



CONSTITUTION
OF THE COUNCIL

Part 4
Section 6

CONTRACT PROCEDURE RULES

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1. **Introduction**

1.1 These Contracts Procedure Rules are standing orders made pursuant to Section 135 of the Local Government Act 1972, effective as of April 2016 and amended January 2025. Compliance with the Rules and observance of domestic law from which they emanate (in particular the principles relating to non-discrimination, equal treatment and transparency) is mandatory for all Officers and Members. The Rules ensure that procurement activity is undertaken in a legally compliant, transparent, fair and competitive manner.

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1.2 Decisions relating to procurement are among the most important decisions that can be made by the Council, its Members and Officers because the money involved is public money and the Council is concerned to ensure that high quality Goods, Services and the execution of Works are procured. Efficient use of resources in order to achieve Best Value is therefore imperative.

1.3 These Rules shall apply to all procurement activity where the Council is to procure any Goods, Services or the execution of Works, or enters into a concessions Contract as either a contracting authority or commissioner of such, regardless of the origin of funding (such as external grants, partnership funding, pooled or joint budgets for example). Procurement of contracts above financial thresholds prescribed by statutory instrument must comply with the Procurement Act 2023 and the Regulations made under it.

1.4 For the avoidance of doubt, these Rules shall also apply to Frameworks.

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1.5 Where relevant, the Council shall have regard to the Public Services (Social Value) Act 2012 ("the Act"). This requires commissioners and procurers at the pre-procurement stage to consider how / what is to be procured may improve social, environmental and economic well-being of Wirral, how it might secure any such improvement and to consider the need to consult.

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1.6 The Audit and Risk Management Committee shall monitor compliance with the Rules and undertake a review of the Rules every two years. Any failure to comply with any of the provisions of these Rules must be reported immediately to the Director of Law and Corporate Services (Monitoring Officer). Failure by any Officer or Member to comply with the provisions of these Rules may lead to disciplinary action being taken against them.

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1.7 The Director of Law and Corporate Services (Monitoring Officer) will keep these rules under review and have authority to make minor amendments as required, after consultation with the Head of Commercial Procurement. Any changes will be notified by the Director of Law and Corporate Services (Monitoring Officer) to Directors for dissemination to officers involved in procurement. Any significant changes require the consent of the Audit and Risk Management Committee.

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1.8 The Director of Law and Corporate Services (Monitoring Officer), in consultation with the Head of Commercial Procurement, will fully review these rules every two years and report this review to the Audit and Risk Management Committee for approval.

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1.9 These Rules should be read in conjunction with the Council's Constitution and in particular the Financial Regulations, ~~any relevant guidance documents endorsed by the Council.~~

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2. Interpretations and Definitions

2.1 In the event of any conflict between these Rules and Council Policy, the requirements of English law shall prevail over Council Policy.

2.2 Any reference to legislation, primary or secondary, shall include any amendments / replacements made from time to time.

2.3 All figures specified in these Rules are exclusive of VAT.

2.4 In the event of any doubt as to the interpretation of these Rules, or as to proper procedure to be followed, advice should be sought from Corporate Procurement in the first instance and reference should be made to the guidance contained in the Procurement Took Kit which should be read in conjunction with these Rules.

2.5 In these Rules the words and phrases below have the following meanings:

AO Authorised Officer and is any Officer, who has delegated authority from the SRO, to carry out commissioning functions.

Best Value has the same meaning as that defined in the Local Government Act 1999 as amended from time to time.

Bidder any Economic Operator that submits a Quotation or Tender.

Call-off an order made/call-off Contract entered into under a Framework, and are subject to the application of Rule 5.1.

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Category Manager the Category Manager is a procurement specialist who has responsibility for all stages of a procurement process for a defined group of products, services or works

Concessions the granting of a right (exclusive or otherwise) to an economic operator to exploit works or services provided for their own gain with or without payment.

Contract a legally binding agreement between the Council and the Contractor for the procurement by the Council of all Goods, Services, the execution of Works and

Concessions Contracts and which incorporates the terms and conditions under which the Goods, Services, execution of works and Concessions will be provided.

Contractor the Bidder or Tenderer who the Council enters into a Contract with following the submission of a Quotation or Tender and who is appointed by the Council to provide the Goods, Services, execution of Works or Concessions Contract. They may also be referred to as 'suppliers', 'providers' or 'service providers'.

Contracts Finder or Find a Tender the Central Digital Platform, provided for the purposes of the Procurement Act 2023.

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Corporate Procurement Provide advice and support at all stages of the procurement process regardless of value. They will conduct procurement activity for all contracts of £25,000 or over in value.

Director of Finance, (S151) the Senior Responsible Officer for Finance and is the most Senior Officer delegated in the Council's Scheme of Delegation for Finance Services, the Officer appointed by the Council pursuant to S151 of the Local Government Act 1972.

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Economic Operator any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of Works and/or a work, the supply of Goods or the provision of Services on the market.

EIR the Environmental Information Regulations 2004.

Electronic Purchasing System (EPS) purchases made online.

Equality Duties The Council's responsibilities as defined within the Equality Act 2010.

Procurement Act, Procurement Act 2023 and the Regulations and Statutory Guidance made under it, i.e. National Procurement Policy Statement to which the Council has a duty to have regard.

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Exemption/Exception	the release of the obligation to comply with some or all of these Rules.
Financial Regulations	the written code of procedures forming part of the Council's Constitution which provide a framework for proper financial management and which set out the rules on accounting, audit, administrative procedures and budgeting systems.
FOIA	the Freedom of Information Act 2000.
Frameworks	an agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing Call-off Contracts to be awarded during a given period, with regard to the commercial and quality aspects.
Goods	an inherently useful tangible item required by the Council, from time to time.
Head of Commercial Procurement	the Senior Responsible Officer for all Council procurement activity.
Director of Law and Corporate Services (Monitoring Officer)	the Senior Responsible Officer for Legal and the most Senior Officer delegated in the Council's Scheme of Delegation for Legal Services.
Invitation to Tender	an invitation issued by the Council to Tenderers to submit a Tender or a quote for the provision of Goods, Services, the execution of Works or a Concessions contract in accordance with the Specification or request for those Goods, Services, execution of works or Concessions Contract.
Key Decision	Key decisions are those as set out in Article 13 of the Council's Constitution.
Law and Corporate Services	The Contract Team within Law and Corporate Services can provide legal advice on high-value or complex procurements. Officers are responsible for ensuring that Law and Corporate Services are involved in all above threshold contracts

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and any contracts involving legal issues for example TUPE or Subsidy Control. The Contract Team within Law and Corporate Services can provide legal advice on specialist IT, social care, regeneration education and housing related contracts.

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Modification

any variation to a Contract, including an extension or overspend.

