

**PART 4G:
CONTRACT PROCEDURE RULES**

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PREAMBLE

For capitalised words see Appendix 1 at the end of these Rules for the meanings.

1. The Contract Procedure Rules

- 1.1 These Contract Procedure Rules (“Rules”) are a legal requirement under Section 135 of the Local Government Act 1972 and are part of the Council’s Constitution. They set out the basic principles that must be followed by everyone proposing to enter into any Contract on behalf of the Council.
- 1.2 The Regulations contain further rules concerning procurement by the Council which must be followed.
- 1.3 If there is any doubt or lack of clarity as to the meaning or application of these Rules, officers must seek advice from Procurement Services and/or Legal Services.

2. Purpose

- 2.1 These Rules set various value levels, their application and the procedures that must be followed for each. The procedures are designed in incremental steps so the higher the value the more rigorous the processes.
- 2.2 Following the Rules ensures that the Council:
 - achieves value for money, meets the Best Value Duty and delivers savings from the market;
 - achieves accountability, fairness and transparency (as required by the Local Government Transparency Code 2014) and ensures an adequate audit trail is maintained;
 - ensures compliance with all legal requirements, following proper, fair and proportionate procedures for and throughout all procurement processes;
 - ensures that all procurement processes reflect appropriate quality requirements and all Submissions are judged by objective criteria which are clearly set out in the procurement documentation;
 - ensures that the Council’s wider policy objectives are promoted (including environmental sustainability, economic regeneration, business continuity);
 - reduces the risk of fraud, bribery and corruption.

3. Procurement Guidance

- 3.1 The Head of Procurement and/or the Head of Law may from time to time publish guidance to amplify and fine tune the steps to be taken as part of procurement and Contract management processes or vary the standard procurement documents.
- 3.2 Where there is any ambiguity or conflict between these Rules and or guidance issued under this Rule, the provisions of the Rules shall take precedence.

4. Social Value

- 4.1 The Public Services (Social Value) Act 2012 requires the Council under certain circumstances to consider how the economic, social and environmental

wellbeing of Leicester may be improved by Services that are to be procured, and how procurement activity may secure these improvements.

- 4.2 The Council will apply the principles of the Public Services (Social Value) Act 2012 to the commissioning and procurement of all Medium, Large and PCR Contracts.
- 4.3 The Council has set out its policy on social value in its Social Value Charter which must be implemented in all relevant procurement processes.

5. Contracts Database and Electronic Tendering System

- 5.1 Procuring Officers must record all Medium, Large and PCR Contracts in the Contracts Database, which is part of the Electronic Tendering System.
- 5.2 In exceptional circumstances there may be occasions when use of the Electronic Tendering System is not appropriate or possible. E-mail and/or hard copy Submissions may be required.
- 5.3 Electronic auctions may be used, so long as, where applicable, the Regulations are complied with.

6. Minor Amendments & Review

- 6.1 The Chief Operating Officer, Chief Finance Officer and the City Barrister, may from time to time amend the thresholds in the table in Rule 13.1.
- 6.2 The City Barrister may from time to time amend these Rules:
 - to correct an error or clarify an ambiguity;
 - to reflect changes in the management structure, working practices and responsibilities, e.g. as set out elsewhere in the Constitution; and
 - to reflect changes in the Law to ensure consistency.

7. Periodic Review of the Rules

- 7.1 The City Barrister shall ensure that the Rules are reviewed at least every five years and, if appropriate, propose amendments to Full Council, following an initial report to the Audit & Risk Committee.

GENERAL PROVISIONS

8. Status

- 8.1 In the event of any inconsistencies between the Rules and the Law (including the Regulations), then the Law will apply over the Rules.

9. Scope

- 9.1 These Rules must be followed at all times and apply:
 - to all members, officers and staff, (including agency staff and interims) and consultants of the Council;
 - to all departments trading organisations and organisations for which the Council is the accountable body;

