider amending the Constitution, giving the Audit and Governance Committee delegated authority for approving the annual Statement of Accounts.

Resource Implications:

The recommendation in this report seeks to ensure that the Council's Constitution remains fit for purpose.

Legal and Governance Implications:

There are a range of Legal and Governance implications. Most notably:

- The Accounts and Audit Regulations 2015
- The Accounts and Audit (Amendment) Regulations 2021 (especially Regulation 2); and
- Article 4 (1c) of the Council Constitution.

Safer, Cleaner, Greener Implications:

There are no implications arising from the recommendation in this report in respect of the Council's commitment to the Climate Local Agreement, the corporate Safer, Cleaner, Greener initiative, or any crime and disorder issues within the district.

Consultation Undertaken:

The subject matter of this report was considered by full Council on 29th July 2021.

Background Papers:

None

Risk Management:

The Constitution sets out procedures and rules for the operation of the Council's functions and responsibilities. This includes the scrutiny and approval of the annual Statement of Accounts in accordance with legislative requirements. It is an important control in the safeguarding of public funds and failure to comply with due legislative process, would represent a significant reputational risk.

Equality:

There are no equality implications arising from the recommendation in this report.

Report to Constitution Working Group

Date of meeting: 2 September 2021

**Portfolio: Environmental and Technical Services
(Councillor N Avey)**

**Subject: Covid-19 Development Projects – Local Business
Suppliers / Procurement Strategy and Rules**



**Epping Forest
District Council**

Officer contact for further information: S. McNamara (01992 564331)

Democratic Services Officer: V. Messenger (01992 564243)

Recommendations/Decisions Required:

- (1) That the Working Group note the updated Procurement Strategy for 2021 – 2026;**
- (2) That the Working Group consider the updated Procurement Rules of January 2021; and**
- (3) That, subject to recommendation (2) above, a report be made to Council recommending the incorporation of the updated Procurement Rules of January 2021 within the Constitution.**

Report:

1. The attached Cabinet Report (ref: C-045-2020/21) was submitted to Cabinet on 3 December 2020 when Cabinet agreed the updated Procurement Strategy for 2021 – 2026 and the updated Procurement Rules of January 2021, which have been effective since 1 January 2021.

2. The current Procurement Strategy needed to be renewed from January 2021, which required an updated version. The strategy has been updated to reflect how Procurement can support the delivery of the Council's Corporate Objectives and Covid-19 recovery plan. The updated Procurement Strategy 2021 – 2026 is provided for information only, as part of this Cabinet report, which the Working Group is asked to note.

3. The Procurement Rules, which had been in effect since April 2018, required an update to support the Council's new Procurement Strategy. This is to ensure that the rules are aligned with the Strategy and to help the Council achieve its objectives. The Council is making changes to its approach to procurement, to recognise the broader economic and well-being impact of existing local businesses and attract new businesses to the District.

4. Subject to the consideration of Procurement Rules of January 2021, the Working Group is asked to make a recommendation to Council for approval, as this documentation needs to be incorporated within the Constitution.

Resource Implications:

To put a clear strategy and rules in place to enable Procurement to contribute towards the Council's objectives.

Legal and Governance Implications:

The recommendations of this report seek to ensure that the Council's Constitution remains fit for purpose.

Safer, Cleaner, Greener Implications:

Climate change and sustainability are big drivers for the updating of the Strategy and Rules, and we are seeking to include Sustainability criteria wherever possible for our future procurement exercises to ensure our suppliers are operating sustainably and environmentally friendly.

Consultation Undertaken:

Cabinet 3 December 2020 agreed the updated Procurement Strategy for 2021 – 2026. Prior to Cabinet this included – Procurement and Contract Development Team, Contracts Working Party, Accountancy, Climate Change Officer, Economic Development Specialist Officer and the Leadership Team.

Background Papers:

Cabinet Report reference: C-045-2020/21 (03 December 2020)
Procurement Strategy 2021-2026
Procurement Rules
Procurement Checklist
Social Value Proforma for EFDC

Risk Management:

The Council's Constitution sets out procedures and rules for the operation of its functions and responsibilities. If procurement is not co-ordinated and controlled, it is unlikely that the Council will achieve value for money.

Equality:

There are no equality implications arising from the recommendations of this report.

Report to the Cabinet

Report reference: C-045-2020/21
Date of meeting: 03 December
2020



Portfolio: Environment and Technical – Cllr N Avey
Subject: Covid-19 Development Projects – Local Business Suppliers /
Procurement Strategy and Rules
Responsible Officer: Shane McNamara (01992 564331).
Democratic Services: Adrian Hendry (01992 564246).

Recommendations/Decisions Required:

- (1) To agree the updated Procurement Strategy for 2021 – 26 which supports the Council objectives under Covid-19 Development Projects to become effective from 01 January 2021; and**
- (2) To agree the updated Procurement Rules, that will come into effect from 01 January 2021.**

Executive Summary:

The current Procurement Strategy is required to be renewed from January 2021, and as such an updated version is required. The strategy has been updated to reflect how Procurement can support the delivery of the Council's Corporate Objectives and Covid-19 recovery plan.

To help support the recovery plan, we have undertaken the following:

- The Procurement Strategy has been updated to increase number of local suppliers that must be invited to tender, and to agree to pay local suppliers faster.
- Social Value and Sustainability evaluation criteria will now be used wherever possible in procurement exercises to maximise the benefits to the district and ensure sustainable practices throughout our supply chains.
- A Social Value template has been created which will measure contractors on elements such as locality of their business, their supply chains, their workforce and any other benefits they can bring to the district.
- EFDC's Procurement Rules have been updated to ensure these changes are adopted into our everyday practices.
- A Procurement Checklist has been created to help officers with a step by step, tick off guide to ensure they are including all relevant steps throughout the process.
- Training will be run by the Procurement and Contract Development Team throughout January and February for officers to ensure awareness across EFDC of the updates.
- We are working with Economic Development to offer EFDC Procurement support to Local Businesses through Meet the Buyer days or similar events, which will help to inform local businesses of our processes and help them to bid more successfully for EFDC business.

The Procurement Rules have been in effect since April 2018 and required an update to support the Council's new Procurement Strategy, and to ensure that the rules are aligned with the Strategy and help the Council to achieve its objectives. The Council is making changes to its approach to procurement, to recognise the broader economic and well-being impact of existing local businesses and attract new businesses to the District. The new procurement strategy and rules require a minimum of two local suppliers to be invited to tender wherever possible and a commitment to make faster payments to local suppliers (21 days instead of the mandatory 30). The latest spend analysis that was conducted on EFDC's 2018/19 data showed that while 57% of our spend was with Small and Medium Enterprises (SME's), only 6% of our spend was with businesses based in the Epping Forest District and these changes will help to try to increase that figure and make it more attractive and accessible for local business to work with us.

The new procurement strategy includes the use of Social Value, to enable bidders to be explicit in the provision of local job opportunities, apprenticeships and community benefits as part of their tender. A Sustainability-focused evaluation criteria has also been developed when assessing tenders to maximise the benefit to the District and its local businesses and communities.

Training and guidance are being developed to help contracting officers in procuring and managing contracts. This will include templates, checklists, examples of good practice and suggested structures for supplier meetings to ensure they are performing to the agreed standards set out when the contract was entered into, and that the Council gets maximum value and benefit.

Reasons for Proposed Decision:

To update the current Procurement Strategy and accompanying Procurement Rules in line with current best practice and use the opportunity to incorporate Covid-19 Development Project aims.

Other Options for Action:

To let the Strategy expire and not replace it, this would mean there is no high-level strategic direction to the Council's purchasing and will drastically reduce the likelihood of achieving value for money and providing good quality services to our residents.

To leave the Procurement Rules as they are, this would not be a viable option as the rules would not be in alignment with our Corporate Objectives and Covid-19 recovery plan, thus making the achievement of those objectives much more difficult.

Report:

1. Epping Forest District Council will continue its policy of using best practice procurement approaches and processes. This will assist in the delivery of high-quality services to support strategic priorities at good value for money.
2. The Procurement Strategy (Appendix 1) supports the Council's Corporate Objectives and Covid-19 recovery plan. At a general level, procurement of goods and services assists in delivering the Council's strategic objectives and statutory responsibilities. At a specific level, this procurement strategy is designed to support the Council's objectives of:
 - Ensuring that the Council has appropriate resources, on an ongoing basis, to fund its

statutory duties and appropriate discretionary services while continuing to keep Council Tax low.

- Ensuring the Council adopts a modern approach to the delivery of its services and that they are efficient, effective and fit for purpose.
3. New policies have been introduced into the Strategy to help achieve specific outcomes, in particular to attempt to encourage local suppliers to participate in tender opportunities by increasing the minimum number invited to all EFDC tenders, to be more sustainable by setting specific evaluation criteria to afford weighting to sustainable practices / supply chains, and to look to generate additional benefit to the district through Social Value evaluation criteria, prioritising what social value the bidders can offer, ranging from creation of jobs and / or apprenticeships in the local area, or funding to benefit local communities (a draft social value proforma is included in Appendix 3).
 4. In order to support this Procurement Rules (Appendix 2) have been updated to make them easier to follow; they have been updated to reflect the Council's new organisational structure, and processes have been reviewed and amended to ensure they are effective while still retaining control of the Council's Procurement processes. Tender rules have been amended and all tenders are now conducted electronically, they will be opened centrally by the Procurement and Contract Development Team, waivers will be approved by the level of officer who is permitted to accept tenders at that value and financial thresholds have been updated to try to align them more closely with the Council's Decision Making Accountability (DMA) guidelines.
 5. A Procurement Checklist has been created to guide and help contracting officers through the Procurement process by following a stepped process to ensure they have considered all relevant factors before proceeding. The completion of this checklist will be mandatory for all tender processes and will help to ensure all contracting officers are aware of the Strategy and are adhering to Rules.
 6. Following the adoption of the Strategy and Rules, the Procurement and Contract Development Team will run a training programme to raise awareness of the changes that have been made and the support documents that are available, such as the Procurement Checklist. The training will start in January and will be offered to staff at all levels of the authority to provide the opportunity to go through the new documents in details and ask questions. Processes for Business Support Finance, such as use of Marketplace and Accounts Payable, will be included in this training to ensure the whole Procurement cycle is covered.
 7. Although not expressly mentioned in the Procurement Strategy and Rules, it has been highlighted that Contract Management can get complacent. The Procurement and Contract Development Team will develop further training and guidance that will help contracting officers with the ongoing management of contracts. This will include templates and suggested structures for supplier meetings, performance monitoring, change management and dispute resolution etc.

Resource Implications:

There are no direct resource implications for this report. It is an officer view that a robust strategy and rules will lead to greater value being derived from our Procurement exercises, sometimes through Social Value and Sustainable practices and through cost savings where possible.

EFDC expects to spend approximately £18.5m with contractors in 2020/21, and it is vital that

we use those funds as efficiently and effectively as possible.

Legal and Governance Implications:

The United Kingdom is still in the process of transitioning out of the EU, and as such we are still subject to EU Procurement Law at the present time. It is envisaged that we will continue to be subject to these laws after January 2021, when the UK officially leaves the EU, and therefore our Procurement Rules still make mention of the EU Procurement Law and the applicable financial thresholds at which they apply. Should the situation change in the future, the Council will amend Procurement Rules accordingly.

Safer, Cleaner and Greener Implications:

Climate change and sustainability are big drivers for the updating of the Strategy and Rules, and we are seeking to include Sustainability criteria wherever possible for our future procurement exercises to ensure our suppliers are operating sustainably and environmentally friendly.

Consultation Undertaken:

Procurement and Contract Development Team
Procurement and Contracts Working Party
Accountancy
Climate Change Officer
Economic Development Specialist Officer
Leadership Team

Background Papers:

Procurement Strategy 2021-2026
Procurement Rules
Procurement Checklist
Social Value Proforma for EFDC

Risk Management:

If procurement is not co-ordinated and controlled, it is unlikely that the Council will achieve value for money.

Failure to comply with the EU Procurement Regulations could result in the UK High Court preventing the award of a contract and/or awarding damages to any supplier who has suffered loss or damage as a result of any breach in the regulations, as well as imposing fines on the authority.