Officer

any employee of the Council which shall include any person engaged by the Council to act as an agent or consultant on its behalf.

Post Tender Report

a summary of the outcomes delivered by the procurement activity.

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Selection questionnaire and is the document used by the Council to screen potential Tenderers in accordance with the Procurement Act.

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Procurement Smartform

a document providing details of the procurement activity and the authority to commence it as required in accordance with Rule 7.1. or for the approval or notification of Exceptions to CPRs; Extensions to Contracts; Variations to Contracts Contract Award; Breach Notice.

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Purchasing Cards

transaction cards which work in a similar way to charge cards and can be used by an AO to purchase Goods and/or Services.

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Quotation

a formal offer submitted by a Bidder to supply goods, Services, execute Works or operate a Concessions Contract at a defined price.

Regulations

Regulations which implement the Procurement Act 2023.

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Regulations Threshold

the financial threshold identified by the Regulations, as amended from time to time, and where applicable, requires the procurement activity to be subject to the Procurement Act 2023 because it is in excess of the relevant financial value.

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Rules	these Contract Procedure Rules.
Scheme of Delegation	the scheme identified within the Council's Constitution which delegates powers and duties of the Council to Officers under Section 101 of the Local Government Act 1972 and all other powers enabling such delegation necessary for the discharge of the Council's functions.
SCM	the Senior Category Manager or similar role with equivalent experience and seniority within Corporate Procurement.
Services	the time, effort and expertise required by the Council, from time to time, and supplied by a Contractor.
Specification	the outputs, outcomes and the scope and nature of Goods, services, execution of Works or concessions Contract required by the Council from a procurement activity.
Social Value	a requirement upon the contractor to improve the economic, social, and environmental wellbeing of the Borough of Wirral. <u>Under the Public Services (Social Value) Act 2012 those benefits must be linked to the subject matter of the contract and be proportionate.</u>
SRO	Senior Responsible Officer and is the Officer delegated in the Council's Scheme of Delegation for the relevant service with the responsibility for the award of the Contract.
Tender	a formal offer submitted by a Tenderer to the Council at a stated price in response to a Specification to supply Goods, Services, execute Works or operate a Concessions Contract.
Tenderer	any Economic Operator that submits a Tender.
Tendering Portal	Wirral <u>Borough Council's</u> tendering and sourcing portal.

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TUPE the Transfer of Undertakings (Protection of Employment) regulations 2006 as amended from time to time.

Value for Money the optimum combination of whole-life costs, price, quality and benefits to meet the Council's requirements in the published award criteria. Such a term equates to the Most Advantageous Tender in the Procurement Act and the duty of Best Value as defined by the Local Government Act 1999 as amended from time to time.

Works the provision of physical activity which is directed toward the production or accomplishment of something by the Contractor, from time to time.

Writing the requirement that any document should be in writing is satisfied where (apart from the usual meaning of that expression) the text of it is created and transmitted by electronic means, in legible form, and capable of being used for subsequent reference.

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3. Principles and Responsibilities

3.1 Principles

3.1.1 All procurement activity must comply with the obligations under the Procurement Act 2023 and its objectives which are,

- a. value for money,
- b. maximising public benefits;
- c. sharing information with suppliers on policies and decisions;
- d. being seen to act with integrity and,
- e. reduction of barriers to small and medium sized enterprises.

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3.1.2 All procurement activity must be compliant with the latest national legislation, and the Council Constitution and have regard to:

- a. The need to achieve accountability through effective mechanisms which enable Officers and Members of the Council to maintain the highest standards of integrity and honesty and to enable them to discharge their responsibility on issues of procurement risk and expenditure of public money;
- b. The need to provide consistent procurement policy to suppliers and achieve competitive supply;
- c. The need to meet commercial, regulatory and Corporate Priorities of the Council;

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- d. The need to achieve efficiencies by administering procurement processes which are cost effective;
- e. The need to ensure Value for Money **and to have regard to maximising public benefits;**
- f. The need to ensure fair-dealing by ensuring that suppliers are treated **the same unless a difference between them justifies different treatment which must not put one supplier at an unfair advantage,** including protection of commercial confidentiality where compatible with the Council's obligations under FOIA and EIR;
- g. The need to maintain integrity **(and to be seen to do so)** by excluding corruption or collusion with suppliers or others from procurement processes;
- h. The need to ensure informed decision-making based on accurate information;
- i. The need to ensure legality in the administration of procurement processes and award of contracts;
- j. The need to promote responsiveness by endeavouring to meet the aspirations, expectations and needs of the community served by the procurement processes;
- k. The need to provide transparency by ensuring that there is openness and clarity on the Council's procurement policy and its delivery;
- l. The need to create and retain an audit trail in relation to each procurement activity; **and**
- m. The consideration of Risk.

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3.2 The Responsibilities of Officers and Members

3.2.1 Officers and Members involved in procurement activity must comply with these Rules, the Council's Financial Regulations, and the Council's Employees Code of conduct/Members Code of Conduct. They must also have due regard to any guidance provided by Corporate Procurement.

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3.2.2 Failure to comply with any of these rules **by any officer** may be considered a breach of the Officers Code of Conduct and may result in disciplinary action. **Failure to comply with any of these rules by a member may be considered a breach of the Members' Code of Conduct and may result in an investigation by the Monitoring Officer.**

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3.2.3 Where it becomes apparent that a Service has failed to comply with the CPRs a Breach Notice, as set out in the Procurement Smartform should be completed and submitted to the Head of Commercial Procurement and Internal Audit. Internal Audit **They** will, if the breach exceeds £50,000 in value, submit a report to the Head of Commercial Procurement and Law and Corporate Services (with appropriate recommendations) before reporting to the Audit and Risk Management Committee and/or the Corporate Governance Group. Breaches up to £50,000 will be reported to the Corporate Governance Group by Corporate Procurement in consultation with Internal Audit.

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4. **Contracts to which these Rules do not apply**

4.1 These **rules do not apply to the following:**

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- a. employment contracts for Officers engaged on a PAYE basis;

- b. Contracts relating solely to the disposal or acquisition of securities and investments; - Treasury Management Strategy
- c. Contracts for the acquisition or sale of an interest in land and property; and
- d. Contracts for the appointment of Counsel or the appointment of experts for the purpose of legal or potential legal proceedings by the Director of Law and Corporate Services, (Monitoring Officer).

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5. **Contracts which do not require full competition**

The Senior Responsible Officer (SRO)/Authorised Officer (AO) must complete a Procurement Smartform in accordance with Rule 12 where any of the circumstances outlined below are applicable and the procurement may be excepted from the requirement of Rule 9 (Quotations) and Rule 10 (Tenders).