- where the Council is acting as agent for or working collaboratively with another body unless it is agreed between the parties otherwise and provided the Law is complied with at all times;
 - to all Contractors acting on behalf of the Council and empowered to form contracts on behalf of the Council and by any person who is not an officer of the Council engaged to manage a Contract on behalf of the Council;
 - to the award of a Contract where a sub-contractor/supplier is to be nominated by the Council to a main Contractor.
- 9.2 The Rules shall not apply to maintained schools, who must follow the Contract Procedure Rules for maintained schools as issued by the City Barrister from time to time.
- 9.3 Failure to comply with the provisions of the Rules may result in action being taken by the Council against the persons/organisations concerned including, where appropriate, referral to the Police.
- 9.4 These Rules apply to
- all Contracts, including but not restricted to:
 - the supply of Goods; and/or
 - the supply of Services (including consultancy); and/or
 - the carrying out of Works; and/or
 - a Capital Asset Disposal; and/or
 - any and all of the above in so far as they are (whether in part or whole) a Concession Contract.
 - any matters as may arise in the process of managing Contracts including those which change, vary or terminate;
 - any Contract which the Council awards to a Company in which it has an interest, but which is not a Teckal Company; and
 - any award of a Contract to another public body which is not a delegation of function.
- 9.5 These Rules do not apply to:
- contracts solely for the acquisition or disposal of any interest in land;
 - contracts of employment;
 - loan agreements;
 - grants so long as they fall outside of the definition of procurement within the Regulations;
 - functional arrangements with other public bodies, including any arrangements covered by Regulation 12 of the PCR, provided they are first approved by the Head of Law;
 - contracts awarded to a Teckal Company of the Council; or
 - delegations of functions to another Local Authority under the Local Government Act 1972 and Local Government Act 2000.

10. Private Interests

- 10.1 Whenever any member, officer or other person involved in a procurement process on behalf of the Council has any interest, or could be perceived to have any interest, in a Bidder or potential Bidder, or any procurement, this interest must be notified in writing to the City Barrister.
- 10.2 For each procurement (including re-procurements) where there is such an interest, that individual must declare it even where it has been declared before. The City Barrister, in consultation with the Head of Procurement, will decide how to proceed to ensure fairness can be demonstrated, to reduce any potential accusation of misconduct, eliminate bias and maintain the integrity of the process.
- 10.3 For the avoidance of doubt, no member, officer or agent of the Council, shall improperly use their position to obtain any personal or private benefit from any Contract entered into by the Council.

11. Procurement Plan and Pipeline

- 11.1 The Head of Procurement will maintain a Procurement Plan and Pipeline and make this available on the Council's website to members, the public and potential Bidders, which will comprise a list of known Medium, Large and PCR Contracts to be procured in the forthcoming two years.

12. Monitoring & Reporting

- 12.1 The Executive and the Audit & Risk Committee will each receive a report following the end of each financial year to include:
- achievement of the Procurement Plan;
 - compliance with these Rules, including a summary of Waivers;
 - any changes to these Rules made under Rule 6;
 - any proposals for changes to these Rules to be made to Full Council.

THRESHOLDS & APPROVAL

13. Thresholds

- 13.1 The following table sets out the thresholds for categorisation of Contracts into value bands based on the Estimated Value.

	Goods & Services	Works & Concessions
Small Contract	£0 - £10,000.00	£0 - £25,000.00
Medium Contract	£10,000.01 - £100,000.00	£25,000.01 - £250,000.00
Large Contract	£100,000.01 – PCR Threshold	£250,000.01 – PCR Threshold
PCR Contract	Over PCR Threshold	Over PCR Threshold

14. Calculating Estimated Value

14.1 Before starting any procurement process, the Commissioning Officer must calculate its Estimated Value as follows:

- for fixed-term Contracts, the total estimated maximum value of the Goods, Services or Works to be supplied over the period of the Contract including any Extensions;
- for Contracts with no defined term, multiplying the estimated average monthly value by 48;
- for trials and pilots, the value of the full Contracts which may be awarded following the trial/pilot;
- for Framework Agreements and DPSs, the total expected value of all Call-Off Contracts over the maximum duration of the Framework Agreement/DPS by all organisations who may use the Framework Agreement/DPS;
- for Concession Contracts, the total income, regardless of source, to the Contractor over the Contract period;
- for periodic/recurring purchases, whether it is from the same or different contractors, must be aggregated over a minimum of a 12-month period;

14.2 Further, when calculating the Estimated Value:

- it must exclude Value Added Tax (VAT) but must include all other taxes and duties;
- it must include the combined estimated value of any department or section of the Council that may use the Contract over the duration of the Contract including any Extensions;
- where the Council is contributing only part of the total value of a Contract, it is the total spend under the contract of all parties to it that must be taken as the Estimated Value and to determine its categorisation;
- it should be calculated including the total consideration that the Contractor(s) will receive in return for carrying out the Contract, whatever the nature or source of the consideration;
- the requirement shall be looked at as a whole and must not be artificially split to avoid competition;
- the Commissioning Officer shall take account of historic cost and an assessment of future trends or, where the requirement is new, the best estimate of value available at the time.

14.3 Where there is any doubt as to the Estimated Value and the band in which the Contract will fit then the procedure for the higher categorisation must be used.