Equality Impact Assessment

1. Under s.149 of the Equality Act 2010, when making decisions, Epping District Council must have regard to the Public Sector Equality Duty, ie have due regard to:
 - eliminating unlawful discrimination, harassment and victimisation, and other conduct prohibited by the Act,
 - advancing equality of opportunity between people who share a protected characteristic and those who do not,
 - fostering good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
2. The characteristics protected by the Equality Act are:
 - age
 - disability
 - gender
 - gender reassignment
 - marriage/civil partnership
 - pregnancy/maternity
 - race
 - religion/belief
 - sexual orientation.
3. In addition to the above protected characteristics you should consider the cross-cutting elements of the proposed policy, namely the social, economic and environmental impact (including rurality) as part of this assessment. These cross-cutting elements are not a characteristic protected by law but are regarded as good practice to include.
4. The Equality Impact Assessment (EqIA) document should be used as a tool to test and analyse the nature and impact of either what we do or are planning to do in the future. It can be used flexibly for reviewing existing arrangements but in particular should enable identification where further consultation, engagement and data is required.
5. Use the questions in this document to record your findings. This should include the nature and extent of the impact on those likely to be affected by the proposed policy or change.
6. Where this EqIA relates to a continuing project, it must be reviewed and updated at each stage of the decision.
7. All **Cabinet, Council, and Portfolio Holder reports must be accompanied by an EqIA**. An EqIA should also be completed/reviewed at key stages of projects.
8. To assist you in completing this report, please ensure you read the guidance notes in the Equality Analysis Toolkit and refer to the following Factsheets:
 - Factsheet 1: Equality Profile of the Epping Forest District
 - Factsheet 2: Sources of information about equality protected characteristics
 - Factsheet 3: Glossary of equality related terms
 - Factsheet 4: Common misunderstandings about the Equality Duty
 - Factsheet 5: Frequently asked questions
 - Factsheet 6: Reporting equality analysis to a committee or other decision making body

Section 1: Identifying details

Your function, service area and team: Contracts and Technical

If you are submitting this EqlA on behalf of another function, service area or team, specify the originating function, service area or team:

Title of policy or decision: Procurement Strategy and Rules

Officer completing the EqlA: Tel: 01992564331 Email: smcnamara@eppingforestdc.gov.uk

Date of completing the assessment: 13.10.2020

Section 2: Policy to be analysed

2.1	Is this a new policy (or decision) or a change to an existing policy, practice or project? Change to existing policies
2.2	<p>Describe the main aims, objectives and purpose of the policy (or decision): To renew and update the Council's Procurement Strategy and Procurement Rules</p> <p>What outcome(s) are you hoping to achieve (ie decommissioning or commissioning a service)? To put a clear strategy and rules in place to enable Procurement to contribute towards the Council's objectives.</p>
2.3	<p>Does or will the policy or decision affect:</p> <ul style="list-style-type: none">• service users• employees• the wider community or groups of people, particularly where there are areas of known inequalities? <p>The policy affects EFDC Staff who procure on its behalf.</p> <p>Will the policy or decision influence how organisations operate? No.</p>
2.4	<p>Will the policy or decision involve substantial changes in resources? No</p>
2.5	<p>Is this policy or decision associated with any of the Council's other policies and how, if applicable, does the proposed policy support corporate outcomes? The Procurement Strategy is designed to put measures and processes in place to help achieve the Council's Corporate Objectives and Covid Recovery Plan.</p>

Section 3: Evidence/data about the user population and consultation¹

As a minimum you must consider what is known about the population likely to be affected which will support your understanding of the impact of the policy, eg service uptake/usage, customer satisfaction surveys, staffing data, performance data, research information (national, regional and local data sources).

3.1	What does the information tell you about those groups identified? N/A
3.2	Have you consulted or involved those groups that are likely to be affected by the policy or decision you want to implement? If so, what were their views and how have their views influenced your decision? Yes, the policies have been discussed at Leadership Team and at the Procurement and Contracts Working Party, and have been accepted and agreed.
3.3	If you have not consulted or engaged with communities that are likely to be affected by the policy or decision, give details about when you intend to carry out consultation or provide reasons for why you feel this is not necessary: This is an internal policy that will not affect communities directly.

Section 4: Impact of policy or decision

Use this section to assess any potential impact on equality groups based on what you now know.

Description of impact	Nature of impact Positive, neutral, adverse (explain why)	Extent of impact Low, medium, high (use L, M or H)
Age	N/A	N/A
Disability	N/A	N/A
Gender	N/A	N/A
Gender reassignment	N/A	N/A
Marriage/civil partnership	N/A	N/A
Pregnancy/maternity	N/A	N/A
Race	N/A	N/A
Religion/belief	N/A	N/A
Sexual orientation	N/A	N/A

Section 5: Conclusion

		Tick Yes/No as appropriate	
5.1	Does the EqIA in Section 4 indicate that the policy or decision would have a medium or high adverse impact on one or more equality groups?	No <input checked="" type="checkbox"/>	
		Yes <input type="checkbox"/>	If ' YES ', use the action plan at Section 6 to describe the adverse impacts and what mitigating actions you could put in place.

Section 6: Action plan to address and monitor adverse impacts

What are the potential adverse impacts?	What are the mitigating actions?	Date they will be achieved.

Section 7: Sign off

**I confirm that this initial analysis has been completed appropriately.
(A typed signature is sufficient.)**

Signature of Head of Service:

Date:

Signature of person completing the EqlA: Shane McNamara

Date: 27.10.2020

Advice

Keep your director informed of all equality & diversity issues. We recommend that you forward a copy of every EqlA you undertake to the director responsible for the service area. Retain a copy of this EqlA for your records. If this EqlA relates to a continuing project, ensure this document is kept under review and updated, eg after a consultation has been undertaken.

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Epping Forest District Council

Procurement Strategy

2021 - 2026

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INTRODUCTION

Procurement is much more than a narrowly based technical issue. 'Procurement' is the process of acquiring goods, works and services, covering acquisitions from third parties, partnering and from in-house providers. The process spans the whole life cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset. It involves options appraisal and the critical 'make or buy' decision which may result in the provision of services in-house in appropriate circumstances.

The Procurement Strategy sets out the Council's procurement objectives and principles and describes the contribution that effective procurement will make to the achievement of Epping Forest District Council's vision and corporate priorities. The strategy is supported by an annual action plan and the Council's Procurement Rules.

SUPPORTING THE DELIVERY OF THE COUNCIL PLAN

The Procurement Strategy supports the Council's Corporate Plan. At a general level, procurement of goods and services assists in delivering the Council's strategic objectives and statutory responsibilities. At a specific level, this procurement strategy is designed to support the Council's objectives of:

- Ensuring that the Council has appropriate resources, on an ongoing basis, to fund its statutory duties and appropriate discretionary services.
- Ensuring the Council adopts a modern approach to the delivery of its services and that they are efficient, effective and fit for purpose.

It also supports the Council:

- To respond to issues of deprivation in the district: through promoting a consistent approach to equality and diversity and reducing inequality in the provision of services and through requiring and promoting good practice in equality and diversity in the employment and contracting practices of suppliers and partners.
- To maintain and improve the links between the Council, local town centres and the business community: through, to the extent that the EU Procurement Directives, collaborative procurement and value for money allow, sourcing appropriate goods and services through local businesses and promoting the development of local businesses by making the Council easier to do business with.

Other influences on the strategy

A number of external influences have been taken into account in the preparation of this strategy, including:

- Delivering Value for Money as measured through the annual assessment by the Council's external auditors;
- The Council's duty to promote equality of opportunity in line with the public sector equality guidance.

A number of internal drivers have also been taken into account in the strategy, including:

- The Medium-Term Financial Strategy and Budget 2020/21, which set the framework for a balanced budget over the medium term. Delivering these forecasts will require, amongst other things, delivering real efficiencies, including through improved procurement and sourcing decisions and through improved procurement processes and financial controls.
- The Council's Climate Change Strategy is directed towards reducing the Council's carbon footprint and has included a specific action to update the Procurement Strategy for the inclusion of green and local issues.

The key legislative requirements are set out in:

- Public Contract Regulations 2015
- Equalities Duty Act (2010)
- Localism Act (2011) including Community Right to Bid and Community Right to Challenge
- Public Services (Social Value) Act (2012)
- National Procurement Strategy (2015)

RESPONSIBILITIES

Service Director – Contracts and Technical

As the officer “Procurement Champion” the Service Director is responsible for the updating and maintenance of this strategy and the supporting processes.

The Procurement Champion is responsible for ensuring:

- The strategy is in place, reviewed and updated on a regular basis;
- The strategy is communicated to Directors for implementation;
- The implementation of the strategy to the extent that it mandates compliance with processes and procedures is monitored across services and that an effective reporting system is in place to report breaches or weaknesses to the Finance and Performance Management Cabinet Committee;
- The provision of reports on the effectiveness of the strategy, the performance during the year and any recommendations for improvement to the Finance and Performance Management Cabinet Committee.

Service Directors / Service Managers

Service Directors and Service Managers are responsible for ensuring that the compliance requirements of the strategy are effectively communicated to their directorates, that the strategy is followed within their directorates and to participate fully in the development and execution of the strategy.

Service Directors are also responsible for ensuring that the provisions of the Constitution regarding Procurement Rules and Financial Regulations are effectively implemented and monitored within their directorates. There is a requirement to have procurement as a standing item on the agenda for all Service Management Team Meetings.

Officer Groups

The Procurement and Contracts Working Group is made up of Service Managers/Team Managers from each service and is chaired by the Procurement and Contract Development Team Manager. Meetings are held during the year to disseminate procurement policies and practices across the Council and achieve a more consistent and co-ordinated approach to procurement.

THE STRATEGY

Epping Forest District Council will continue its policy of using best practice procurement approaches and processes. This will assist in the delivery of high-quality services to support strategic priorities at good value for money. Long term sustainability will also be promoted, as will the public duties to promote equality of opportunity both within the Council's operations and through the impact of its buying decisions, using effective selection and management of its relationships with its partners and supply chain.

Essex Procurement Hub

Since October 2006, the Council has been a member of the Essex Procurement Hub, along with Braintree, Castle Point, Maldon and Rochford. The Hub is a group of procurement specialists who are employed by Braintree District Council to provide procurement expertise to the members that subscribe to the service. The Council will promote efficiency in its own processes and improve its impact in promoting change amongst partners and suppliers.

In 2019/20, EFDC's subscription fee for membership of the Hub was £58,420 – this cost was offset by rebates generated by usage of the Hub's frameworks, bringing the actual amount paid down to £30,000 for this extremely beneficial service (during the same period, savings in excess of £350,000 were made which enables more money to be put towards service improvement for the local community and keeping the District's Council Tax low).

Partnership and Collaboration

As outlined earlier, the Council Corporate Plan recognises that the Council cannot deliver its objectives in isolation and that there is a need to work with other organisations to help improve efficiency and outcomes using the expertise of others. This may include collaboration, partnering and/or the use of consortia arrangements.

One example of this would be the Procurement Alliance for Essex (PAE). The PAE offers a strategic advice service for Essex local authorities. Our strategy is to use the PAE to help identify joint procurement opportunities and best practice procedures across the County.

The Essex Procurement Hub provides both the expertise to assist with individual member's procurement projects and the opportunity for collaboration in areas of mutual benefit. Before any framework contracts are let the requirements of all members are considered to ensure the widest possible relevance and greatest concentration of spending power. The Hub also provides advice on the use of framework contracts established by other purchasing consortia, such as those established by the Pro 5 group (ESPO, YPO, CBC & NEPO) or the [Crown Commercial Services](#).

Regulatory Framework

Procurement has to work within a number of controls including EU legislation, the Chartered Institute of Purchasing & Supply's Code of Ethics and internal governance requirements. In addition, the Council has other policies which this strategy seeks to align with.

The key control over procurement activities is the Council's Procurement Rules as set out in the Constitution. These rules are set at levels to assist in achieving value for money and allow decision making at practical levels (summary provided at Appendix 1).

Our strategy is to ensure that our Procurement Rules remain relevant and ensure compliance with EU regulations. Failure to comply with EU regulations could result in contracts being ruled illegal and the Council being subject to significant fines. The Public Contract Regulations 2015 also incorporate the 2014 EU Procurement Regulations into UK Law, and it is vital that EFDC remains up to date and compliant with these regulations.

Value for Money

A function of procurement is to achieve value for money. We will achieve this by:

- challenging the way things are done and the way services are provided
- by encouraging collaboration with other Essex Procurement Hub members and organisations such as the East of England Local Government Association (EELGA) and Crown Commercial Services (CCS) to take advantage of increased purchasing power
- taking into account the potential impact of a sustainable approach and balancing price with quality (by using 'whole life costs' for example)

Local Suppliers

Epping Forest DC is committed to encouraging the use of local suppliers wherever possible to boost the local economy and to try to use our spend to create opportunities and added value in the local community, such as local job opportunities and apprenticeships.

Some of the actions we will take to try to achieve this are:

- Ensuring at least 2 local suppliers are invited to bid on all tender opportunities issued by Epping Forest District Council
- Using Social Value elements as evaluation criteria, to ensure greater value is generated for the local area through our spend.
- Ensuring that Local Suppliers are paid within 21 days of receipt of a valid and undisputed invoice, rather than the 30 days set out in the Public Contract Regulations 2015.