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5.1 **Call-Off contracts**

- 5.1.1 Call-off Contracts where a suitable Framework, has been identified in accordance with Rule 6.3. and a direct award can lawfully be made in accordance with an objective mechanism for supplier selection set out in the Framework.

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5.2 **No competitive market**

5.2.1 Where any of the following circumstances apply and subject to Rule 5.2.2:

- a. Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the AO, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or
- b. The AO can demonstrate that no genuine competition can be obtained in respect of the purchase of particular Goods, Services or execution of works; or
- c. The AO is satisfied that the Services or execution of Works are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or
- d. Goods are proposed to be purchased by or on behalf of the Council at a public auction; or
- e. Goods or Services are proposed to be purchased which are of a specialist or unique nature (such as antiquities for museums or a particular performance artist); or,

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- f. Contracts awarded to a company controlled by the Council and which does at least 80% of its business with the Council (as defined by Regulations).

Further guidance can be provided by Corporate Procurement and an AO must seek advice where there is any doubt and comply with Rule 10. For above Regulation

threshold contracts a Transparency Notice must be published before an award is made and the award must be compliant with the requirements of the Procurement Act.

5.2.2 The AO, in conjunction with the Director of Law and Corporate Services, (Monitoring Officer) and, the Head of Commercial Procurement, shall ensure that the Contract terms and conditions are appropriate taking into account all relevant factors (such as benefit and risk to the Council) and ensure that the Contract complies with Rule 11.

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5.3 Exemptions as prescribed by legislation

5.3.1 Certain other arrangements contained in domestic legislation may permit an exemption from the requirement for competition. Examples include Light Touch contracts under prescribed financial thresholds for specified health, legal, social welfare and education services and the NHS Provider Selection Regime for health care services. Contact Corporate Procurement for advice.

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6 Corporate Contracts

6.1 Use of Corporate Contract

6.1.1 If a Council contract exists which covers the subject matter of the proposed procurement (a Corporate Contract) it must be used unless one of the following conditions applies:

- The corporate contractor has confirmed that the goods, services or works are not available within the required timescale.
- The corporate contractor has confirmed that they are unable to fulfil the requirement.
- The corporate contract is subject to an unresolved dispute or an exit plan has been exercised.
- The corporate contractor's financial position has altered and a status of administration or liquidation has been applied.
- The corporate contractor is in breach of contract and a termination notice has been issued.
- The Corporate Contract is no longer value for money and the Council is entitled in law to procure the goods or services elsewhere.

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6.1.2 Where an officer seeks to no longer use a corporate contract, they will arrange for consent to be obtained in writing from the Head of Commercial Procurement.

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7. Pre-Procurement Process

7.1 Authority to carry out procurement activity

7.1.1 Any procurement activity carried out on behalf of the Council must be carried out by an SRO with the appropriate delegated authority as set out in the Scheme of Delegation. For all procurements valued at £25,000 or greater the SRO must submit a Procurement Smartform to Corporate Procurement, prior to starting the relevant procurement activity. By submitting the Procurement Smartform the SRO confirms that they have the authority and budget to carry out the procurement activity. When a

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single quote is obtained above £5,000 up to the threshold of £25,000, this requires the senior or peer agreement of a DMT member of the relevant department prior to the proposed action. It is the responsibility of the commissioner to obtain this agreement and retain the appropriate evidence should it subsequently be required.

7.1.2 Any proposed procurement for I.T. or Telecomms products or services must be referred to the Head of Digital by the SRO for approval to proceed further. This approval should be recorded by the SRO and Head of Digital. The Procurement Smartform can be completed and submitted when this approval has been granted.

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7.2 Appraisal of the procurement activity

7.2.1 The AO, together with Corporate Procurement, must conduct an options appraisal of the route to market and consider the following:

- a. Value for Money;
- b. The need for the expenditure and its priority;
- c. The objectives of the purchase;
- d. Whether it is a Key Decision;
- e. Any risks associated with the purchase and how to manage them;
- f. The market;
- g. TUPE and pensions;
- h. Which procurement method is most likely to achieve the purchasing objectives;
- i. Existing and compliant Frameworks or other arrangements; and
- j. The economic, social and environmental wellbeing of the borough and the benefit which the procurement process can bring to the community and have regard to the duty to secure continuous improvement in accordance with Best Value, the Council's Social Value Policy, Social Value Guidance.

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7.2.2 Where award for a Contract for services may result in employees of the Council or its Contractor transferring to a new employer, the advice of the Director of Finance and the Director of Law and Corporate Services (Monitoring Officer) must be obtained before the commencement of the procurement activity to ensure compliance with TUPE, and other related legislation, and to assess the implications in respect of pension arrangements.

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7.2.3 The AO must ensure that an appropriate Tender Specification or request for a Quotation commensurate to the scope of the Goods, Services, and execution of Works or Concessions Contract required is written prior to the commencement of any procurement activity.

7.2.4 For procurement under the Regulations Thresholds, the use of prequalification questionnaires is no longer permitted. However, the Regulations do permit the use of suitability assessment questions in evaluating tenders where they are relevant to the subject matter of the procurement and are proportionate. Pre-qualification questionnaires are also permitted for public works contracts above the financial thresholds for goods and services. Advice must be sought from Corporate Procurement where it is proposed that such questions are to be used.

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7.2.5 The Authorising Officer, together with Corporate Procurement, in all Supplier / Contractor sectors and areas identified as vulnerable to serious and organised crime include within the quotation / tender documentation the following statement:

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“Wirral Borough Council has identified that the scope of this procurement falls within a business sector which may be attractive to infiltration by organised crime groups. Wirral Borough Council therefore reserves the right to include enhanced probity checks / requirements at both the selection and award stages of the procurement.” as set out in the invitation to tender.

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7.3 Frameworks

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7.3.1 Where, following an options appraisal as required by Rule 7.2 a suitable Framework is identified, the AO must ensure that:

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- a. Any Call-off Contract is entered into in accordance with the terms of the relevant Framework; and
- b. Where applicable, a further competition (the tender process required by the Framework) is held in accordance with rules of the Framework;
- c. Authority to proceed must be obtained from the Head of Commercial Procurement or his delegated representative.

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7.3.2 For the avoidance of doubt, a Framework is considered suitable where it has either been entered into by:

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- a. the Council in compliance with these Rules; or
- b. another local authority, a local authority purchasing consortium or central government where the Framework has been tendered and awarded in accordance with public procurement legislation, and the Council is identified as a contracting authority.

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7.3.3 Where a Framework has been set up following an UK Tender, there must be full compliance with UK rules when awarding Call-off Contracts under it.