14.4 With the written approval of the Head of Procurement the Procuring Officer may make use of the “Small Lots” provision set out at paragraph 14 of Regulation 6 of the Regulations, and therefore not aggregate the value of all requirements. The Procuring Officer must follow a procedure to award the Contract based only on the value of that ‘Small Lot’.

15. Financial Approval

- 15.1 Before procurement of any Contract reaches the Advertisement stage, it must have financial approval from the required officer(s), as set out in the table below:

Contract Categorisation	Financial Approval
Small Contract	Budget Holder(s)
Medium Contract	Head of Service
Large Contract	Divisional Director and Head of Finance
PCR Contract	Divisional Director and Head of Finance

EXEMPTIONS & WAIVERS

16. Exemptions & Waivers

- 16.1 Exemptions and Waivers may be requested by completion of a Form for Exemptions and Waivers (FEW).
- 16.2 A **Waiver** is an approval that for the purpose of a specific procurement the procurement procedure requirements contained in Rules 20 to 37 and their application will be waived, though they apply in principle ('Waiver').
- 16.3 An **Exemption** is an approval that, for one of the following reasons, the procurement is exempt from the procurement procedure requirements contained in Rules 20 to 37 ('Exemption').
- Goods, Services or Works which are available only as proprietary or patented articles; Services or Works from one Contract or for which there is no reasonably satisfactory alternative available in the European Union; and for repairs to, or the supply of, parts of existing proprietary or patented articles or Works, including machinery or plant;
 - works of art, museum specimens or historical documents (a FEW is not required if the Contract is for the Arts & Museum Service);
 - particular artistes and performers and bought-in productions (a FEW is not required if the Contract is for the Arts & Museum Service);
 - those genuine unforeseen emergencies (not of the Council's own making), where immediate action is required, including to fulfil the Council's statutory obligations under the Civil Contingencies Act 2004;
 - Where one of the criteria for use of the Negotiated Procedure without Prior Publication set out in Regulation 32 of the PCR is met;
 - Services as set out in Regulation 10 of the PCR.
- 16.4 In the event that an Exemption does not apply but there is a clear need to dispense with the requirements of the Rules the Commissioning Officer may request a Waiver.

16.5 Exemptions and Waivers require approval as follows.

Contract Category	Exemption	Waiver
Small Contract	Head of Service	Head of Service
Medium Contract	Divisional Director and Specialist Procurement Team Manager	Divisional Director and Specialist Procurement Team Manager
Large Contract	Divisional Director and Specialist Procurement Team Manager	Divisional Director, Specialist Procurement Team Manager and Head of Law
PCR Contract	Divisional Director, Head of Procurement and Head of Law	Divisional Director, Head of Procurement and Head of Law

16.6 Where the FEW is in relation to an ICT Contract it must also be signed by the Director of Finance.

16.7 Exemptions and Waivers may alternatively be authorised by the Executive supported by formal advice from the Head of Procurement and the Head of Law.

TERMS AND CONDITIONS & EXECUTION OF CONTRACTS

17. Contract Duration

17.1 All Contracts (excluding Framework Agreements and Concession Contracts but including Call-Off Contracts) may only be for a maximum of five years unless first approved in writing by the Head of Procurement and the Divisional Director.

17.2 All Framework Agreements may only be for a maximum four years unless first approved in writing by the Head of Law, Divisional Director and Head of Procurement.

17.3 The length of a Concession Contract will be determined in accordance with the CCR and approved by the Head of Law and Head of Finance where it exceeds five years in length.

18. Terms & Conditions of Contract

18.1 For all Contracts, excluding Concession Contracts and Framework Agreements (for which Legal Services must be instructed to approve the terms and conditions), the following terms and conditions will be able to be used, otherwise Legal Services must provide bespoke/customised terms and conditions:

	Small	Medium	Large	PCR
Purchase Order	Yes	Only with prior written approval of Legal Services	No	No
Standard Terms and Conditions	Yes	Yes	Only with prior written approval of Legal Services	Only with prior written approval of Legal Services
Industry Standards	Only with prior written approval of Legal Services			
Contractor's Terms and Conditions	Only with prior written approval of Legal Services			
Framework Agreement Terms and Conditions	Only with prior written approval of Legal Services			

18.2 Where Standard Terms and Conditions are not used the proposed terms of all Contracts must include the clauses as set out in Appendix 2.