Sustainability and Climate Change

The Procurement Strategy is designed to support the Council's efforts to reduce the Council's carbon footprint and environmental impact, aiming to be Carbon Neutral by 2030. The Council will use its procurement strategy to promote long-term sustainability in its own operations, reduce its carbon footprint through its own services and its supply chain, consistent with meeting value for money criteria.

There are a series of actions to support this approach:

- Include sustainability as a part of our quality evaluation criteria for all relevant projects.
- Look to use whole life costing as pricing evaluation criteria wherever possible, to consider the ongoing cost of a product to the Council instead of only purchase costs.
- Educate, train and encourage internal procurers and commissioners to review their consumption of goods/services, reduce usage and adopt more environmentally friendly alternative products
- Consider the costs and benefits of environmentally preferable goods/services as alternatives
- Investigate the impact of the Council's expenditure on goods and services, via purchase spend analysis, to identify potential environmental impacts
- Investigate opportunities for the recycling and re-use of materials where appropriate
- Assess the environmental and corporate risks to the organisation with a commitment to continually improving sustainable performance related to the supply chain
- Work in partnership with other organisations, such as buying consortia to improve sustainable procurement
- Ensure that, where appropriate, suppliers' environmental credentials are, as far as legally practicable, considered in the supplier evaluation process and that environmental and equality and diversity criteria are used in the award of contracts
- Ensure that consideration is given to inclusion, within all specifications, of a facility for suppliers to submit offers for environmentally friendly alternatives
- Specify, wherever possible and practicable, the use of environmentally friendly goods
- Aim to provide goods and services at best value to the Council
- Address barriers to entry to encourage Small and Medium Sized Enterprises (SMEs), local suppliers and the voluntary sector to bid for the Council's business
- Educate our suppliers regarding the Council's environmental, sustainability and equality and diversity objectives
- Encourage and persuade suppliers to adopt environmentally friendly processes and supply environmentally friendly goods/services
- Work with key suppliers to make changes and thereby extend sustainability improvements throughout the supply chain
- Comply with all relevant environmental, health & safety, equality and diversity, disability, race relations, social responsibility and employment legislation

Forward Planning

Forward Planning, particularly of major expenditure, is essential to maximise the potential savings through efficient and effective procurement. Planning annual procurement activity in advance will enable officers to undertake procurement in a more structured manner, identify options and prepare properly.

Specifications should include measurable outputs or outcomes, performance standards or other appropriate measures by which the contract can be assessed.

To plan effectively it is essential to maintain and update where necessary a central Contract Register detailing all contracts in place and all future known procurements, both for renewal of existing period-based contracts and for new future requirements.

Contract and Performance Management

Effective procurement is measured by the outcomes and not by the completion of the process. Contracts must be managed throughout their life to ensure that benefits identified in business cases are delivered. Regular review meetings with incumbent suppliers are crucial in ensuring that set Key Performance Indicators and Service Level Agreements are achieved and maintained.

The Council will expand the use of contract management and build on areas of current best practice. This will involve working closely with both the Essex Procurement Hub and the PAE.

Risk will be managed throughout the procurement cycle to ensure that risks are identified and managed by the most appropriate stakeholder. Risks will be added to service risk registers or the Corporate Risk Register where appropriate. All risks will be revisited at key milestones in the procurement process and throughout the life of the contract.

When suppliers and contractors handle information on behalf of Epping Forest District Council, then we will ensure where possible that equivalent processes are applied or seek to influence our supplier's and contractor's standards.

e-Procurement

e-Procurement is a tool to enable procurement activities, including sourcing, ordering, commissioning, receipting and making payments for the whole spectrum of an authority's activities. Epping Forest District Council uses the BiP Delta e-Sourcing System to manage its Procurement activities, from issuing, receiving and awarding tenders to ongoing management of its Contract Register. Technology can be used to achieve efficiencies in the procure-to-pay cycle including reduction in cycle time and reduction in transaction costs. This will free resources that can be directed into front line services. The Council also uses an electronic procurement system, the Proactis Marketplace system, to place purchase orders.

e-Invoicing

Epping Forest District Council has been using the e-invoicing system provided by Proactis since 2016, and now has a large number of suppliers and invoices being processed via this method. Using e-invoicing is a more efficient and automated process, which in turn leads to reduced cost to the Council of invoice processing.

ACTION PLAN

An annual action plan for procurement will be produced. This will set out the key work areas and provide a set of measurable targets for the coming year. Progress against those key work areas is monitored regularly in conjunction with the Essex Procurement Hub. The current action plan is attached at Appendix 2.

APPENDIX 1**THE PROCEDURAL RULES GOVERNING PROCUREMENT**

The Constitution provides guidance on the commissioning of goods and services and is managed through the Procurement Rules and Financial Regulations. Officers are required to adhere to these rules when purchasing on behalf of the Council.

Broadly the guidelines can be summarised as follows:

1. A buyer identifies the need to purchase goods/services.
2. Before any tender is conducted or order placed, a budget needs to be approved, following Financial Regulations.
3. Once a budget has been determined, current contracts and frameworks in place should be reviewed to determine whether a supplier is already available. If in any doubt the buyer should check with the Procurement and Contract Development Team.
4. If yes, then the Marketplace Purchase Order Process is followed.
5. If no contract or framework is available then the buyer will need to follow the Procurement Rules, which state an informal process is permitted up to £25k, and a tender process should be undertaken with a minimum of three suppliers invited for any spend over £25k, or conducting a full EU tender process (spend on Goods or Services over 4 years of over £189,330 or Works of over £4,733,252 at January 2020 values).
6. All contract spend should be assessed on a lifetime value basis.
7. Once a contract or framework is in place, buyers should follow the Purchase Order Process to secure the order and record the financial transactions correctly.

ACTION PLAN

Action	Outcome	Lead Officer	Target Date
Continued maintenance of data on the Corporate Contracts Register.	Better planning and co-ordination of procurement activities.	Team Manager – Procurement and Contract Development	Ongoing
Continue to hold Procurement and Contract Working Party meetings.	To disseminate procurement policies and practices across the Council and achieve a more consistent and co-ordinated approach to procurement.	Service Manager - Contracts	Ongoing
Ensure use of Procurement Checklist for all procurement processes, and maintain and update the Checklist on a regular basis.	Greater compliance with Procurement Rules, Financial Regulations and all relevant Procurement Regulations.	Team Manager – Procurement and Contract Development	Ongoing
Review Procurement Rules to ensure they are up to date and fit for purpose.	Updated Contract Procedure Rules in the Constitution. Publicised to staff within Council.	Service Director – Contracts and Technical	January 2021
To encourage use of the Essex Procurement Hub where possible.	Ensuring best value is being obtained in the Council's procurement activities.	Service Manager – Contracts Team Manager – Procurement and Contract Development	Ongoing

APPENDIX 3: Glossary of commonly used procurement terms and acronyms

Best Value: Often defined as ‘value for money’, Best Value is the optimum combination of whole life costs and quality to meet the customer’s requirement.

Collaboration: In this context, public sector organisations that engage in a joint procurement for works, services or supplies with the intention of obtaining better value for money through economies of scale and reduced tendering costs.

Commissioning: Commissioning is a broad concept and there are many definitions, the following definition from the Audit Commission perhaps best captures the key elements of the commissioning tasks: “*Commissioning is the process of specifying, securing and monitoring services to meet people’s needs at a strategic level*”.

Competitive Tendering: Awarding contracts following a process of obtaining competing tenders.

Contract: A binding agreement between two or more parties that is enforceable in law.

Contract Management: The activities of a buyer before, during and after a contract period to ensure that all parties to the contract fulfil their contractual obligations. An important aspect of this is managing the relationships between all parties in the most effective way so as to ensure the contract meets the optimum combination of cost, time and quality.

(Source: Adapted from CIPS definition in the contracts management Knowledge Summary)

E-Procurement: is the ability to purchase/sell through electronic trading via the Internet.

Evaluation: A detailed assessment and comparison of offers made by the Council in accordance with published criteria of responses to a request for quotations or tenders.

Framework Agreement: A framework agreement is a general term for agreements with suppliers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement.

Invitation to Tender (ITT): A formal document inviting an organisation to tender to provide services or, supply goods to or carry out works for the Council. It will include the instructions for submitting a tender, the specification for the requirement, the criteria against which the tender will be assessed, the proposed terms and conditions for the contract and, sometimes, a business questionnaire.

Key Performance Indicator (KPI): KPIs are placed against certain elements of a contract or SLA and indicate the items that are to be measured to see if the contractor has achieved the required contract standard.

MEAT: Most Economically Advantageous Tender.

Method Statement: A document used in the invitation to quote or to tender which sets out specific questions for the bidder to answer to explain to the Council how a service is to be delivered/works to be carried out. It will be evaluated and form a part of the contract.

Official Journal of the European Union (OJEU): The on-line publication in which notices advertising a Council tender that fall within the EU thresholds must be placed at the start and end of all the procurement.

Procurement: Often used interchangeably with Purchasing. Procurement is the totality of acquisition starting from the identification of a requirement to the disposal of that requirement at the end of its life. It therefore includes pre-contract activities e.g. sourcing and post contract activities e.g. contract management, supplier relationship management activities. Procurement generally relates to goods, works and service(s) requirements.

Public Procurement Directives: The EU procurement Directives set out the legal framework for public procurement. They apply when public authorities and utilities seek to acquire goods, services, and works. They set out procedures which must be followed before awarding a contract when its value exceeds set thresholds.

Quotation: An offer by a supplier to supply goods or services or to carry out works requested either orally or in writing.

Regulations: The Public Contracts Regulations 2015 that implement the various EU Procurement Directives

Risk Management: Involves three key activities, risk analysis, risk assessment, and risk mitigation, all of which facilitate the taking of decisions and actions to control risk appropriately by providing a disciplined and objective approach.

(Source: www.cips.org Knowledge Summary on risk management)

Selection Questionnaire (SQ): A document asking the tenderer to provide information about his / her business and experience. Most commonly used in EU level procurements.

SME: In this context Small and Medium Enterprises (businesses).

Specification/Statement of Requirements: A description of the requirements for the service or of the service to be provided.

Supplier Relationship Management: (SRM) is the discipline of strategically planning for, and managing all interactions with contractors that supply goods and/or services in order to increase the value of those interactions. In practice, SRM entails creating closer, more collaborative relationships with key suppliers in order to uncover new value and reduce risk.

Tender: The offer submitted by the tenderer in response to the Invitation to Tender.

Procurement Rules

January 2021

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2. General rules
3. Exceptions for Central Purchasing Bodies
4. Contract Conditions
5. Rules for identifying and selecting Contractors / Suppliers to be invited to submit Tenders
6. Nominated Sub-contractors and Suppliers
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10. Rules for inviting Tenders where more than one Tender is required
11. Additional rules for inviting and accepting Tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates
12. Rules for the receipt, custody and opening of Tenders with Total Contract Values within Category 1 of Appendix 1 or higher
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20. Rules for Contract Extensions
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23. Publication of procurement information
24. Disposal and freehold/leasehold property transactions

Appendix 1 Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Appendix 2 Glossary and Definitions of Terms used in the Procurement Rules

Documents referred to in (and that support the Operation of) these Procurement Rules:

Council’s Corporate Procurement Checklist	[Available here]
Council’s Standard Selection Questionnaire (SQ)	[Available here]
Council’s Procedure Note on Financial Checks for Tender Processes	[Available here]
Crown Commercial Service’s Guidance on E-Procurement	[Available here]
Council’s Guidance of Electronic Tendering	[Available here]
Council’s Certificate of Bona Fide Tendering	[Available here]
Council’s Formal Declaration of Tender Offer	[Available here]
EFDC Corporate MEAT Assessment Methodology	[Available here]
Standard Procurement Process (“Regulation 84”) Report	[Available here]
Agreement for Purchase of Consultancy and Other Professional Services	[Available here]

(Note: A Glossary and Definitions of Terms used in these Procurement Rules is provided at Appendix 2. Reference to such terms in these Procurement Rules are denoted with a capital letter)

1. Introduction

- 1.1 These Procurement Rules set out the procedures that must be followed by all officers for the procurement of Contracts for any Works, Supplies or Services on behalf of the Council, including Official Orders issued through the Council's electronic ordering system. A serious/wilful failure to comply with these Procurement Rules could result in disciplinary action being taken.
- 1.2 They seek to adopt a modern and flexible approach to procurement that is easy to follow and comply with and are responsive to the Council's current and future procurement needs, whilst ensuring appropriate controls and probity to safeguard the use of public money. They are also set out in a logical, sequential order to help lead officers through the procurement process.
- 1.3 These Procurement Rules also relate to certain disposals of land and property, and other property transactions, which are covered in Section 25 below. Associated delegations to officers are covered by the Schedule of Officer Delegations within the Council's Constitution. However, these Procurement Rules do not relate to the acquisition of land or properties, which must be authorised through reports to the relevant Portfolio Holder or Cabinet as appropriate.
- 1.4 The transitional arrangements to apply when these Procurement Rules are first introduced is that, wherever possible, any procurement activities for procurements commenced before the adoption of these Procurement Rules must comply with these Procurement Rules. For example, if a Select List was formulated before the adoption of these Procurement Rules (under the Council's previous Procurement Rules 2016-2020), but Tenders had not been invited at the time of adoption, the Tenders should still be invited in accordance with these Procurement Rules.
- 1.5 These Procurement Rules represent the Council's Contract Standing Orders for the purposes of Section 135 of the Local Government Act 1972.