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7.4 Pre-Procurement Market Research and Consultation and must be in accordance with [the Procurement Act 2023](#). [A Preliminary Market Engagement Notice must be published before the Tender Notice in accordance with the Regulations.](#)

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7.4.1 Corporate Procurement will be responsible for leading on the following:

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- a. Before commencing a procurement procedure commissioners may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements;
- b. For this purpose, commissioners may, for example, seek or accept advice from independent experts or authorities or from market participants;

- c. Such advice may be used in the planning and conduct of the procedure, provided that it does not result in a violation of the principles of non-discrimination and transparency;
- d. Appropriate measures must be undertaken to ensure that competition is not distorted by participation of the candidate or tenderer in:
 - i. The communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure
 - ii. The fixing of adequate time limits for the receipt of tenders
- e. The candidate or tenderer shall only be excluded from the procedure where, there are no other means to ensure compliance with the duty to treat economic operators equally.
- f. Prior to any such exclusion, candidates or tenderers will be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting completion.

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7.5 Estimating the Total Value of a Contract or Framework

7.5.1 The Council must not split Contracts or Frameworks to avoid public procurement rules or calculate the value of Contracts in such a way as to deliberately avoid exceeding the Regulation Thresholds or any threshold identified in these Rules. Therefore all Contracts should be dealt with according to their total value and all Officers must calculate the total value (excluding VAT) of any Contract. The value of a Contract should be calculated as follows and applies to the aggregate value of the Contract:

Yearly contract value X Contract Period in years (including any option to extend) = Total value. Where the duration of the contract is indeterminate it shall be presumed to be above the relevant financial threshold. For the purpose of calculating Regulation Thresholds VAT must be included.

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7.5.2 The value of a Framework means the estimated amount payable by the users of the Framework Agreement for the Goods, Services or execution of Works (excluding VAT) under Call-off Contracts entered into over the entire possible duration of the Framework Agreement.

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7.5.3 Frameworks must not be for more than four years (including options to extend) unless otherwise authorised by the Director of Law and Corporate Services (Monitoring Officer) and the Head of Commercial Procurement. Open Frameworks are now permissible whereby the suppliers are locked in for 4 years but the Framework may be open to new suppliers to join for up to a further 4 years.

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7.5.4 The value of the Contract or Framework will determine which procurement activity to follow in accordance with Table 1 below subject to Rules 7.5.6 and 7.5.7:

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Table 1

Goods, Services and Concessions

Value	Procurement Activity	Quotation /Tender process Managed by:
£0-£1,999.99	No requirement for a quotation	Departmental responsibility
£2,000 - £25,000	Minimum one Quotation in accordance with Rule 8 - Quotations	
£25,000 – <u>prescribed</u> Thresholds	Minimum of five suppliers <u>to be sought</u> in accordance with Rule 9 <u>except for contracts procured under Frameworks or by restricted tendering for construction contracts as permitted by the Procurement Act where the number shall be whatever is appropriate for the procurement</u>	Corporate Procurement through the Tendering Portal (and Contracts Finder,
Above the <u>prescribed</u> Thresholds	In accordance with Rule 10 – Tenders and the most appropriate procedure permitted by the <u>Procurement Act</u> ,	Corporate Procurement through the Tendering Portal, UK Notice and Find a Tender

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***WHERE ANY OPPORTUNITY OVER £25k IS OPENLY ADVERTISED, IT MUST BE PLACED ON CONTRACTS FINDER OR AN EQUIVALENT CENTRAL DIGITAL PLATFORM BY CORPORATE PROCUREMENT IF IT IS UNDER THE PRESCRIBED FINANCIAL THRESHOLD.**

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7.5.5 For procurements above £1,999, and below £25,000 the Director responsible for the procurement must make adequate arrangements to ensure that the chosen supplier is selected by reference to objective criteria such as technical ability and value for money and that the chosen supplier is not selected for any other contract within the same financial year without undergoing a competitive procurement. A written record of the decision making process must be kept and open to inspection by financial, legal and procurement officers.

7.5.6 Irrespective of the value in Rule 7.5.4 Contracts and Frameworks that are subject to grant funding requirements shall be advertised in accordance with published guidance/requirements.

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7.5.7 The AO and Corporate Procurement shall ensure that, where proposed Contracts or Frameworks, irrespective of their value, might be of interest to potential Economic Operators located in EU states, a sufficiently accessible advertisement is published.

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7.5.8 Pre selection suitability assessments are not permitted by the Procurement Act unless the value of the construction contract exceeds the financial thresholds for goods and services.

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7.5.9 Where the value of the Contract is below £25,000, its procurement must comply with the general principles contained in Rule 3.1.2 and a Quotation sought if the procurement would otherwise not be so compliant.

7.6 Standards and Award Criteria

7.6.1 Before inviting Quotations or Tenders, the AO, with support from the Corporate Procurement, must ascertain any relevant British, international standards which apply to the subject matter of the Contract. The AO must include those standards or equivalent where they are necessary to describe the required quality.

7.6.2 The AO must define award criteria that is appropriate to the procurement activity and designed to secure an outcome giving Value for Money for the Council. The basic award criteria shall include one of the following:

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- a. Most advantageous tender ("MAT") – where considerations other than price also apply;
- b. Lowest price – where payment is to be made by the Council;
- c. Highest price – if payment is to be received by the Council;

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If MAT is the chosen award criterion, advice must be obtained from Corporate Procurement to ensure that it is compliant with the Procurement Act.

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7.6.3 The AO must seek advice from Corporate Procurement to ensure any award criteria are compliant with relevant legislation and best practice.

8 The Tendering Portal

8.1 The Council's Tendering portal, shall be used for procurement activities of £25,000 and above.

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- a. The web based portal facilitates online tendering to ensure access to a wide spectrum of suppliers, process efficiency, standardisation and compliance.
- b. Procurement Officers will use this system for all procurement with a value of £25,000 and above unless the Head of Commercial Procurement, Legal Services and Internal Audit have provided written consent for an Exception.

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9. Quotations

9.1 Requests for Quotations (applicable to all below Threshold contracts)

9.1.1 All Quotations, including those in further competitions under Frameworks, must be confirmed in writing before a decision to award can be made and all Quotations of £25000 and above in value, must be stored on the Tendering Portals Contracts Register.

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9.1.2 When requesting a Quotation, an appropriate description of the Goods, Services, execution of Works or Concessions (commensurate with the value of the Contract)

setting out the Council's requirements in sufficient detail must be provided to prospective Bidders to enable the submission of competitive Quotations.

9.1.3 The request for a Quotation shall also make reference to or include the following as a minimum:

- a. the terms and conditions of Contract that will apply; and
- b. notification that Quotations are submitted to the Council on the basis that they are compiled at the Bidder's expense; and
- c. a description of the award criteria as appropriate and in accordance with Rule 7.6; and
- d. the date and time by which a Quotation is to be submitted by; and
- e. that the Council is not bound to accept any Quotations submitted.