19. Execution of Contracts

19.1 Contracts may only be signed and entered in to as follows:

Small Contracts (non-deed)	Divisional Director
Medium Contracts (non-deed)	One Authorised Signatory (Legal Services)
Large Contracts (non-deed)	Two Authorised Signatories (Legal Services)
PCR Contracts (non-deed)	Two Authorised Signatories (Legal Services)
Any Contract to be entered in to as a deed	Common Seal and one Authorised Signatory (Legal Services)

19.2 Legal Services will determine where a Contract should be executed as deed.

USE OF PROCEDURES

20. Principles

20.1 The following Rules set out the procedures for use based on the Contract categorisation.

20.2 All ICT Contracts must be procured by the ICT Procurement Team unless the ICT Commercial & Procurement Manager agrees otherwise. Where a procurement is not for an ICT Contract but contains an element of ICT the ICT Procurement Team must be consulted in relation to the procurement.

20.3 All other Contracts except Small Contracts must be procured by the relevant Specialist Procurement Team unless the Specialist Procurement Team Manager agrees otherwise.

20.4 In the case of Schedule 3 Contracts, Concession Contracts or where the Regulations permit or do not apply, the procurement procedures set out in Rules 24 to 26 may be adapted to suit the procurement process in question.

21. No Competition Required

21.1 A Contract may be awarded without competition for the following Services:

- Care Services where the provider is to be appointed as a matter of Service User Choice as per the Care Act 2014;
- Contracts for the provision of Residential Care (both adults and children);
- individual school placements sought for a child with Special Educational Needs (SEN);
- special education packages managed by or on behalf of individual clients under the personalisation agenda; and
- where certain needs of an individual (whether an adult or a child) require a particular social care package, which is only available from a specific Contractor in the opinion of the Divisional Director.

21.2 The Divisional Director must ensure that the Contractor meets the relevant national minimum standards and that a record of the reasons for the choice of the Contractor is maintained on the individual's case notes.

21.3 A Medium Contract may be awarded to one or more VCSE(s) following direct negotiation where, if the Council were not to contract with the VCSE(s) it would significantly affect customers, or other greater gains or benefits would be lost.

22. Small Contracts

22.1 For Small Contracts award may be made based upon one quote provided by a Bidder, who is a Local Bidder where possible. The Commissioning Officer must consider whether additional quotes are in the Council's best interests.

22.2 Where written quote it is not practical, a record of any oral quotation obtained must be made and retained.

23. Medium, Large & PCR Contracts

23.1 The following table sets out the usual procedures for each Contract Value, but any lower value procurement may use a method for a higher value procurement where the relevant Specialist Procurement Team deems appropriate:

	Medium	Large	PCR
Targeted Quotation	Yes	Yes (with approval of the Head of Procurement)	No
Advertised Quotation	Yes	No	No
Use of Non-LCC Framework Agreement	Yes	Yes	Yes
Use of LCC Framework Agreement	Yes	Yes	Yes

Open Procedure	-	Yes	Yes
Restricted Procedure	-	Yes (where permitted by Regulation 107 of the PCR)	Yes
Competitive Dialogue (CD)	Only with Head of Law and Head of Procurement Approval		
Competitive Procedure with Negotiation (CPN)	Only with Head of Law and Head of Procurement Approval		
Innovation Partnership (IP) or Design Contest (DC)	Only with Head of Law and Head of Procurement Approval		

PROCUREMENT PROCEDURES

24. Targeted Quotation

- 24.1 The Procuring Officer must obtain three written Quotations of which at least two shall be from Local Bidders. Where Local Bidders cannot be approached or three Quotations cannot be obtained, written reasons and evidence as to why this is the case are required.
- 24.2 The Procuring Officer must log all details of the Quotations/responses.
- 24.3 The Evaluation Panel may make the decision on whether or not to award the Contract after considering the Quotations, making a written record of their decision and reasons.

25. Advertised Quotation

- 25.1 An advertisement will be placed by the Procuring Officer for a sufficient period of time to allow Bidders to respond.
- 25.2 A RfQ document must be made available to all interested parties who respond to the Advertisement. The RfQ must contain or identify:
- Instructions for the completion and return of Quotations;
 - A Specification setting out the Council's requirements;
 - The proposed terms and conditions of Contract; and
 - The procedure for the evaluation of Quotations.
- 25.3 Quotations received will be evaluated by the Evaluation Panel in accordance with the RfQ to recommend an award.

26. Open Procedure, Restricted Procedure, Competitive Procedure with Negotiation, Competitive Dialogue, Innovation Partnership and Design Contest

- 26.1 Where any of the above procedures are to be used on a PCR Contract the Regulations will be followed in full. Where a Contract below the PCR Threshold or a Concession Contract is being procured, the process shall reflect the procedure set out in the Regulations though the Specialist Procurement Team

Manager may agree to alter the procedure as may be considered beneficial and/or necessary.