2. General rules

(a) Responsibility

- 2.1 It is the responsibility of the designated Budget Holder for the budget that will be used to fund the resultant Contract to ensure that these Procurement Rules are followed.
- 2.2 When the Total Contract Value of a Contract or Official Order to be issued is less than the minimum for Contract Category 1 at Appendix 1, subject to the requirements at Section 2.9 below (Total Contract Values over a 12-month period), these Procurement Rules do not have to be followed. However, it is the responsibility of all Budget Holders to try to obtain value for money, in terms of price and quality, through any Contract or Official Order that they issue, irrespective of its value. Budget Holders should therefore be aware of what constitutes appropriate price and quality for the Works, Supplies or Services sought.

(b) Approach to procurement

- 2.3 In order to help ensure compliance, and to provide a documented audit trail, Budget Holders must use and complete the Council's ["Corporate Procurement Checklist"](#) throughout the procurement process for any Contracts with a Total Contract Value within Category 1 of Appendix 1 or higher. They must also keep a copy of the completed ["Corporate Procurement Checklist"](#) on the relevant Contract file, both throughout the procurement process and for at least 3 years after the completion of the Contract.
- 2.4 Reference to "Directors" throughout these Procurement Rules also includes the relevant Service Director / Service Manager responsible for providing the service to which the relevant procurement relates, except where a Service Director / Service Manager is also the Budget Holder responsible for undertaking the

procurement. Where a Service Director is responsible for a procurement, the Strategic Directors / Chief Executive will take the role of the Director.

(c) Compliance with Regulations additional to these Procurement Rules

- 2.5 These Procurement Rules do **not** set out or duplicate the legal requirements that must be followed for Regulated Contracts with Total Contract Values above the value thresholds set out in the Public Contracts Regulations 2015. For such Regulated Contracts, officers **must** comply with the requirements of the Public Contracts Regulations 2015. If there is any conflict between these Procurement Rules and the Public Contracts Regulations 2015 or any other legislation, then the relevant legal requirements take precedence. Advice on the Public Contracts Regulations 2015 can be obtained from the Procurement and Contract Development Team. However, *these Procurement Rules do set out the Council's own requirements for complying with Regulated Contracts specified within the Public Contracts Regulations 2015, which are shown in italic text. Particular attention is drawn to Section 17 of these Procurement Rules, which explains the Council's requirements, in respect of Regulated Contracts, for Budget Holders to complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015 throughout the procurement process.*

(d) Framework Agreements

- 2.6 Where appropriate, Budget Holders are encouraged to use central contracts and existing Framework Agreements – either through the Essex Procurement Hub or with other organisations to which the Council has access. Where such central contracts or existing Framework Agreements are used, Budget Holders must inform the Procurement and Contract Development Team of their proposed use, so that they can provide guidance and advice on the Council's corporate legal requirements. Some parts of these Procurement Rules do not have to be followed – except where competitive tendering is undertaken amongst Contractors on Framework Agreement Select Lists. Budget Holders should seek advice, and receive confirmation in writing, from the Procurement and Contract Development Team on which parts of these Procurement Rules do not have to be followed in such circumstances.

(e) Exemption from Procurement Rules

- 2.7 These Procurement Rules do not have to be followed in the following circumstances:

- (a) Where a Budget Holder feels that there are good reasons why specific parts of these Procurement Rules should not be followed for a particular procurement, they may seek a waiver from compliance with that part of the Procurement Rules. Requests for such waivers must be made in writing by the Budget Holder. Approvals can only be given in writing (or through a Portfolio Holder Decision or Cabinet minute as appropriate) by the relevant person/body listed at Appendix 1 who is responsible for accepting Tenders for the Contract Category relating to the Total Contract Value of the proposed Contract.

or

- (b) Where it is essential to meet an immediate need, subject to the Budget Holder seeking advice from the Procurement and Contract Development Team where the Total Contract Value is within Contract Category 5 at Appendix 1 (i.e. above the UK Procurement Thresholds), which;

- (i) Has been created by a sudden emergency; or
- (ii) Is outside the Council's control (e.g. by order of the Courts or another body with an equivalent power), or
- (ii) Has some other over-riding urgency.

In such circumstances, the Budget Holder must provide a report to the next available meeting of the Corporate Governance Group explaining the reasons why the matter had to be treated as a matter of urgency and why these Procurement Rules could not be followed.

If it is necessary to incur expenditure outside of the Council's budgetary framework, Budget Holders must comply with the additional relevant requirements within the Council's Financial Regulations

(f) Cumulative value of Contracts

2.8 When seeking to procure a Contract, Budget Holders must:

- (a) Consider and assess the likely total value of Contracts and/or Official Orders to be provided to a potential Contractor by their Directorate over a 12 month period for similar Works, Supplies and/or Services *(or over a 4-year period where the total value would exceed the thresholds for Regulated Contracts set out in the Public Contracts Regulations 2015 and reproduced at Appendix 1)* that could, alternatively, be procured through one or more Contracts or Framework Agreements over that period; and
- (b) If the total value of such Contracts over any 12 month period is likely to be more than the threshold for Contract Category 1 listed at Appendix 1, seek Tenders and procure a Contract in accordance with these Procurement Rules.

2.9 Contracts must not be artificially separated to avoid compliance with either these Procurement Rules or the Public Contracts Regulations 2015.

(g) Breaches of Procurement Rules

2.10 If it comes to light that these Procurement Rules have not been followed, the relevant Service Director / Service Manager must submit a report to the next available meeting of the Corporate Governance Group (or successor officer group) explaining the reason for the breach and, if appropriate, the proposed remedy for correcting or mitigating the effects of the breach. The CGG will identify any breaches that it considers to be sufficiently serious to be reported to the Audit and Governance Committee (or successor member body).

2.11 The provision of in-house Council Services is excluded from the requirement of these Procurement Rules.

(h) Suspension of Contractors

2.12 Contractors can only be suspended from consideration for future contracts on the grounds of one of the mandatory and discretionary exclusions set out in the Public Contracts Regulations 2015 and only for the periods specified in the Public Contracts Regulations 2015.

2.13 If any Budget Holder considers that a Contractor should be suspended from consideration for future Contracts with the Council for a specified period, they must submit a report to the Corporate Governance Group;

- (a) Explaining the reasons for suspending the Contractor;
- (b) Recommending a proposed period of suspension; and
- (c) Seeking approval to such a decision.

2.14 If the Corporate Governance Group agrees that a Contractor should be suspended, the Budget Holder must:

- (a) Advise the Procurement and Contract Development Team of the decision, who must in turn notify all Service Directors / Service Managers of the decision; and

(b) Advise the Contractor of the reasons for the suspension and the period of the suspension.

(i) Conflicts of interest

2.15 No person or body who has given material advice to the Council, or a Consultant acting on behalf of the Council, on a proposed Contract can then submit a Tender for that Contract, where more than one Tender is required (i.e. for Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 or higher).

(j) Absence of post-holder

2.16 In the absence of the post-holder, the responsibilities of specifically named posts within these Procurement Rules, can be discharged by:

(a) Their Service Director / Service Manager; or

(b) An officer designated by them.

2.17 All designations of committees, portfolio holders, other bodies and officers referred to in these Procurement Rules also include successor bodies and posts.

3. Exceptions for Central Purchasing Bodies

3.1 These Procurement Rules do not apply for the procurement of Contracts by a Central Purchasing Body, of which the Council is a member, or under which the Council is entitled to benefit by virtue of its status as a public authority. In such circumstances, the rules for procurement that relate to the member of the Central Purchasing Body undertaking the procurement on behalf of the Central Purchasing Body will apply.

3.2 However, where Tenders are invited by an officer of the Council on behalf of a Central Purchasing Body, these Procurement Rules must be followed.

3.3 In any event, if the value of the Works, Supplies or Services that the Council will be required to fund itself through a Central Purchasing Body or collaborative arrangement is:

(a) Within Contract Categories 1 or 2 at Appendix 1 - The relevant Service Director / Service Manager must be satisfied that the terms and conditions of the proposed Contract are appropriate under all the circumstances, taking any advice from the Procurement and Contract Development Team that the Budget Holder and Service Director / Service Manager considers necessary.

(b) Within Contract Category 3 at Appendix 1 or higher - The Budget Holder must report to the relevant Portfolio Holder on the proposed arrangements for the procurement of the Contract and obtain a formal Portfolio Holder Decision agreeing to the proposed arrangements;

3.4 Where the Council is considering sharing services with other public bodies or arranging for services to be provided to the Council by a company in which the Council has an interest, legal advice should be obtained.

4. Contract Conditions

(a) Compliance with Procurement Rules by Consultants

4.1 Where one or more Consultants are appointed to advise or act on behalf of a Budget Holder in respect of the procurement or administration of a Contract, the Contract for their appointment(s) must include a condition

that the Consultant must comply with these Procurement Rules and the Consultant must be provided with a hard or electronic copy of these Procurement Rules.

- 4.2 It is the responsibility of the Budget Holder to ensure that Consultants appointed by them are aware of the requirements of these Procurement Rules, and that they comply with them.

(b) Standard Contract terms

- 4.3 If the Council's Standard Form of Contract or Official Order is used, no amendments can be made without consulting the Council's Procurement and Contract Development Team. If the Council's Standard Form of Contract is not used, the Contract must include standard contract terms, which are available on the Council's Intranet, unless the Procurement and Contract Development Team, in consultation with the Budget Holder, determines that individual standard terms are not required for a particular Contract.

(c) Liquidated and Ascertained Damages

- 4.4 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, and where late completion or non-completion of the Contract would result in a quantifiable financial loss to the Council, the Contract must include a condition that Liquidated and Ascertained Damages will be payable in such circumstances.
- 4.5 In such circumstances, the Contract must set out the level of Liquidated and Ascertained Damages that will be payable, which must be the Budget Holder's best estimate of the loss to the Council for each week of late or non-completion. Advice regarding the calculation can be obtained from the Council's Deputy Section 151 Officer or their designated officer.

(d) Performance Bonds and Parent Company Guarantees

4.6 It is not a requirement of these Procurement Rules that contractors must provide either a Performance Bond for the Contract's due performance, or a Parent Company Guarantee or deposit as security. However, Budget Holders may consider it appropriate to use one of these arrangements for certain types of contracts - where they are considered to be both appropriate and beneficial for the Council.

If any of these arrangements are to be used, they must be arranged in consultation with the Council's Deputy Section 151 Officer or their designated officer.

(e) Retentions

- 4.6 Where a Contract includes provision for a Defects Liability Period, a condition must be included within the Contract allowing the Council to hold a Retention of:
- (a) 5% of the Contract Sum during the course of the Contract Period; and
 - (b) 2.5% of the Contract Sum on Practical Completion;

which must not be finally released until the end of the Defects Liability Period. Lower amounts of retention can be agreed if the Budget Holder feels it is appropriate for their project. In this situation, the Procurement and Contract Development Team must be made aware prior to proceeding.

(f) Insurances

- 4.7 Subject to Section 4.8 below, conditions must be included within:
- (i) All Contracts that require Contractors to have in effect, at the time of signing the Contract:

- A minimum public liability insurance cover of £5 million; and
- A minimum employer liability cover of £10 million; and

(ii) All appointments of Consultants that require them to have in effect, at the time of signing the Contract:

- Professional Indemnity Insurance with a minimum cover of £2million for any one claim or such other sum as may be determined.

4.8 Subject to obtaining written advice from the Procurement and Contract Team, Budget Holders may include conditions within Contracts varying levels of insurance than set-out at Section 4.7 above, dependent on the risk assessed by the Budget Holder, based on the advice of the Procurement and Contracts Team; this also includes any additional insurances deemed necessary in addition to those listed in 4.7. The Procurement and Contracts Team will liaise with the Council's Insurance Service if deemed necessary in order to provide the required advice.