9.1.4 The proposed form of Contract must comply with Rule 11 and in standard procurements, the Council's standard terms and conditions of Contract must be used. Advice must be sought from Law and Corporate Services and approval given by the Director of Law and Corporate Services (Monitoring Officer) where alternative terms and conditions are used.

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9.1.5 Where requests for a Quotation are sought from more than one prospective Bidder, where possible, the request must be sent to each Bidder at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

9.2 Submission and Receipt of Quotations

9.2.1 Unless agreed by Corporate Procurement, bidders must be given a minimum of two weeks in which to prepare and submit a Quotation, timescales should be proportionate with the complexity of the Contract requirement and provide bidders with a reasonable opportunity to prepare and submit a Quotation.

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9.2.2 In the event that an abnormally low Quote is received, the AO must take advice from Corporate Procurement on how to proceed.

9.2.3 Any Quotation (including all associated documents) submitted after the specified date and time for submission of Quotations shall only be accepted or considered by the Council with agreement from the Director of Law and Corporate Services (Monitoring Officer) and the Head of Commercial Procurement.

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9.2.4 If fewer than the minimum number of quotations is received as sought in Table 1 Rule 7.5, then the Head of Commercial Procurement shall decide whether to proceed or re-advertise the procurement.

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9.3 Amendments to Quotations

9.3.1 The Council may accept amendments to Quotations, including those in further competitions under Frameworks, providing they are received prior to the closing date for submissions. In such circumstances, any alterations must be made by resubmitting a new Quote and clearly highlighting which Quotation (and associated

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documents) is correct and which should be considered as part of the procurement activity.

9.3.2 A Quotation may be amended after the closing date for submission if the amendment is made only in order to correct arithmetical errors or ambiguities. Such amendments may only be made with the prior approval of the Head of Commercial Procurement and Senior Manager Internal Audit.

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9.4 Evaluation of Quotations

9.4.1 All compliant Quotations, including those in further competitions under Framework, must be checked by the AO and validated to ensure they are arithmetically correct. The AO must seek advice from Corporate Procurement if there is any doubt. If arithmetical or other obvious errors are found they should be notified to the Bidder, who should be requested to confirm, or withdraw or seek permission to amend their Quotation. If the rates in the Quotation prevail over the overall price, an amended Quotation may be requested to accord with the rates given by the Tenderer. All amendments to correct any error may only be allowed at the discretion of the Head of Commercial Procurement who may seek advice from the Director of Law and Corporate Services (Monitoring Officer). Any decision to allow an amendment must have regard to the general principles contained in Rule 3.1.2.

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9.4.2 Where the Most Advantageous Tender is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded by the AO, and where appropriate (£25,000 and above) recorded on the Tendering Portal. The AO must then confirm to Corporate Procurement that the Contract can be awarded in accordance with Rule 9.5 by submission of a Procurement Smartform.

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9.4.3 Officers must ensure transparency and fairness during the evaluation process.

9.5 Contract Award – through a Quotation Process

9.5.1 The Contract will be awarded in accordance with the award criteria used.

9.5.2 Where the Quotation is not within the relevant approved budget but additional budgetary provision is available, the relevant AO, with the approval of the Director of Finance (S151 Officer), may accept the Quotation ensuring compliance with the Financial Procedure Rules/Regulations.

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9.5.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation. This must be given either by an officer with delegated authority by means of an Officer Decision Notice or by the Council Committee which is responsible for the goods, services or works that are the subject matter of the procurement.

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9.5.4 All award decisions must be recorded and a Procurement Smartform signed and dated by the SRO or delegated representative for the relevant service and, where necessary signed by the Director of Law and Corporate Services (Monitoring Officer) and the Head of Commercial Procurement e.g. if Rules 5 or 12 apply.

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9.5.5 Once the decision has been made and the approval given to award the Contract, Corporate Procurement, must send a Contract award notice to the winning Bidder(s) and inform unsuccessful bidders of the outcome.

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9.5.6 Prior to commencement of the Contract, the Contract must be completed in accordance with Rule 11.2 unless Rule 11.2.5 applies.

9.5.7 Law and Corporate Services will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.

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10. **Tenders**

10.1 **Invitations to Tender**

10.1.1 All Tender opportunities must be placed on the Tendering Portal and, where appropriate, Contracts Finder/Find a Tender in accordance with Table 1 at Rule 7.5.

10.1.2 For above threshold contracts, there must be a conflict of interests assessment of those involved in the procurement process which will include their personal, professional or financial interests in accordance with the Procurement Act.

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10.1.3 Pipeline Notices must be published within 56 days of the relevant financial year which set out in advance those contracts estimated to exceed £2m which the Council intends to procure in that financial year.

10.1.4 In order to reduce barriers to participation by small and medium sized enterprises the division of the procurement into lots should be considered if the product of the procurement can reasonably be supplied under more than one contract.

10.1.5 The Invitation to Tender shall include the following where appropriate:

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- a. A form upon which the Tenderer can provide details of its bid ("Form of Tender");
- b. A reference to the Council's ability to award in whole, in part or not at all;
- c. A Specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- d. the terms and conditions of Contract that will apply;
- e. A requirement for Tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
- f. A requirement for Tenderers to fully complete and sign all Tender documents including the Form of Tender and certificates relating to canvassing and non-collusion;
- g. Notification that Tenders are submitted to the Council on the basis that they are compiled at the Tenderer's expense;
- h. A description of the award procedure and the evaluation criteria to be used to assess Tenders including any weighting as considered appropriate and in accordance with Rule 6.6. The evaluation criteria must be clear, measurable and specific and must be approved by the AO in consultation with Corporate

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Procurement. The criteria should be proportionate to the nature, complexity and cost of the contract. The evaluation criteria cannot be amended once published in the Invitation to Tender;

- i. The method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with and in particular, whether the overall price prevails over the rates in the Tender or vice versa;
- j. Whether the Council is of the view that TUPE may apply, in relation to the procurement activities;
- k. Whether additional arrangements will be required in relation to pension provision;
- l. Provisions relating to the Council's termination rights in the event that corruption is discovered;
- m. The relevance and application of any parent company guarantees and/or bonds;
- n. That the Council is not bound to accept Tenders.

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10.1.3 The proposed form of Contract must comply with Rule 10 and where appropriate, the Council's standard terms and conditions of Contract must be used. Advice must be sought from Law and Corporate Services and approval given by the Director of Law and Corporate Services (Monitoring Officer) where alternative terms and conditions are used.