- 26.2 The CPN, CD, IP and DC processes may only be used for PCR Contracts in the circumstances set out in the Regulations. In such cases evaluation, award and any negotiation will be undertaken in accordance with the Regulations and the procurement documents issued.

USE OF FRAMEWORK AGREEMENTS & DYNAMIC PURCHASING SYSTEMS

27. LCC Framework Agreements

- 27.1 For the purposes of establishing a Framework Agreement the Rules must be followed unless otherwise stated.
- 27.2 The Framework Agreement must set out a methodology for awarding a Call-Off Contract.
- 27.3 Once it has been established, additional Contractors may only be added to a Framework Agreement where:
- it is not an PCR Contract or it is for Services listed in Schedule 3; and
 - the ITT states:
 - a) that additional organisations may be added to the Framework Agreement during the term;
 - b) how and when additional organisations be added to the Framework Agreement; and
 - c) that the same evaluation criteria and award methodology applied to the original Contractors will be applied to any potential Contractors when determining whether to add them.

28. Non-LCC Framework Agreements

- 28.1 The Council may use Framework Agreements set up by third parties where the Framework Agreement entitles the Council to do so, subject to the approval of the Head of Procurement and the Head of Law (other than for Small Contracts, where standing approval is given).
- 28.2 The methodology and all requirements set out in the Framework Agreement must be followed when awarding a Call-Off Contract under the Framework Agreement.

29. Dynamic Purchasing Systems (DPSs)

- 29.1 A DPS may only be established with the approval of the Head of Law and the relevant Specialist Procurement Team Manager and in accordance with the Regulations.

CONDUCTING A PROCUREMENT PROCESS

30. Fairness & Equal Treatment

- 30.1 All Bidders must be provided with the same information throughout any procurement process.
- 30.2 The Procuring Officer and Commissioning Officer must ensure that all processes set out in the procurement documentation issued to Bidders are followed.

31. Advertisements

- 31.1 Where the procurement procedure requires an advertisement, one must be placed in accordance with the Regulations and on a website as approved by the Head of Procurement and any such place as there is a legal requirement to place such adverts.
- 31.2 For all advertised procurement procedures, the Procuring Officer must allow a reasonable time between the date of the advertisement or the issue of documents to Bidders and the Closing Date, having regard to:
 - the requirements of the Regulations;
 - the amount of effort likely to be required to make a Submission; and
 - the urgency of the requirement.
- 31.3 As a minimum, all advertisements must express the nature and purpose of the procurement procedure, stating where further details may be obtained.

32. Reserved Contracts

- 32.1 The Procuring Officer may Reserve a Contract with the written approval of the relevant Specialist Procurement Team Manager and Head of Law.
- 32.2 The Procuring Officer must set out in all appropriate documentation, including the Advertisement, that the contract is Reserved; and comply with Regulations 20 or 77 of the PCR, if applicable.

33. Specification

- 33.1 All Specifications must be a written statement of the Goods, Services or Works required and shall be prepared in accordance with such guidance as issued by Legal Services and/or the relevant Specialist Procurement Team.
- 33.2 Unless justified by the subject matter of the Contract and approved by the relevant Specialist Procurement Team Manager, the Specification shall not refer to a specific make or source, or a particular process which characterises the Goods, Services or Works provided by a specific organisation, or to trademarks, patents, types or a specific origin or production with the effect of favouring or eliminating certain organisations or certain products. Such reference shall be accompanied by the words 'or equivalent'.

34. Receipt and Opening of Submissions

- 34.1 The PQQ, RfQ or ITT must specify the Closing Date for Submissions.

- 34.2 The Electronic Tendering System must be used for each procurement process, including but not limited to, for the publication of documents and receipt of documents to/from Bidders at all times unless otherwise agreed in advance with the Head of Procurement.
- 34.3 The Head of Procurement may authorise the acceptance of Submissions received via the Electronic Tendering System after the Closing Date where:
- there is clear evidence of technical issues preventing the Bidder sending their Submission ahead of the Closing Date, confirmed by the provider of the Electronic Tendering System; and
 - the Bidder gains no other advantage through the acceptance of their Submission.

35. Clarification of Submissions

- 35.1 Bidders are not permitted to alter their Submissions after they have been received by the Council other than in accordance with the instructions provided to Bidders, this Rule or Rule 36.
- 35.2 Following the Closing Date but before the award of any contract, the Procuring Officer may seek clarification from a Bidder.
- 35.3 Clarification should be conducted via or recorded on the Electronic Tendering System.
- 35.4 Any clarification of Submissions during a procurement process must always ensure fair and equal treatment of all Bidders is maintained.