4.9 The Contractor shall also be required:

- (i) To show to the Budget Holder evidence of all relevant insurance policies, both in place at the time of signing the Contract and any new policies obtained on the expiry of insurance policies, who must check that all required insurances are in effect throughout the duration of the Contract for the required levels of cover; and
- (ii) For construction contracts only, with Total Contract Values within Contract Category 4 of Appendix 1, to have the interest of the Council noted on the insurance policies.

(g) Assignment

4.10 A condition must be included within every Contract which prohibits the Contractor from transferring or assigning (directly or indirectly) any part of the Contract to another person or body without the written permission of the Council. *It should be noted that Regulated Contracts may only be assigned in limited circumstances.*

4.11 On receipt of a request from a Contractor to assign all or part of a Contract, the Budget Holder must undertake the checks of the proposed assignee required by Sections 7 and 8 below, before approving the assignment.

(h) Cancellation

4.12 All Contracts must include conditions relating to the cancellation of the Contract, in terms specified by the Procurement and Contract Development Team, either generally or for specific contracts.

4.13 *All Regulated Contracts must include a condition providing an express right for the Council to terminate the contract in specified circumstances, in the form prescribed in Regulation 73 of the Public Contracts Regulations 2015.*

(i) Appointment of Sub-Contractors and alternative suppliers

4.14 A condition must be included within every Contract which prohibits the Contractor from appointing a sub-contractor or alternative supplier to perform any part of the Contract without the prior written consent of the Council.

(j) Access to sites and documentation for audit purposes

- 4.15 When considered relevant to the requirement, tender documentation must contain a provision allowing an officer designated by the relevant Service Director, Service Manager and/or Chief Internal Auditor access, for audit purposes, to:
- (i) A site where a Contract is being performed; and/or
 - (ii) Relevant documentation relating to a Contract.
- (k) Payments to Contractors*
- 4.16 In order to comply with Regulation 113 of the Public Contracts Regulations 2015, a condition must be included within every Contract requiring that all payments made by the Council to Contractors, and by Contractors to any sub-contractors, must be made no later than 30 days from the date a valid and undisputed invoice is received. Budget Holders must then ensure that this Contract condition is complied with.
- 5. Rules for identifying and selecting Contractors/suppliers**
- 5.1 Subject to 2.9 above, where a Total Contract Value is below Contract Category 1 at Appendix 1, there is no requirement for Budget Holders to obtain competitive Tenders for procurements. In such circumstances, Budget Holders can decide the most appropriate Contractor to select to perform the Contract. However, for the avoidance of doubt, Budget Holders can seek competitive Tenders if they consider it appropriate.
- 5.2 *Except for Regulated Contracts, where the procedure for inviting Tenders must comply with Public Contracts Regulations 2015,* Budget Holders may use any of the following methods that they consider most appropriate, under all the circumstances, to determine which Contractors should form a Select List to be invited to submit Tenders, subject to a written explanation of the criteria adopted for selecting Contractors being held on the relevant Contract file and a copy being provided to the Procurement and Contract Development Team at the time of formulating the Select List:
- (a) Use of Constructionline – Budget Holders may reduce a Long List produced by Constructionline for the type and value of Contract required to an appropriate Short List (comprising the required number of Tenderers set out in Appendix 1) using a method previously considered appropriate, and approved in writing, by their Service Director or Service Manager.
 - (b) Use of an existing or new Framework Agreement – including a Framework procured by the Essex Procurement Hub;
 - (c) Use of Contractors known to be able to meet the Council’s requirements to a good quality and to provide good value for money;
 - (d) Use of Contractors who have previously been successful in Tendering for similar work for the Council in the past; and
 - (e) Through the formulation of a Select List by:
 - (i) The inclusion of Contractors considered to be able to perform the Contract; and/or
 - (ii) Advertising for potential Contractors as appropriate (but note 5.3 below).
- 5.3 Where Contractors are invited to express an interest in being considered for specific procurements for Contracts with a Total Contract Value in excess of £25,000, through the placement of an advertisement in any media, the Procurement and Contract Development Team must be notified and provided with the details of the procurement. The Procurement and Contract Development Team must then publish the required information on the Government’s Contracts Finder website, in accordance with the Public Contracts Regulations 2015.

- 5.4 Unless there are good reasons, if an in-house Council service can meet the requirements of the Specification to the required quality, they must be used in preference to an external Contractor. This includes the Council's Building Control Services.
- 5.5 When Budget Holders are deciding which Contractors should be invited to provide Tenders, they must take account of the following:
- (a) *If the Contract is for a Total Contract Value in excess of the thresholds for Regulated Contracts set out in the Public Contracts Regulations 2015, the selection of Contractors to Invite to Tender must be in accordance with these Regulations;*
 - (b) *With the exception of Regulated Contracts, where appropriate and possible, at least two business with its headquarters located in the Epping Forest District should be invited to Tender and the Procurement and Contract Team should be notified prior to tender issue if this is not the case, along with the reasons no local suppliers have been invited;*
 - (c) Contractors who have previously provided good quality Works, Supplies or Services with good value for money should be invited to Tender in preference to Contractors with whom the Council has not had any previous experience; and
 - (d) It may be appropriate to seek references for Contractors from other local authorities or public bodies for whom they have previously undertaken Works or provided Supplies or Services.
- 5.6 In accordance with the Public Contracts Regulations 2015, Selection Questionnaires (SQ's) must not be used for any procurement exercises that are not Regulated Contracts. It is still possible to ask questions relating to Contractors' suitability, provided that they are relevant to the subject matter of the procurement, are proportionate and are only used to establish whether Contractors meet minimum requirements of suitability, capability, legal status and financial standing. All candidates meeting the minimum criteria must be invited to tender.
- 5.7 *For Regulated Contracts, if Selection Questionnaires (SQs) are used, unless there are good reasons, the ["Council's Selection Questionnaire \(SQ\)"](#) should be used. If a different form of SQ is required, or the questions in the Council's SQ are not considered to be reasonable or proportionate, the amendments must be agreed with the Council's Procurement and Contract Development Team.*

6. Nominated Sub-Contractors and Suppliers

- 6.1 Nominations made by the Council to a main Contractor for a sub-contractor or a supplier must be made following Tenders being sought in accordance with these Procurement Rules to select the Nominated Sub-Contractor or Supplier, except where a supplier has previously been used by the Council and the likely overall cost to the Council of changing supplier is considered by the relevant Service Director / Service Manager to be greater than any reduced costs that could reasonably be obtained through a further Tendering process.

7. Checks to be undertaken on the experience, abilities and financial standing of Tenderers

- 7.1 If Tenders are to be invited from Contractors listed on Constructionline or an existing Framework Agreement no further checks are required, subject to the required checks of financial standing referred to in Section 8 below.
- 7.2 If Tenders are to be invited for Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 no checks of Contractors are required, subject to:

- (a) The required checks of financial standing referred to in Section 8 below; and
- (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and the adoption and use of satisfactory health and safety policies being obtained, to the satisfaction of the Budget Holder.

7.3 However, if the Budget Holder considers it appropriate, any (further) checks (including those listed at Section 7.3 and 7.4 below), can be undertaken for any Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 (provided that they are in line with Section 5.6 above).

7.4 For all Contracts with Total Contract Values covered by Contract Category 3 in Appendix 1 or higher, the following checks must be undertaken of all Tenderers intended to be invited to submit Tenders, prior to issuing Invitations to Tender, in a form considered appropriate by the Budget Holder. *For Regulated Contracts, the wording provided by the Crown Commercial Service’s Selection Questionnaire (SQ) must be used:*

- (a) Details of each potential Tenderer’s previous experience and ability to undertake the work - to ensure that they are able to perform the Contract to the required standard;
- (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and adoption and use of satisfactory health and safety policies;
- (c) The financial standing of proposed tenderers, if/as required by the Council’s [“Procedures for Financial Checks of Contractors”](#) referred to in Section 8 below;
- (d) Details of each Contractor’s approach to equality and diversity, to ensure that both the Contractor and the Council comply with the requirements of the Equality Act 2010; and
- (e) If the Contractor or their staff are likely to identify any Safeguarding issues relating to the wellbeing of either adults with care and support needs or children in the performance of the Contract, details of each Contractor’s approach to Safeguarding, to ensure that the Contractor and its employees are able to assist the Council to comply with its legal requirements under the Care Act 2014 and the Children Act 2004.

8. Checks of financial standing

8.1 Checks of Contractors’ financial standing should be undertaken as shown below, for the types of Contracts set out below:

- (a) **Supplies** Not required.
- (b) **Works** For all Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher.
- (c) **Services** For all Contracts with a Total Contract Value within Contract Category 5 of Appendix 1.

8.2 If checks of Contractor’s financial standing are required in accordance with Section 8.1 above, the checks must be undertaken in accordance with the Council’s [“Procedures for Financial Checks of Contractors”](#), and which sets out:

- (a) At what point in the procurement process financial checks should be undertaken;
- (b) Who has responsibility for undertaking the checks;

- (c) What checks should be undertaken and the methodology to be followed; and
- (d) What action should be taken based on the outcome of the checks.

9. Obtaining value for money for Contracts where Tenders are not required from more than one Contractor

- 9.1 Tenders are not required from more than one Contractor for Contracts with a Total Contract Value below the Total Contract Values of Category 1 at Appendix 1. However, Tenders can still be sought in such circumstances - with the manner in which such Tenders are sought being determined by the Budget Holder and which does not have to comply with these Procurement Rules.
- 9.2 If Budget Holders do not seek Tenders from more than one Contractor, they must still take reasonable and appropriate steps to ensure that the Council obtains good value for money from Contractors, in terms of price and quality.

10. Rules for inviting Tenders where more than one Tender is required

- 10.1 For Contracts with a Total Contract Value within Category 1 of Appendix 1 or higher (including the value of any potential Contract Extensions), Budget Holders must invite Tenders from at least the number of Contractors shown in Appendix 1 for the relevant Contract Category.
- 10.2 Where Budget Holders consider that increased value for money may be obtained by inviting more Contractors to Tender for a Contract than the number required for the relevant Contract Category at Appendix 1, they should invite more Contractors to Tender as appropriate.
- 10.3 Where the Total Contract Value (including the value of any potential Contract Extensions) is close to the upper threshold for a Contract Category in Appendix 1, Tenders should be sought based on the Contract Category with the higher Total Contract Values.
- 10.4 Budget Holders must give Tenderers sufficient time to properly complete and return Tenders before the Tender Return Date.
- 10.5 *For Regulated Contracts with a Total Contract Value above the thresholds within the Public Contracts Regulations 2015 (i.e. within Category 5 of Appendix 1), Budget Holders must comply with the e-communication requirements of Regulations 22(8-21) and 53 of the Public Contracts Regulations 2015. With effect from 18th October 2018, Budget Holders must comply with the full e-communication requirements of Regulation 22 and any other provisions of the Public Contracts Regulations 2015 relating to e-communications. A copy of the Crown Commercial Service's ["Guidance on Electronic Procurement & Electronic Communication"](#), to comply with the Public Contracts Regulations 2015, can be found by using the above hyperlink.*
- 10.6 Any electronic procurements undertaken by Budget Holders on behalf of the Council must comply with the ["Council's Guidance on Electronic Tendering"](#).
- 10.7 For procurements within Categories 1-4 of Appendix 1, the following documents must be included as part of the tender documentation:
 - (a) A ["Certificate of Bona Fide Tendering"](#)
 - (b) A ["Formal Declaration of Tender Offer"](#)
 - (c) A ["Request for Insurance Information"](#) (in line with requirements as laid out in 4.7 and 4.8 of the Rules).

Please liaise with the Procurement and Contract Development Team prior to issuing tender documentation to ensure all relevant information, including any additional information not listed here, has been included for your requirement.

11. Additional rules for inviting and accepting tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates

(a) Most Economically Advantageous Tenders (MEATs)

11.1 If the assessment of Tenders is to be based on an evaluation to assess the Most Economically Advantageous Tender (MEAT), i.e. taking account of both price and quality, Budget Holders must follow the Council's ["Corporate MEAT Assessment Methodology"](#). In line with the Council's Procurement Strategy, Social Value and Sustainability must be considered as criteria wherever possible to ensure the Council are getting best value and positively contributing to both the local community and to reducing carbon emissions.

11.2 Prior to Invitation of Tenders being issued, a MEAT Evaluation Assessment must be formulated by the Budget Holder and:

- (i) (A copy) must be provided to the Procurement and Contract Development Team prior to the Invitation of Tenders being issued, for audit purposes;
- (ii) Must not be changed after Invitations to Tender have been issued; and
- (iii) Must be held on the relevant Contract file for at least 1 year after the Contract has been let.