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10.1.4 All Tenderers invited to Tender must be issued with the same information at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

10.1.5 All communications relating to Tenders must be recorded on the Tendering Portal.

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10.2 Pre and Post Tender Clarification Procedures

10.2.1 Providing pre-Tender clarification to potential or actual Tenderers, or seeking clarification of a Tender, is permitted subject to Rule 9.2.3.

10.2.2 Post-tender clarification may be undertaken with Tenderers only where it is essential in order to be completely clear about any fundamental aspect of the Tender submission before the completion of the Tender evaluation process and subject to Rule 10.2.3.

10.2.3 All pre- and post- tender communication must be conducted in writing by Corporate Procurement. All correspondence must be documented and retained on the Tendering Portal.

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10.2.4 At all times during the clarification process, the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

10.2.5 Unless otherwise permitted by the Procurement Act, in no circumstances are post-award negotiations permitted that would materially change the contract.

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10.3 Submission and Receipt of Tenders

10.3.1 Tenderers must be given a reasonable period in which to prepare and submit a proper Tender, consistent with the complexity of the Contract requirement and in accordance with the timescales in the Procurement Act.

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10.3.2 Any tender (including all associated documents) submitted after the specified date and time for submission of Tenders shall only be accepted or considered with agreement from the Director of Law and Corporate Services, (Monitoring Officer) and Head of Commercial Procurement.

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10.3.3 All Tenders received, including those in further competitions under Frameworks, must remain unopened until the specified closing date and time has passed.

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10.4 Verifying and Opening Tenders

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10.4.1 Tenders for contracts valued at £500,000 or above must be opened and verified by an Officer from Corporate Procurement who is independent of the procurement activity to which the Tender relates.

10.4.2 Tenders below £500,000 must be opened and verified by Corporate Procurement in line with 10.4.1.

10.4.3 All tenders must be submitted through the Tendering Portal unless an exception in writing has been obtained from the Head of Commercial Procurement.

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10.4.3 A record of all tenders received will be kept and will include;

- service name
- contractor's names
- tender value
- date
- reason for any disqualifications
- name of those who were invited but did not submit a tender.

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10.4.4 Any request for an extension to a tender period by an AO must be made no later than 3 working days before the tender closing date and agreed by the Head of Commercial Procurement. If an extended date is permitted all tenderers must be advised.

10.5 Amendments to Tender

10.5.1 The Council may accept amendments to Tender submissions, including those in further competitions under Frameworks, providing they are received prior to the closing date for receipt of tenders.

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10.5.2 A Tender may be amended after the closing date for submission if the amendment is made only in order to correct arithmetical errors or ambiguities. Such amendments may only be made with the prior approval of the Head of Commercial Procurement after consultation with Internal Audit and Legal Services Contracts Team.

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10.6 Evaluation of Tenders

10.6.1 In the event that an abnormally low Tender is received, the AO must take advice from Corporate Procurement on how to proceed.

10.6.2 All compliant Tenders, including those ~~in further~~ competitions under Frameworks, must be checked by ~~Corporate Procurement~~, and validated to ensure they are arithmetically correct. ~~If arithmetical errors or other ambiguities are found they should be notified to the Bidder, who should be requested to confirm, or withdraw or seek permission to amend their Tender. All amendments to correct any error may only be allowed at the discretion of the Head of Commercial Procurement who shall seek advice from the Director of Law and Corporate Services (Monitoring Officer) and Internal Audit.~~ Any decision to allow an amendment must have regard to the general principles contained in Rule 3.1.2.

10.6.3 Where the ~~Most~~, Advantageous Tender is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on the Tendering Portal. The AO must then confirm to Corporate Procurement that the Contract can be awarded by updating the Smartform.

10.6.4 During the evaluation process, the evaluation of quality should be separate, from that of price to ensure so that one cannot influence the other before the final scoring of bids is completed. Unless agreed with Corporate Procurement all evaluation criteria should be based on the standard scoring model. For contracts valued at £100k or above, Social Value must be applied to the evaluation and will be a minimum of 10% via the Social Value Portal.

10.6.5

Standard Scoring Model		
	Contracts up to £100k	Contracts of £100k and more
Price	20% - 80%	20% - 80%
Quality	20% - 80%	20% - 80%
Social Value	Discretionary	10%

Officers must ensure transparency and fairness during the evaluation process.

10.7 Financial Evaluations

10.7.1 Corporate Procurement shall obtain financial profile reports of bidders for all appropriate procurements of £100k and above.

10.7.2 Financial profile reports for procurements of £100k and above, shall be considered jointly by the commissioning service and Corporate Procurement for the purposes of deciding to include the bid in the evaluation stage. Financial profile reports for procurements equal in value to the appropriate Regulation Threshold and above shall be submitted to the Director of Finance (S151) for the approval or rejection of the bidder to proceed to the evaluation stage in accordance with the following principles.

10.7.3 No tender shall be rejected on the grounds of lack of financial standing unless the criteria for rejection are clearly stated in the published pre-tender documentation and the tender can be rejected in accordance with those criteria.

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10.7.4 The financial standing criteria must be related to and proportionate to the subject matter of the contract and compliant with any requirements on minimum yearly turnovers and ratios between assets and liabilities set out in Regulations.

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10.8 Contract Award – through a Tender process

10.8.1 The winning Tenderer shall be awarded the Contract in accordance with the award criteria used.

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10.8.2 Where the Tender is not within the relevant approved budget but additional budgetary provision is available, the relevant SRO, can only accept the tender by having prior approval of the Director of Finance, (S151 Officer), and complying with the Financial Regulations.

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10.8.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation. This must be given either by an officer with delegated authority by means of an Officer Decision Notice or by the Council Committee which is responsible for the goods, services or works that are the subject matter of the procurement.

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10.8.4 All award decisions must be recorded and a Procurement Smartform signed and dated by the SRO for the relevant service and where necessary signed by the Director of Law and Corporate Services (Monitoring Officer) and the Head of Commercial Procurement e.g. if Rules 5 or 12 apply.

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10.8.5 A contract which has a contract value above the Regulation thresholds can only be awarded after a notice of the proposed award has been given to all unsuccessful Tenderers and the 8 working day standstill period has elapsed from the date the notice was given.

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10.8.8 Any challenges by Tenderers must be dealt with immediately by the SRO/AO, in consultation with Law and Corporate Services and Corporate Procurement, before the award process proceeds.

10.8.9 Prior to commencement of the Contract, the Contract must be completed in accordance with Rule 11.2 unless Rule 11.2.5 applies.

10.8.10 Law and Corporate Services will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.

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10.8.11 The Corporate Procurement must publish a Contract Details Notice, in accordance with the Procurement Act, and on the Council's eSourcing Portal no later than 30

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days after the date of award of the Contract where a Contract value exceeds the Regulation threshold.