36. Negotiation

- 36.1 Other than for PCR Contracts (where negotiation will only be permitted where an appropriate procedure is used), the Procuring Officer in consultation with the Commissioning Officer may negotiate with Bidders to seek to secure improvements in the price or economic advantage. Such negotiation must take place following the Closing Date, but before award of Contract and be approved in writing by the Head of Procurement.
- 36.2 When conducting negotiations, the following shall apply:
- The negotiation must not increase the value so that it exceeds the PCR Threshold.
 - A Bidder must not be told the detail of any other Submission or how their Submission compares to any other Submission.
 - Two officers of the Council must be present at negotiations.
 - A written note of the negotiations must be made and retained detailing the time and location of the negotiations, the discussions and any agreement reached.
 - Negotiations shall not result in a material departure from the published Specification and/or Contract terms. The Head of Law, in consultation with the Head of Procurement and appropriate Divisional Director, shall determine whether any proposed change to the Specification constitutes a material departure and any resulting actions.

37. Standstill and Contract Award

37.1 Contract Award must be authorised prior any Standstill Period commencing, or where not applicable prior to the notification of award being issued to Bidders, as follows:

Small Contract	Budget Holder & Commissioning Officer (&, for ICT Contracts, the Specialist Procurement Team Manager)
Medium Contract	Head of Service & Specialist Procurement Team Manager
Large Contracts	Divisional Director & Specialist Procurement Team Manager
PCR Contracts	Divisional Director & Specialist Procurement Team Manager

37.2 A Standstill Period must be applied to PCR Contracts if required by the Regulations, and may be applied to Large Contracts and to Call-Off Contracts from Framework Agreements over the PCR Threshold.

37.3 Each Standstill Period must last a minimum of 10 calendar days from the day of sending the notice to Bidders, day one counting as the day after such notice is sent.

37.4 A challenge during the Standstill Period will mean that the approval of Head of Law and Head of Procurement is required to award the Contract.

37.5 Letters of Intent are not permitted unless prior written approval of the Head of Law has been granted.

37.6 For PCR Contracts the requirements with regards to notification of outcome, reasons/feedback, the end of a Standstill Period and any other such requirements within the Regulations shall be complied with.

37.7 For Medium Contracts and Large Contracts, the Procuring Officer must, following the approval of the award, send at the same time a notification in writing to:

- the successful Bidder(s) that their Submission is accepted; and
- the unsuccessful Bidders that their Submission has not been accepted.

CONTRACT MANAGEMENT & CONTRACT MODIFICATIONS

38. Contract Management

38.1 The Divisional Director must ensure that for each Medium, Large and PCR Contract, a person is designated as the Contract Manager.

38.2 The Contract Manager is responsible for managing the performance of the Contract and the Contractor(s) throughout the Contract period, including ensuring that value for money is obtained and Best Value Duty met.

38.3 The Contract Manager is responsible for initiating procurement of a replacement contract, where required, in a timely manner in accordance with these Rules.

39. Financial Parameters for Extensions and Variations

39.1 When considering Contract Extensions and Variations, the Contract categorisation must be reviewed for which the calculation of the value should be undertaken as follows:

- the spend to date on the Contract (compared against the procured Contract value, detailing where any other variations have occurred and value of them); plus
- the projected spend on the Contract over the remaining term; plus
- any increase as a consequence of the proposed Extension or Variation.

For the purposes of this calculation, decreases in Contract value should not be considered other than in so far as they affect the projected spend.

39.2 Where the figure exceeds the original contract value this will be considered as a financial variation to the contract, in addition to any change to the scope of services.

39.3 Should the categorisation of the Contract change (Rule 13.1) this will mean the approval under Rules 40 and 41 will be for the new categorisation.

40. Extensions

40.1 An Extension of Contracts is only where it is expressly provided for in the Contract. Where the Contract does not provide for an extension then Rule 41 regarding variations apply. For an Extension the following approvals shall be required:

Category of Contract	Approval Required
Small Contract	Head of Service
Medium Contract	Head of Service
Large Contract	Divisional Director
PCR Contract	Divisional Director in consultation with the Head of Procurement

40.2 In the case of any Extension other than for Small Contracts, approval shall be via a CEV form. Once approved the CEV form must be forwarded to the relevant Specialist Procurement Team.