11.3 A copy of the MEAT Evaluation Assessment must be provided to Tenderers as part of the Tender Documents.

(b) Schedule of Rates

11.4 Where Tenders are based on a Schedule of Rates, a reasonable Pre-estimate of Quantities for each of the rates contained in the Tender must:

- (i) Be produced prior to Invitations to Tender being issued;
- (ii) Be lodged with the Procurement and Contract Development Team for audit purposes;
- (iii) Not be changed after Invitations to Tender have been issued;
- (iv) Be held on the relevant Contract file for at least 6 years after the Contract has been let;
- (v) Be used to multiply the rates provided by Tenderers to reach an Estimated Tender Sum, which shall be the Tender Sum reported for consideration of acceptance by the relevant person/body specified in Appendix 1.

12. Rules for the receipt, custody and opening of Tenders with Total Contract Values within Category 1 of Appendix 1 or higher

12.1 All Tenders must be received, held and opened in accordance with EFDC's ["Guidance on Electronic Tendering"](#).

13. Alterations

- 13.1 Tenders must not be altered after they have been opened. However, *except in the case of Regulated Contracts*, the Budget Holder can recommend to the person or body responsible for accepting the Tender that it is appropriate to accept the correction of Arithmetical Errors, if the Budget Holder is satisfied that such errors were made inadvertently. *For Regulated Contracts, any proposed alterations to Tenders after they have been opened must be discussed with the Council's Procurement and Contract Development Team.*
- 13.2 If an error is identified within the Tender Documents before the Tender Return Date, all the Tenderers must be informed of the error and invited to adjust their Tenders prior to submission.
- 13.3 If an error in the Tender Documents is identified after the Tender Return Date, all Tenderers must be given details of the error and afforded the opportunity of withdrawing their Tender or submitting an amended Tender.

14. Post-Tender Negotiations

- 14.1 No Post-Tender Negotiations are permitted, unless the Contract has been advertised and Tendered under the Competitive Dialogue Procedure and the relevant Service Director / Service Manager is satisfied, and determines, that Post-Tender Negotiations are appropriate to the procurement process.
- 14.2 Seeking clarification from Tenderers on queries related to their Tenders does not constitute Post-Tender Negotiations. However, the Budget Holder must first consult with the Procurement and Contract Development Team for advice and, if necessary, seek further legal advice.
- 14.3 If the Specification for a Contract needs to be amended, due to the lowest Tender exceeding the available budget, or if the Council's requirements have changed since the Tenders were invited, all Tenderers must be given the opportunity to submit revised Tenders based on the revised Specification.

15. Rules for accepting Tenders

- 15.1 Tenders must only be accepted by the person/body listed in Appendix 1 for the relevant Contract Category relating to the Total Contract Value.
- 15.2 The report to the person/body listed in Appendix 1 on the proposed award of a Contract must seek approval from that person/body to the proposed arrangements for any proposed Contract extensions, including a recommendation on whether subsequent decisions to extend Contracts, in accordance with the Contract Terms, will be agreed by the:
- (a) The Budget Holder;
 - (b) The relevant Service Director / Service Manager
 - (c) The relevant Portfolio Holder; or
 - (d) The Cabinet.
- 15.3 Where the actual Total Contract Value of the Tender to be recommended for acceptance exceeds the expected Total Contract Value for the relevant Contract Category at Appendix 1, and results in Tenders not having been invited and/or opened in accordance with the higher Contract Category, the Tenders must be reported to, and approved by, the person/body authorised to accept Contracts for the higher Contract

Category, together with an explanation of why the actual Total Contract Value is above the expected Contract Value.

15.4 For Contracts that are not Regulated Contracts, if a Tender, other than either:

- (a) The lowest Tender (for Tenders based only on price); or
- (b) The Tender with the highest weighted Tender Evaluation Score (for procurements undertaken to assess the Most Economically Advantageous Tender (MEAT))

is recommended by the Budget Holder, it may only be approved by:

- (c) A Service Director or Service Manager - where the Tender would normally be accepted by the Budget Holder;
- (d) The relevant Portfolio Holder - where the Tender would normally be accepted by a Service Director, Service Manager or the Portfolio Holder; or
- (e) The Cabinet - where the Tender would normally be accepted by the Cabinet.

15.5 *For Regulated Contracts, there are only limited circumstances when a Tender, other than either the lowest-priced Tender or having the highest weighted Tender Evaluation Score, can be accepted. If acceptance of a different Tender is proposed, Budget Holders are required to seek the advice of the Procurement and Contract Development Team and follow the requirements of the Public Contracts Regulations, and/or undertake a further Tender exercise.*

15.6 For audit purposes, where the circumstances in Sections 16.3 and 16.4 above apply, the Budget Holder must provide an explanation in writing to the person/body accepting the Tender of why the lowest Tender or highest weighted Tender Evaluation Score should not be accepted, and must retain a copy of the written explanation on the Contract file.

15.7 Prior to a Tender being accepted, evidence of valid satisfactory insurances required under Section 4.8 above must be received from the Preferred Tenderer by the Budget Holder.

15.8 Budget Holders are authorised to instruct the Procurement and Contract Development Team to draft Contracts on their behalf, or issue Official Orders via the Council's Electronic Ordering System, that have been Tendered and approved in accordance with these Procurement Rules.

15.9 For all procurement exercises with Total Contract Values in excess of £25,000, Budget Holders must provide details of all Tenders received, and the name of the successful Tenderer, to the Council's Procurement and Contract Development Team within 5 working days of a Contract being entered into, in order to:

- (a) Maintain a central record of all procurement exercises; and
- (b) Enable the Procurement and Contract Development Team to provide the required information to the Contracts Finder website, in order to comply with the requirements of the Public Contracts Regulations 2015.

15.10 On receipt of the information provided by the Budget Holder, the Procurement and Contract Development Team must upload the required information to the Crown Commercial Service's Contracts Finder website as soon as reasonably possible.

16. Procurement Process ("Regulation 84") Report

16.1 *For Regulated Contracts undertaken with a Total Contract Value within Category 5 of Appendix 1, throughout the procurement process, Budget Holders must complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015. At the same time as informing Tenderers that their Tenders have been either successful or unsuccessful, Budget Holders must provide a copy of the completed Report to the Procurement and Contract Development Team, in order to maintain a central record. A template for the [“Procurement Process \(“Regulation 84”\) Report”](#) is available here.*

17. Contract Documentation and retention

17.1 Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 can be dealt with by the use of an Official Order, provided that the relevant Service Director / Service Manager is satisfied that there is no need for more extensive terms and conditions to be specified in order to protect the interests of the Council. An Official Order (or formal Contract) is required for all Council Contracts.

17.2 All Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher must:

- (a) Be in a standard form of an appropriate formal legal agreement approved by the Council’s Procurement and Contract Development Team; and
- (b) Be executed as a deed under seal, unless the Council’s Procurement and Contract Development Team, in consultation with the Budget Holder, determines otherwise. This would be on the basis that it is deemed appropriate that the period of liability for breach of contract can be reduced to six years from the usual twelve.

17.3 Budget Holders (and their successors) must ensure that:

- (a) All appropriate Contract Documentation is retained in a secure location for a minimum period, following the date of final payment, of at least:
 - (i) Six years if the Contract is not executed as a deed under hand (not under seal);
 - (ii) Twelve years if the Contract is executed as a deed under seal; and
- (b) Documentation relating to unsuccessful Tenders is retained in a secure location for the same period as the successful contract (six or twelve years).

17.4 Original signed Contracts with Total Contract Values within Contract Category 2 of Appendix 1 or higher must be forwarded to the Procurement and Contract Development Team for secure storage within 28 days of signing/sealing. Original signed Contracts with Total Contract Values within Contract Category 1 of Appendix 1 can also be forwarded to the Procurement and Contract Development Team for secure storage if the Budget Holder wishes.

18. Rules for negotiated contracts

18.1 Contracts with Total Contract Values within Contract Category 1 at Appendix 1 or higher may only be negotiated where the relevant Portfolio Holder (or, for Contracts within Contract Category 4, the Cabinet) has resolved that competitive Tenders need not be invited and that a Contract may be negotiated with just one Contractor.

18.2 In such circumstances, the reason for not inviting competitive Tenders must be set out in the report to the Portfolio Holder or Cabinet, which can be for any reason considered appropriate by the relevant Service Director / Service Manager including the following reasons:

- (a) The Contract is urgent and there is insufficient time to invite Tenders;
- (b) The requirements of the Contract are of a specialist nature, where no other Contractor is known to provide them;
- (c) No demonstrable material benefit would be obtained from inviting competitive Tenders; or
- (d) Tenders have previously been sought for a similar Contract within the previous 6 months and no Tenders were received.

18.3 *For Regulated Contracts, procurements must be undertaken in accordance with the Public Contracts Regulations 2015 in all circumstances.*

19. Use of Consultants

19.1 The definition of a “Consultant” is provided at Appendix 2.

19.2 The procurement of all Consultants must be undertaken in accordance with these Procurement Rules *and, where appropriate, the Public Contract Regulations 2015.*

19.3. Budget Holders are responsible for ensuring that any Consultants acting on behalf of the Council comply with these Procurement Rules in full.

19.4 Budget Holders must ensure that prior to instructing the Procurement and Contract Development Team to produce a Contract for the appointment of a Consultant, an IR35 check is completed by HR to determine whether the appointment is outside of the scope of IR35.

19.5 Except where a recognised national Form of Contract or other accepted and standard type of agreement is used for the appointment of a Consultant, or where the Procurement and Contract Development Team determines otherwise, the Council’s [“Agreement for Purchase of Consultancy and Other Professional Services”](#) must be used for the appointment of any Consultant.

19.6 Where a national Form of Contract or other accepted and standard type of agreement is to be used for the appointment of a Consultant, Budget Holders must take the advice of the Procurement and Contract Development Team on any specific provisions to be included or excluded within the Contract / agreement.

20. Rules for Contract Extensions

20.1 Where Contracts allow one or more Contract extensions, Budget Holders are authorised to extend existing Contracts up to the maximum period allowed by the Contract in accordance with the decision of the person/body listed in Appendix 1 when they formally accepted the original Tender, as required under Section 16.2 above.

20.2 Where a Contract allows a Contract extension, but the original decision to award a tender did not specify the arrangements for proposed extensions in accordance with Section 16.2 above, and the Contract has a Total Contract Value within Category 4 of Appendix 1, Budget Holders must consult the relevant Portfolio Holder, in writing, on any intention to extend the Contract prior to the Contract being extended. In response, the Portfolio Holder may either raise no objections to the proposed extension or require that a formal decision on the proposed extension is made through a formal Portfolio Holder or Cabinet Decision.

20.3 Budget Holders must ensure that arrangements are made for any decisions about whether or not a contract should be extended in compliance with Sections 21.1 and 21.2 above in sufficient time to enable the works, goods, supplies or services to be procured through a new Contract, instead of through the extension of an existing Contract if that is the decision made.

21. Contract monitoring

21.1 For all Contracts with a Total Contract Value within Category 4 of Appendix 1, the Budget Holder must provide a written progress report to the relevant Portfolio Holder(s) at least every three months, between the Tender Return Date and the date of Practical Completion. The Progress Report must report on the progress with the required Works or Services and the current financial position, in relation to:

- (a) Contract and fee expenditure to date;
- (b) The latest anticipated Total Contract Cost and the anticipated total cost of all fees;
- (c) Any variations between the budget approved at the time of the acceptance of the Tender and the latest anticipated Total Contract Cost and anticipated total cost of all fees; and
- (d) The use of any contingency sums to date and the amount of any contingency sums remaining.

21.2 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, where the latest anticipated Total Contract Cost is in excess of 20% of the Tender Sum, the Budget Holder must submit a written report to the next available meeting of the Council's Corporate Governance Group after the date the excess has been identified, explaining the reasons for the increase and, if appropriate, any remedial action to be taken to reduce the excess.

22. Final Accounts

22.1 The Budget Holder responsible for any Contract with a Total Contract Value within Contract Category 4 of Appendix 1 or higher must produce a written Final Account and provide a copy to the Deputy Section 151 Officer or their designated officer within 3 months of all financial transactions relating to the Contract being completed. The Final Account must include details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extensions of time awarded, and any claims agreed with the Contractor.

22.2 If considered necessary, the Chief Internal Auditor may examine and audit the Final Account and associated Contract Documentation to satisfy that the Final Account is correct and represents an accurate and appropriate summary of Contract payments and deductions.

23. Publication of procurement information

23.1 In order to comply with the Local Government Transparency Code 2015, the Procurement and Contract Development Team is responsible for ensuring that the information required by Part 2.1 of the Code is published every 3 months in accordance with the Code.