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10.8.12 Contract Award and Details, Notices, feedback to Tenderers and the contract Terms and Conditions, including any incidental documentation must be issued by Corporate Procurement where the value of the Contract is over the Regulation Thresholds.

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10.8.13 Contract award and details notices must be issued through the Tendering Portal unless otherwise authorised by the Head of Commercial Procurement.

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10.8.14 A copy of the contract must be published within 90 days if it exceeds £5m.

10.8.15 Subject to the requirements of the Procurement Act, if the contract exceeds £5m at least 3 Key Performance Indicators should be published in a Contract Performance Notice and reported against every 12 months.

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10.8.16 If a procurement for an above threshold contract is abandoned a Procurement Termination Notice must be published.

10.8.17 If an above threshold contract expires or is terminated, a Contract Termination Notice must be published.

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10.9 Enquiries about the Tender process

10.9.1 The confidentiality of Tenders and the identity of Tenderers must be preserved at all times insofar as this is compatible with the Council's obligations under FOIA and EIR.

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10.9.2 If the Council receives a request for information under the FOIA as a result of the de-briefing process, the request must be referred to both the Head of Commercial Procurement and the relevant Officer of the Council who deals with such requests. The Council will be responsible for responding to the request.

10.9.3 Any challenges, complaints or requests for feedback, clarification or further information must be referred to the Head of Commercial Procurement who will advise on how to respond and notify the Director of Law and Corporate Services (Monitoring Officer).

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11. Contract Provisions and Contract Formalities

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11.1 Contract Provisions

11.1.1 All contracts must be in writing and must set out the parties' obligations, rights and risk allocations. Advice must be sought from Corporate Procurement as to the appropriate form of Contract to be used and where possible, be on the Council's standard terms and conditions. Corporate Procurement may seek further advice from the Contracts team in Law and Corporate Services.

11.1.2 All contracts, irrespective of value, shall, where appropriate, clearly specify as a minimum:

- a. What is to be supplied (i.e. the Works, materials, services, matters or things to be furnished, had or done);
- b. The provisions for payment (i.e. the price to be paid and when);
- c. The time, or times, within which the contract is to be performed;
- d. The provisions for the Council to terminate the Contract and break clauses;
- e. The provision for collateral warranties from sub-contractors;
- f. The provision of Bond of Surety where applicable, Legal and Procurement to advise; and;
- f. Dispute resolution process.

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11.1.3 Law and Corporate Services can provide advice on Contract specific terms and conditions.

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11.2 Contract Formalities

11.2.1 Once a decision to award has been made in accordance with Rule 9.5.3 or 10.7.3, the contract must be either be signed by the Officer authorised to award the Contract under the Council's Scheme of Delegation or by Seal and in accordance with Rule 11.3.2.

11.2.2 Where the Contract is to be in writing, the AO must arrange with Law and Corporate Services for the Contract including all schedules and appendices to be signed by all parties. This can be done in two ways:

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- a. Sending bound hard copies of the Contract to the winning Bidder(s) or Tenderer(s) for signing; or
- b. Sending electronic copies of the Contract to the winning Bidder(s) or Tenderer(s) for printing, binding and signing.

11.2.3 Before arranging for the Contract to be signed or sealed on behalf of the Council, Law and Corporate Services must check that the returned signed Contract has not been amended or altered by the winning Bidder(s) or Tenderer(s) without prior written agreement by the Council.

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11.2.4 All Contracts which are to be formally concluded in writing must be concluded, before the Goods are supplied, or the Service, execution of Works or Concessions Contract begins, except in exceptional circumstances, and then only with the prior approval from the Director of Law and Corporate Services, (Monitoring Officer).

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11.2.5 All contracts must include clear provisions as to the amounts and timing of payments due under the contract. Payments should be paid in arrears upon the production of satisfactory evidence of performance. Where the total amount payable under the contract cannot be ascertained the contract must include a clear mechanism for calculating the amounts due, for example by reference to a bill of quantities or schedule of rates, and the maximum amount payable must be stated.

11.2.6 Payments should be made within 30 days of a valid and undisputed invoice. Payments Compliance Notices must be published every 6 months ending on 31st March and 30 September.

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11.2.7. Approval of the relevant SRO and the Head of Commercial Procurement is required if payment is required in advance or partially in advance as necessary for provision of the service or in line with statutory guidance. Evidence of such approval and the reasons for it must be recorded.

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11.2.8. A purchase order must be raised in the e-Procurement system for all goods, services and works requirements to be acquired through an EPS and for all Contracts. The purchase order must attach the terms and conditions of Contract between the Council and the Contractor. The exception to this is where payment is to be made by certificate within the contract conditions_(e.g. New Engineering Contract).

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11.2.8 The AO must ensure that the person signing on behalf of the Contractor has requisite legal authority to bind the Contractor. Where there is any doubt, the AO must seek advice from Law and Corporate Services.

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11.3 Contracts under Seal

11.3.1 A Contract must be sealed where:

- a. The Council wishes to extend the liability period under the Contract and enforce its terms for up to 12 years; or
- b. The price to be paid or received under the Contract is a nominal price and does not reflect the value of the goods or services; or
- c. The Contract value is £250,000 or above.

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11.3.2 The seal must be affixed in accordance with the provisions of the Council's Constitution.

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11.3.3 All contracts with a value of £250,000 or over will be sealed by Law and Corporate Services. Contracts between £50,000 and £250,000 in value shall be signed by an authorised signatory from Law and Corporate Services.

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11.3.4 When the steps for finalising the contract are complete the contract can be issued to the supplier for execution as a Deed or for signature (as appropriate).

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11.3.5 The supplier will seal or sign the contracts in duplicate but leave them undated.

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11.3.6 Law and Corporate Services must notify Corporate Procurement, Finance and the relevant SRO when the contract has been executed.

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11.3.7 The contract will be dated when the Council's seal is affixed.

11.3.8 Electronic signatures may be used in accordance with the Electronic Signatures Regulations 2002, provided the security arrangements have been approved by the relevant SRO.

11.3.9 A copy of the signed Contract with a value of £100k and over must be attached to The Chest Portal.

10.4 Transfer of Contracts

11.4.1 No Contract should be transferred from one Contractor to another without first consulting Law and Corporate Services and Corporate Procurement. Contracts can only be transferred if approved in accordance with the table below:

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Value of Contract/Quote	Decision Maker
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All values	Director of Finance, (S151 Officer) and the Director of Law and Corporate Services, (Monitoring Officer) or their nominees in accordance with the Council's Scheme of Delegation and consultation with the Head of Commercial Procurement
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11.5 Insurance

11.5.1 The AO is responsible for checking that all chosen contractors provide written evidence of adequate insurance to cover public liability, employers' liability and if necessary professional indemnity for the full duration of the contract.