41. Contract Variations

41.1 No Variation may be authorised which alters the overall nature of the Contract.

41.2 Authorising officers must have due regard to transparency and openness and the value for money of the proposed Variation and must notify the Head of Procurement of the Variation.

- 41.3 Each Variation to a Contract must be made in writing and signed by the parties to the Contract unless the Contract allows otherwise. This must be done before the Variation takes effect.
- 41.4 The Contract Manager may, where they do not significantly affect the overall delivery or cost of the Contract, agree Variations on any Contract provided that such Variation is confirmed in writing and signed by the parties, with full details of the Variation included.
- 41.5 All Variations other than under Rule 41.4 above require authorisation via a CEV as follows:

Contract Categorisation	Percentage Change in Contract Value	Approval Required
Small Contract	Any	Head of Service
Medium Contract	Any	Head of Service
Large Contract	Less than 50%	Divisional Director
Large Contract	50% or more	Divisional Director and Head of Procurement
PCR Contract	Less than 10%	Divisional Director
PCR Contract	10% or more	Divisional Director, Head of Procurement and Head of Law

42. Novation of Existing Contracts

- 42.1 The novation of a Contract from an existing party to a new party requires prior written approval of the City Barrister and must be via a formal agreement. The Head of Procurement must be informed of the novation.

43. Early Termination of Contracts

- 43.1 Following consultation with the City Barrister the Divisional Director shall be authorised to terminate any Contract before the expiry of its agreed term. In such cases the Divisional Director must inform the Head of Procurement of the termination.

APPENDIX 1: DEFINITIONS

Terms defined in the Council's Constitution have the same meaning when used in these Rules. Where a job title is used and that job title is no longer appropriate, the Chief Operating Officer will identify the postholder to replace the stated job title. To ensure effective operation of these Rules, the Head of Procurement, Head of Law and City Barrister may delegate their responsibilities under these Rules to appropriately skilled officers.

Other terms are defined by these Rules as follows:

“Best Value Duty” means the duty under section 3(1) of the Local Government Act 1999 to make arrangements to ensure continuous improvement in the way its functions are exercised having a regard to the combination of economy, efficiency and effectiveness.

“Bidder” means a person or organisation who responds to an Advertisement or invitation and participates in a procurement procedure to win a Contract.

“Call-Off Contract” means a Contract based on a Framework Agreement or DPS.

“Capital Asset Disposal” means a relevant disposal of capital assets by the Council which fall within the scope of the Regulations which may include land disposal agreements from which the Council receives an income.

“CCR” means the Concession Contracts Regulations 2016 (as amended or re-enacted from time to time).

“Closing Date” means any stated closing time and date for the receipt of Submissions.

“Commissioning Officer” means a person appointed by a Head of Service or Chief Officer to identify and specify the requirement and provide specialist service/technical input into the Procurement Procedure.

“Contract” means any contract to be procured and entered in to by the Council and includes Framework Agreements, Concession Contracts, ICT Contracts and Schedule 3 Contracts.

“Concession Contract” means as defined in Article 3 of the CCR.

“Contract Manager” means a person appointed by a Head of Service or Chief Officer to manage the performance of a Contract throughout its Contract period. The duties of a Contract Manager shall begin when the Contract is awarded and shall cease when it is completed or terminated.

“Council” means Leicester City Council.

“Contractor” means any person or organisation contracted to sell, provide or buy Goods, Service or Works. This term applies after a Contract is formed.

“DPC” means a certificate signed by a Director confirming their agreement to use their delegated powers as stated within the certificate.

“DPS” means a Dynamic Purchasing System as permitted in the PCR.

“Electronic Tendering System” means any IT system approved for use by the Head of Procurement via which a procurement process can be conducted.

“Estimated Value” means the estimate value of a Contract as established in accordance with Rule 12.

“Evaluation Panel” means the Procuring Officer, the Commissioning Officer and any other individuals appointed by them to participate in evaluating Submissions. For Large and PCR Contracts, the Evaluation Panel must include at least one other officer to evaluate the technical quality elements of the Submission in addition to the Commissioning Officer.

“Extension” means an extension of a Contract for a further period of time in accordance with its terms.

“Goods” means the subject of a Public Supply Contract.

“Head of Law” means the Head of Law for Commercial, Property & Planning.

“ICT Contract” means any contract primarily for the provision of equipment, software or hardware that connects or interfaces with the Council’s ICT network, including maintenance and support services to this hardware and software.

“ITT” means an Invitation to Tender document issued by the Council to potential Bidders.

“Law” means any:

- (i) applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (ii) enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
- (iii) applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (iv) National Standards;
- (v) Statutory Guidance; and

in each case in force in England and Wales and including any amendments.