24. Disposal and freehold/leasehold property transaction

24.1 For the purposes of these Procurement Rules:

- (a) All disposals and freehold/leasehold property transactions, including interests in land (such as acquisitions, disposals, new lettings, lease renewals, lease surrenders, rent reviews, sub-lettings, assignments, licences, deeds of variations, easements, wayleaves and land covenants on land) must be dealt with in accordance with the Schedule of Delegation set out in Part 3 of the Council's Constitution and any procedures required by law; and
- (b) References to Total Contract Value within these Procurement Rules (including in Appendix 1) mean:
 - (i) The anticipated purchase price or premium for the disposal or freehold/leasehold property transaction; or
 - (ii) The annual rent.

24.2 Disposals or freehold/leasehold property transactions involving Council land and property may be through:

- (a) Formal tendering (providing for an initial deposit and binding contract if the Tender is successful);
- (b) Formal tendering (providing for no initial deposit and no binding contract if the Tender is successful);
- (c) Private treaty; or
- (d) Public auction.

24.3 These Procurement Rules must be followed in full for all disposals or freehold/leasehold property transactions where Tenders from potential purchasers are sought in accordance with Section 25.2 (a) or (b) above.

24.4 If the method of disposal or property transaction set-out in Section 25.2(a) or (b) above is followed, the person/body that will be asked to accept the Tender may pre-determine that the relevant sale particulars should make provision for a two-stage offer process, that provides the Council with the option of inviting best and final offers after receipt of initial offers, where this is demonstrated to them to be appropriate:

- (a) By the relevant Budget Holder making such a recommendation in a written report to the person/body that will be asked to accept the Tender; and
- (b) Having considered the case for adopting this method of disposal based on an assessment of the risks involved and concluding that this procedure is the most appropriate for achieving best value.

24.5 Disposals or other freehold/leasehold property transactions involving Council land or property sought through the methods set-out in Section 25.2 (c) or (d) above can only be approved:

- (a) In exceptional circumstances and if the person/body that will be asked to accept the Tender has considered a report prepared by the relevant Budget Holder which justifies the proposed procedure as the most suitable method of achieving best consideration; and
- (b) If the transaction is for less than the open market value, the report referred to in Section 25.5(a) above contains an estimate of what the value of the transaction would be if advertised on the open market.

24.6 Where disposals or other freehold/leasehold property transactions involving Council land or property are sought through the methods set-out in Section 25.2 (c) or (d) above:

- (a) The relevant Service Manager or Service Director may determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 2 of Appendix 1 or lower;
- (b) The relevant Portfolio Holder must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 3 of Appendix 1; and
- (c) The Cabinet must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 4 of Appendix 1 or higher.

24.7 The arrangements referred to in Section 25.6 above may include:

- (a) Determining the most appropriate method of disposal to achieve the Council's statutory duty of obtaining best consideration; or
- (b) Deciding to sell for less than the open market value, provided that all statutory procedures are complied with, including (where necessary) obtaining the consent of a Secretary of State.

24.8 The Chief Estates Officer may agree, on behalf of the Council, to all estates acquisitions, disposals and licences set out within the Schedule of Officer Delegations in Part 3 of the Council's Constitution, where it would be in accordance with good estate management and would not adversely affect the premises concerned.

24.9 The relevant Portfolio Holder may take decisions under delegated authority for all estates management matters that, individually, have a cumulative value of between £500,001 and £999,999, subject to all other matters within these Procurement Rules being satisfied and undertaken in accordance with Article 14 (Decision Making) of the Council's Constitution.

Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Contract Category	Total Contract Value ^(*)	Minimum no. of tenders to be invited ^{(+)(@)}	Minimum number of Local** Suppliers to be invited	Designation of person/body required to accept tender
1	£25,000 - £50,000	Five	Two	Budget Holder / Team Manager ^(#)
2	£50,001 - £150,000	Five	Two	Service Manager
3	£150,001 - £250,000	Five	Two	Service Director
3	£250,001 - £1million	Five	Two	Portfolio Holder
4	Over £1million	Five	Two	Cabinet
5	Above the relevant UK Threshold for Works, Supplies or Services	As per regulations	As per regulations	As 1-4 above (dependent on contract value)

Notes:

All tenders will be opened by the Procurement and Contract Development Team using the electronic procurement system.

(*) Total Contract Value means the total value of the Works, Services and Supplies over the total period of the Contract, including all potential Contract Extensions to the initial Contract Period.

Where the Total Contract Value is within Contract Category 5, the arrangements for Contract Category 5 should be followed, and not the arrangements for any of the other Contract Categories that may also apply to the Total Contract Value.

(**) Local suppliers are defined as having a headquarters in the Epping Forest District.

(+) If the estimated Total Contract Value is in excess of the value thresholds for Works, Supplies or Services, above which the Public Contracts Regulations 2015 apply, the required number of Tenders determined by the Regulations must be applied.

(@) Includes any in-house Tenders submitted.

(#) Budget Holder means the person who is the named person responsible for the budget heading under which payments for the contract will be made and is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.

Glossary and Definitions of Terms used in the Procurement Rules

Term	Definition or Explanation
Arithmetical Error	An error in addition, subtraction, multiplication or division within a submitted Tender.
Cabinet	The Leader of the Council and other councillors appointed by the Leader to form a group of councillors authorised by the Council's Constitution to make decisions on certain issues.
Central Purchasing Body	A contracting authority which either: <ul style="list-style-type: none"> • Acquires supplies and/or services intended for contracting authorities; or • Awards public contracts (concludes framework agreements) for works, supplies or services intended for contracting authorities
<i>"Certificate of Bona Fide Tendering"</i>	A form that Tenderers must complete, sign and return with their Tender to confirm that the Tender they are putting forward is the true offer that will be available to the Council if the Tender is won by the Tenderer (i.e. to confirm that the offer is genuine and is not just a competitive offer to push them forward through the Tender process). The Council's Standard <i>"Certificate of Bona Fide Tendering"</i> can be obtained here or from the Council's Intranet.
Competitive Dialogue Procedure	A formal and complex process, allowed by the Public Contracts Regulation 2015, for procuring a Contract through discussions with Contractors in a structured way.
Constructionline	The UK's leading procurement and supply chain management web-based service that collects, assesses and monitors standard company information through a question set that is aligned to the standardised pre-qualification questionnaire developed by the British Standards Institute, to reduce duplication within the construction industry.
Consultant	A person or organisation who is not employed by the Council, included on the Council's payroll or covering an establishment post, who is procured directly - through a company (or similar commercial undertaking) or an agency and is engaged to perform a specific task over a predetermined period.
Contract Award	The decision to enter into a Contract with a Contractor.
Contract Documentation	All documents related to the administration of a Contract, not just the Tender Documents
Contract Extension	The continuation of a Contract for a further period of time allowed by the Contract. There can be more than one Contract Extension for a Contract.
Contracts Finder	A service provided by the Crown Commercial Service, and referred to in

	the Public Contracts Regulations 2015, that enables Contractors to search for information about Contracts worth over £25,000 with the Government, Government agencies and local government.
Contract Period	The period commencing with the date a Contract specifies that the provisions of the Contract are to start to the date the Contract comes to an end.
Contract Sum	The amount to be paid to a Contractor to perform a Contract, prior to any Contract Extensions, and referred to in the formal Contract between the Council and the Contractor.
Contracts	Contracts, agreements or orders for Works, Supplies or Services.
Contractors	Works contractors, Suppliers, Service providers and Consultants.
Corporate Governance Group	A group of officers, chaired by the Chief Executive, comprising members of Management Board, the Chief Internal Auditor and the Deputy Monitoring Officer.
Crown Commercial Service	A Government Agency that brings together policy, advice and direct buying information in a single organisation and provides commercial Services to the public sector and saving money for the taxpayer. Much of the CCS's advice gives formal detailed guidance on the operation of the Public Contracts Regulations 2015.
Defects Liability Period	A set period of time after a Works Contract has been completed, during which a Contractor has the right to return to the site to remedy any defects at the Contractor's own cost.
Director	Levels 3 and 4 of the Council's Management Spine.
e-Communications	The method of using electronic communications, including email and web-based applications, to provide and receive documents and communications to and from Contractors, in accordance with the Public Contracts Regulations 2015 – detailed in the "Guidance on Electronic Procurement & Electronic Communication" produced by the Crown Commercial Service.
Essex Procurement Hub	A Central Purchasing Body of six local authorities in Essex, including Epping Forest DC, that provides strategic and operational procurement support, advice and guidance in order to add demonstrable value to the procurement process to its members. The Hub lets and manages a number of national Framework Agreements that are accessible to any UK Public Authority.
Estimated Tender Sum	A Tender Sum formulated by applying rates submitted by a Tenderer to Pre-Estimated Quantities that are estimated to apply over the Contract Period and used to compare the Tenders received from different Contractors. This is nearly always different from the Total Contract Cost.

Regulated Contracts	Procurements by public bodies in the UK that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Public Contracts Regulations 2015, which stipulate the way in which any procurements above the financial thresholds must be undertaken.
Final Account	A written statement that includes details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extension of time awarded and any claims agreed with the Contractor.
<i>“Formal Declaration of Tender Offer”</i>	The form that Tenderers must complete, sign and return with their Tender to state and confirm their Tender Sum. The form includes a number of statements that Tenderers sign to confirm their compliance. The Council’s Standard <i>“Formal Declaration of Tender Offer”</i> is available here and on the Council’s Intranet.
Framework Agreement	An agreement with Contractors to establish terms governing Contracts that may be awarded during the life of the Framework Agreement, or a general term for agreements that set out terms and conditions for making specific purchases (referred to as “call-offs”).
Insurance Service	The service responsible for insurance arrangements for the Council, who co-ordinates insurance matters on behalf of EFDC.
Invitations to Tender	A letter, email or other communication sent to Tenderers – either by post or electronically – together with Contract Documents, that invites Tenderers to submit a Tender by the Tender Return Date.
Late Tender	A Tender that has not been received by the Council by the Tender Return Date.
Light Touch Regime (LTR) / Procurement	A specific set of rules introduced by the Public Contracts Regulations 2015 for certain Services contracts that tend to be of lower interest to cross-border competition, that replace the previous distinction between “Part A” and “Part B”. These include certain social, health and education services, defined by the Regulations. A relatively high financial threshold is applied to the LTR, below which contracts do not need to be advertised in the Find a Tender Service (FTS). For LTR contracts above the threshold, contracting authorities have to follow a new light-touch set of procurement rules, set out in the Regulations.
Liquidated and Ascertained Damages	Fixed damages stated in a Contract, and usually set as an amount per week (or part of a week), which the Contractor must pay the Council (or which the Council may deduct from payments to the Contractor) if completion of the Contract is delayed beyond the Contract completion date, as adjusted by any extensions of time. Note that they are void as a penalty if they are not a "genuine pre-estimate" of the Council’s potential loss, in which case the Council can usually recover normal, unliquidated damages for breach of Contract.

Long List	A list of all Contractors expressing an interest in receiving an Invitation to Tender, before any selection process has been undertaken by the Council to produce a Short List.
Most Economically Advantageous Tender (MEAT)	A Tender for a Contract that has been evaluated not only on the basis of the price submitted by a Tenderer, but also on the basis of the assessed quality of both the submitted Tender and the Tenderer. This is in accordance with a pre-determined MEAT Assessment Methodology, with Tenders evaluated using a pre-determined MEAT Evaluation Assessment, which usually provides for pre-determined weightings to be applied to the price and the quality of various aspects of the Tender.
<i>“MEAT Assessment Methodology”</i>	The pre-determined approach agreed by the Council, and available on the Council’s Intranet, to assess the Most Economically Advantageous Tender (MEAT). The Council’s <i>“MEAT Assessment Methodology”</i> is available here and on the Council’s Intranet.
MEAT Evaluation Assessment	The document that sets out the pre-determined weightings to be applied to the price and the quality of various aspects of the Tender and used to calculate the relative scores of all the Tenders received.
Nominated Sub-Contractors and Suppliers	Sub-contractors and suppliers that the Council requires a Works Contractor, Service provider or other Supplier to use to perform the Contract.
Official Order	A standard form of Contract placed with a Works Contractor, supplier, service provider or Consultant, that is usually issued through the Council’s Marketplace System or the Northgate Open Housing Management System (OHMS)
Parent Company Guarantee	A guarantee by the parent company of a Contractor in respect of the Contractor’s performance under its Contract with the Council, where the Contractor is a subsidiary of the parent company
Partnering Contract	A broad term used to describe a collaborative management approach that encourages openness and trust between the parties to a Contract. The parties become dependent on one another for success, which often requires a change in culture, attitude and procedures throughout the supply chain. Most commonly used on large, long-term or high-risk contracts, Partnering Contracts can be adopted for a one-off project, or can be a long-term relationship over a number of projects (such as a Framework Agreement).
Performance Bond	A means of insuring a Contractor against the risk of the Contractor failing to fulfil its contractual obligations to the Council. The Performance Bond provides compensation, guaranteed by a third party, up to the amount of the Performance Bond (which is typically set at 10% of the Total Contract Value), to enable the Council to overcome difficulties that have been caused by non-performance of the Contractor, such as, for example, finding a new Contractor to complete Works.
Portfolio Holder	A Councillor appointed by the Leader of the Council as a member of the

	Cabinet with responsibility for a particular portfolio of services, as set out in the Council's Constitution.
Post-Tender Negotiations	Discussions that take place with one or more Tenderers on price and/or other terms of the Contract or Specification after Tenders have been received and opened.
Practical Completion	The completion of all the Works required to fulfil a Contract.
Pre-estimate of Quantities	A Budget Holder's best estimate of the quantities of items relating to the Contract that will arise over the Contract Period, that are applied to rates submitted by Tenderers to produce an Estimated Tender Sum, which is used to compare the Tenders received from different Contractors.
Preferred Tenderer	A Tenderer that is being recommended to be awarded a Contract.
<i>"Procurement Process ("Regulation 84") Report"</i>	A requirement of Regulation 84 of the Public Contracts Regulations 2015, relating to procurements where the Total Contract Value is above the UK thresholds for Regulated Contracts, which is completed throughout the procurement process and is a written statement, in a defined format, that provides information on different aspects of the procurement and must be made available to Tenderers on request. A template for the <i>"Procurement Process ("Regulation 84") Report"</i> can be obtained here.
Professional Indemnity (PI) Insurance	A liability insurance that helps protect individuals and companies (usually Consultants) from bearing the full cost of defending a negligence claim in respect of professional advice provided to the Council by the Consultant.
Public Contracts Regulations 2015	Regulations made by the UK Government to exercise the powers given by the European Communities Act 1972, relating to procurements by public bodies in the UK and, in particular, for Regulated Contracts that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Regulations.
Retention	A percentage of the amount certified as due to a Contractor following their completion of a Contract, which is deducted from the amount due and retained by the Council. The purpose of holding a Retention is to ensure that the Contractor properly completes the activities required of them under the Contract.
Retention Period	The period during which a Retention is held by the Council.
Safeguarding	Ensuring the wellbeing of either adults with care and support needs or children in accordance with the requirements of the Care Act 2014 and the Children Act 2004 respectively.
Schedule of Rates	A list of prices provided by a Tenderer against items within a list produced by the Council for Tenderers to complete. The prices are multiplied by the Pre-Estimate of Quantities to produce an Estimated Tender Sum.

Select List	A list of selected Contractors to which Invitations to Tender are issued.
Services	In relation to public Contracts, means matters which have as their object the provision of services other than those defined as Works.
Short List	A list of Contractors that has been reduced, following a selection process, from a Long List of Contractors expressing an interest in receiving an Invitation to Tender. The Short List often then forms a Select List.
Specification	A document that sets out the detailed requirements of the Council for the undertaking or provision of Works, Supplies or Services, and forms an important part of the Tender Documents and the subsequent Contract issued to a Contractor.
Budget Holder	The officer designated by a Director as being responsible for a specified Council budget, from which payments for a Contract will be made, who is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.
Supplies	In relation to public contracts, means a matter that has as its object the purchase, lease, rental or hire-purchase (with or without an option to buy) of a product or products.
Tender	A written tender, quotation or fee submission submitted by a Tenderer in accordance with these Procurement Rules, that sets out the Tenderer's proposed price for performing a Contract, together with any other information required by the Council and these Procurement Rules.
Tender Documents	A set of documents sent to Contractors with an Invitation to Tender, which explains the Council's requirements for a proposed Contract and includes documents to be returned to the Council for consideration
Tenderer	A person or organisation that is invited to submit a Tender to the Council.
Tender Evaluation Score	The score that results from a MEAT Evaluation Assessment of a Tender, which is used to rank Tenders in order of the Most Economically Advantageous Tender in terms of best price and quality. A Contractor with the highest Tender Evaluation Score is usually offered the Contract.
Tender Sum	The total price set out in a Tender that a Contractor would charge to perform the required Contract, before any Contract Extensions are applied. An Estimated Tender Sum is calculated where a Contractor prices a Schedule of Rates.
Tender Opening	A meeting between those designated within Appendix 1 to be present when Tenders received for a Contract are opened, and which must be held no earlier than the day after the Tender Return Date.
Tender Return Date	The time and date specified within an Invitation to Tender by which Tenders must be returned and received by the Council.

Total Contract Cost	The actual total cost of the Contract at the end of the Contract Period, after any Contract Extensions have been applied.
Total Contract Value	The total value of the Works, Services, and/or Supplies over the Contract Period, including all potential Contract Extensions to the initial Contract Period.
Works	<p>The outcome of building or civil engineering works taken as a whole, which is sufficient in itself to fulfil an economic or technical function.</p> <p>In relation to public contracts, means matters which have as their object any one of the following:</p> <ul style="list-style-type: none"> (a) The execution, or both the design and execution, of works related to one of the activities listed in Schedule 2 to the Public Contracts Regulations 2015; (b) The execution, or both the design and execution, of a work; and/or (c) The realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority “exercising a decisive influence on the type or design of the work”.

Social Value matrix developed by Procurement and Contract Development Team

Social Value Measures			Council Priorities
Theme	Response		
Location	Are you based in Epping Forest District and / or in Essex?		EFDC then Essex based businesses
Business Type & Size	Are you an SME (Small or Medium Enterprise) or VCSE (Voluntary, Community and Social Enterprise)?		Support for SME and VCSE's
Supply Chain - Localism	Please provide an outline of who and where your key suppliers are located in relation to your operational base.		Encourage use of local suppliers. EFDC / Essex based suppliers. SME suppliers.
Employment	Employment of local people.		Council contracts support the employment and training of local people
	Does your organisation have any apprentices? <i>If yes please state the number of people on the scheme and the nature of their work.</i>		
Using renewable energy sources	Describe any initiatives or actions undertaken by your organisation in respect of these measures. Please attach policies where appropriate.		Epping Forest District Council has declared a climate change emergency and is aiming to be carbon neutral by 2030.
Reduction of single use plastics			
Reducing waste & recycling, reusing materials wherever possible			
Support of the Voluntary and Community Sector	Please detail any in-kind contributions made to the third sector and local community. <i>E.g. Special rates or discounts, donations.</i>		Epping Forest District Council is committed to supporting the third sector operating in and for benefit of Epping residents.

Social Value Weighting 10%* (different weighting can be agreed with the Procurement and Contract Development Team)

Scoring Matrix

Council Priorities	Scored on	Max Score 60 (different scoring can be agreed with the Procurement and Contract Development Team) <i>Weighted as 10%* of quality element</i>
Epping Forest District and Essex based businesses	Are you based in the Epping Forest District or in Essex?	10 – Epping Forest District OR 5 – Essex
Support for SMEs	Are you an SME or VCSE?	5 – SME or VCSE
Encourage use of local suppliers. Epping FD/ Essex based suppliers. SME suppliers.	Please provide an outline of who and where your key suppliers are in relation to your operational base.	10 – Across actions listed
Council contracts support the employment and training of local people	Employment of local people.	10 – Local workforce, participation in apprenticeship scheme.
	Does your organisation have any apprentices? <i>If yes please state the number of people on the scheme and the nature of their work.</i>	
Epping Forest District Council has declared a climate change emergency. Actions include: <ul style="list-style-type: none"> - <i>Use of renewable energy sources</i> - <i>Reduction in use of single use plastics</i> - <i>Reduce, recycle, reuse</i> 	Describe any initiatives or actions undertaken by your organisation in respect of these measures. Please attach policies where appropriate.	5 – Across actions listed
Epping Forest District Council is committed to supporting the third sector operating in and for benefit of Epping residents.	Please detail any in-kind contributions made to the third sector and local community. <i>E.g. Special rates or discounts, donations.</i>	10 – Supporting voluntary/community sector AND/OR local community
Innovation to delivery of Social Value	Demonstrating a new and innovative way of providing social value to the Council or the wider community	10 – supporting the Council and the wider voluntary / community sector and / or local communities.

Please describe how any benefit you have stated will be implemented, and duration of the activity.

Please identify the person in your organisation who will be our contact to implement the benefit.

Name:
Position:
Email:
Phone Number:

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Epping Forest District Council

Procurement & Contracts Checklist

PLEASE NOTE: THIS CHECKLIST MUST BE USED FOR ALL SPEND OVER £25,000 OR ANY VALUE THAT WILL REQUIRE A CONTRACT TO BE PUT IN PLACE.

Procurement Exercise/Activity: _____

General Principles	
I have liaised with the Procurement and Contract Development Team before I begin to see what information they require to draw up a contract for this requirement if deemed necessary (this will include GDPR considerations).	
I have checked that the Procurement and Contract Development Team has sufficient resource available to support me through my procurement exercise and contract drafting. Any additional funds needed to pay for appropriate levels of support should be included in your budget for the project.	
I have ensured that I have sufficient budget in place to cover the anticipated value of the requirement and any additional support required from the Procurement and Contract Development Team – either through confirmation from your Service Accountant and/or Cabinet Approval for additional budget.	
If the project will impact another department within the Council in any way (Hardware / Software / Licenses from ICT for example) I have ensured that they have been consulted with prior to proceeding.	
I have carried out some form of market testing, appropriate to the scale and scope of the procurement, to assess that interest exists amongst potential suppliers and to assist in the development of the specification.	
I have determined a realistic estimate of the total life cycle value of the goods, services or works I am procuring.	
I have considered any safeguarding issues where relevant and put appropriate processes in place.	
I have made enquiries to establish whether another department already has a contract for the services I am seeking to procure.	
I have made enquiries to establish whether an opportunity exists for joint procurement with another department.	
I have investigated whether a framework agreement exists for the services I am seeking to procure.	
I have ensured that, for any direct awards without competition, I am able to demonstrate how I am achieving best value for the Council.	
I have liaised with Business Support Finance to ensure they have all the information they need to support me (new supplier on Marketplace and Accounts Payable system, for example).	

Spend over £25k in value	
I have liaised with the Procurement and Contract Development Team before I begin to see what information they require to draw up a contract for this requirement.	
I have considered utilising the Essex Procurement Hub to manage this tender on my behalf (speak to the Procurement and Contract Development Team for more information).	
I have created a clear description of what is needed (specification). Ensure all relevant equality issues have been considered, using the equality questionnaire if appropriate.	
I have provided a reasonable estimated value of the procurement exercise to the Procurement and Contract Development team to ensure that all appropriate actions are taken prior to issue.	
I have included in the documentation a clear description of the criteria that will be used for evaluating the tenders and the maximum scores to be awarded for each item. As well as setting an appropriate price/quality split, Social Value and Sustainability criteria must be included in EFDC's Procurement processes wherever possible. Please speak to the Procurement and Contract Development Team for further guidance.	
In preparing this opportunity I have considered the economic, environmental and social benefits of the procurement in the District. If the tender is for the provision of services and the estimated value is above the EU Threshold I have documented the outcome of the team's discussions on this matter.	
I have liaised with Procurement and Contract Development Team to publish the requirement via the Council's e-Procurement portal and have invited at least five potential suppliers or advertised on Contracts Finder (see Procurement Rules for full requirement based on value of procurement). Details of the suppliers to be invited must be provided to the Procurement and Contract Development Team prior to issue.	
Wherever possible, I have invited at least two local suppliers (with headquarters in the Epping Forest District) to bid for the requirement. If unable to do so, the Procurement and Contract Development Team have been informed of the reasons for this.	
Any clarification requested received during the tender process were responded to, with the response being issued to all tenderers for information (this can be done on your behalf as part of the Procurement process – speak to the Procurement and Contract Development Team).	
I have ensured that I and at least one colleague have separately scored the tenders using the scoring mechanism set out in the documentation previously issued.	
I have selected the supplier achieving the highest score from the combined evaluations.	
I have written to or emailed all the tenderers notifying them of the outcome (this can be done on your behalf as part of the Procurement process – speak to the Procurement and Contract Development Team).	
I have adhered to the requirements of EFDC's Procurement Rules and Financial Regulations.	

DECLARATION

I confirm that the above checklist and all associated actions included have been undertaken as part of this procurement exercise.

Signed: _____ Date: _____

Job Title: _____

ONCE COMPLETE, PLEASE RETURN TO EFDC'S PROCUREMENT AND CONTRACT DEVELOPMENT TEAM