“Local Bidder” means a business having a base from which the Goods/Services/Works will be delivered with an LE postcode.

“PCR” means the Public Contracts Regulations 2015 (as amended or re-enacted from time to time).

“PCR Contract” means a Contract which is over the PCR Threshold.

“PCR Threshold” means the relevant threshold set out in Regulation 5(1)(a), (c) or (d) of the PCR or Regulations 9(1) of the CCR.

“Procuring Officer” means a person appointed by the Head of Procurement for the purpose of carrying out the appropriate duties set out in these Rules. A Procuring Officer may be appointed specifically for the purpose of a single Contract or for a range of Contracts.

“Quotation” means a completed RfQ (or similar Submission from a Bidder), and any attached documents submitted by a Bidder as part of a procurement procedure.

“Regulations” means both the CCR and PCR.

“Reserve” means the reservation of a Contract a for sheltered workshops, mutuals or social enterprises (or similar). Reserved shall be construed accordingly.

“RfQ” means a Request for Quotation document issued by the Council to potential Bidders.

“Schedule 3” means Schedule 3 to the PCR.

“Services” means the subject of a Public Service Contract.

“Social Value Charter” means the social value charter as adopted and published by the Council from time to time and includes all guidance issued.

“Specialist Procurement Teams” Procurement Services (City Barrister & Head of Standards Division), ICT Commercial & Procurement Team (Finance Division) and Social Care & Public Health Procurement Team (Care Services and Commissioning Division).

“Specialist Procurement Team Manager” shall mean the appointed manager of the Specialist Procurement Team as appointed from time to time.

“Specification” means a clear written statement of the Goods, Services or Works the Council requires from the Contract.

“Standard Terms and Conditions” the standard terms and conditions for any Contract type as published and approved by Legal Services for use by officers without the need to instruct Legal Services.

“Standstill Period” any standstill period required in accordance with these Rules.

“Submission” means a completed ITT, RfQ, PQQ or other similar document submitted by a Bidder as part of a procurement procedure.

“Teckal Company” means a company which falls within the meaning of Regulation 12 of the Regulations.

“Variation” means a variation of any Contract as originally procured and, where the Contract does not allow for an Extension, it shall include a variation to extend the Contract.

“VCSE(s)” means a Voluntary Community Sector Enterprise being a not for profit organisation.

“Works” means the subject of a Public Works Contract.

APPENDIX 2: MANDATORY REQUIREMENTS

- Allowing the Council to terminate and recover sums paid where there is evidence of bribery or corruption;
- Allowing the Council to, where there is a breach by the Contractor;
 - a) terminate part or all of the Contract; and
 - b) appoint an alternative contractor, and recover the cost of doing so from the Contractor; and
 - c) recover any compensation as a consequence of the breach by the Contractor in the event of a breach of Contract by or the insolvency of the Contractor;
- Stating the price payable by the Council (and any mechanism by which the price, any additional price or discounts are to be ascertained) and setting out the mechanisms for payment;
- For Medium, Large and PCR Contracts, prohibiting the Contractor or from sub-contracting, assigning or otherwise transferring the Contract without the prior written consent of the Council;
- Where the Contractor sub-contracts all or part of the Contract it remains liable to the Council for any such is sub-contracted parts;
- Requiring compliance by the Contractor with all relevant legislation and requirements of the Council in relation to the same, including as a minimum:
 - a) The Human Rights Act 1998 (as if the Contractor were a public body);
 - b) Freedom of Information Act 2000/Environmental Information Regulations, Data Protection Act 2018;
 - c) The Equalities Act 2010, The Modern Slavery Act 2015, Bribery Act 2010, Prevention of Terrorism Act 2005, Counter Terrorism & Security Act 2015
 - d) The Transfer of Undertakings (Protection of Employment) Regulations 2006;
- Stating the levels and type of insurance required of the Contractor;
- Setting out indemnities in respect of claims made against the Council made in respect of a Contractor's activities;
- Where appropriate, requiring the provision to the Council of adequate Intellectual Property protection together with an indemnity protection;
- Requiring the provision to the Council of adequate warranties in Contracts for the purchase of Goods;
- Where the Contract relates to the Services to be delivered to vulnerable groups, requiring compliance with the Council's safeguarding policies, procedures and practice requirements;
- For Large and PCR Contracts, obliging the Contractor to maintain continuous improvement throughout the Contract;
- Requiring the Contractor to grant reasonable access to the Council to information and premises relating to the Contract, and to undertake appropriate monitoring and compliance procedures.