11.5.2 Indemnity levels must reflect the risk to the Council which typically will be for each and every contract;

- £10 million for Public liability
- £5 million for Employers liability (or statutory minimum)
- £2 million for Professional indemnity

Other insurances may be required if appropriate e.g All Risks, Product Liability and Motor Insurance.

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11.5.3 In some cases where the contract is of low risk the levels required may be reduced but only following written consent of the Director of Finance (S151 Officer) or nominee. For major contracts of long duration where contractor's exposure to liability is high, it may be appropriate to require higher limits.

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12. Waiving the Rules

12.1 Procedure Rules Approval

- 12.1.1 Where an Officer intends to seek an exemption or exception to these rules as they apply to all procurements they shall arrange for consent to be obtained in writing.
- a. Such consent shall be evidenced on a Procurement Smartform Document signed by the authorised appropriate Officer/s depending on the value of the procurement as set out in the table below **prior** to the start of the procurement process.
 - b. The Procurement Smartform must be completed by the SRO/AO quoting which of the Exceptions listed below apply and why. The Procurement Smartform must be checked by Law and Corporate Services and Procurement prior to signing by the authorised Officer/s.
 - c. Consent to waiving the rules will only be approved in exceptional circumstances and only if compliant with the Procurement Act if the procurement exceeds the prescribed financial thresholds.

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12.2 Summary Table: Officers authorised to approve waiving of the Contract Procedure Rules

Under £50,000	Under £100,000	£100,000 and over	Over threshold
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12.3

Category Manager	Senior Category Manager	Approval of Head of Commercial Procurement and Director of Law and Corporate Services (Monitoring Officer) or Delegated representatives	Unable to waive unless in accordance with the Procurement Act, and the Director of Law and Corporate Services (Monitoring Officer) and the Head of Commercial Procurement provide prior approval

Exemptions

- 12.3.1 Contracts which are exempt from the application of the Procurement Act, and these rules include:
- a. Contracts relating solely to the acquisition or disposal of an interest in land and buildings
 - b. Transactions conducted by the Director of Finance, (S151 Officer) in respect of dealing in the money market or obtaining finance for the Council
 - c. Employment contracts

12.4 Exceptions

- 12.4.1 Requests to waive these rules for under threshold contracts (or where the thresholds do not apply) may be authorised in the following circumstances, supported in all cases by appropriate evidence.
- a. goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative.
 - b. compatibility issues such that procurement from another source would be uneconomic given the investment in previous infrastructure;
 - c. a waiver of the rules would be in the interests of the Council, be lawful, and provide value for money;
 - d. Where there is a legal requirement to contract with a particular supplier.
 - e. Contracts awarded to sole suppliers because of exclusive rights.
- 12.4.2 For above threshold contracts exceptions can only be granted if compatible with the requirements of the Procurement Act.

12.5 Records of Waiver

- 12.5.1 All exemptions or exceptions should be recorded by Corporate Procurement in the Contract Procedure Rules Contracts Register and be available for inspection as required. All original documents evidencing waiving of the rules must be available when required.

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13. **Extension or Variation/Overspend of Contracts**

13.1 The relevant SRO must not enter into variations or overspends which are within the scope of the original procurement but would increase the value of the contract singly or cumulatively by an additional 5% for contracts which are valued at £100,000 or more and 10% for contracts up to £100,000 beyond the approved budget without the approval of the Director of Finance. A business case will be required to obtain this approval. Evidence of such approval must be recorded in writing in a Procurement Smartform.

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13.2 For above threshold contracts modifications may only be permitted if compliant with the requirements of the Procurement Act and a Contract Change Notice is published which sets out the reasons for the proposed variation if it exceeds 10% or more in value of the original contract (15% for works).

13.2 Contract extensions must be considered for approval by the Director of Finance and the Head of Corporate Procurement (or delegated representatives). Evidence of approval granted or rejected must be recorded in writing in a Procurement Smartform.

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Summary Table: Procurement Officers authorised to approve contract extensions.

Extensions

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Under £50,000	Under £100,000	£100,000 and above
Category Manager	Senior Category Manager	Head of Procurement or Delegated representative

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13.2 The Head of Commercial Procurement will keep a record of such approvals.

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13.3 The SRO can extend or vary a contract provided:

- there is provision within the contract to extend (and this has not already been utilised to its full extent);
- the budget has been confirmed in writing or confirmation there is the budget available;
- authority is recorded in writing; and
- Law and Corporate Services prepare the documentation to record the terms of the extension or variation (if necessary depending upon the provisions of the contract).

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13.4 If there is no provision within the contract notice or in the contract terms for extensions, legal advice should be sought.

13.5 Legal advice must be sought on the need to re-procure if changes amount to a significant or material alteration to the contract advertised or there is a proposed change to a named subcontractor.

14. Sale of Council Goods or Assets

14.1 When selling Council goods or assets Officers must comply with the aims of these rules (Rule 3) specifically the need to achieve best value, ensure transparency, openness, nondiscrimination, probity and accountability.

14.2 Appropriate authority under the relevant scheme of delegation for the sale must be evidenced before commencing the sale process.

14.3 The table below sets out the minimum measures Officers must take to ensure that sales achieve best value.

Sale with value of under £10,000	Sale with value under £50,000	Sale with value over £50,000
Minimum of 3 offers required wherever possible	Procurement to advise on the need to advertise to achieve an appropriate level of interest	Advertise sale appropriately

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14.4 Corporate Procurement can advise officers on compliance regarding sales if required.

15. Application of the Contract Procedure Rules to Schools

15.1 The Schools Fair Funding Scheme (FFS) governs the management by each school of its delegated and devolved budget as determined in s.48 of the School's Standards and Framework Act 1998. Schools (other than academies) are encouraged to follow these Rules, (unless Governing bodies have taken decisions to change reporting arrangements) but where there is conflict between the Rules and the FFS, the FFS will take precedence.

16. Declarations of Interest, Anti-Bribery and Corruption

16.1 The Council's reputation with regards to procurement activity is important and should be safeguarded from any imputation of dishonesty or corruption. All elected Members and Officers are reminded of their responsibilities in relation to gifts, hospitality and any conflicts of interest and should ensure they comply with the obligations set out in the Council's Members' Code of Conduct and Officers' Code of Conduct respectively and any other relevant policies, guidance or strategies relating to bribery, fraud and corruption issued or endorsed by the Council from time to time.

16.2 Any Member or Officer must declare any interest which could influence their judgment in relation to procurement activity in accordance with the Council's Code of Conduct.

16.3 No gifts or hospitality should be accepted from Bidders or Tenderers involved in procurement activity except in accordance with the Council's Code of Conduct.

16.4 Members and Officers involved in a procurement process must not have contact with Bidders or Tenderers whilst documents are out to tender or whilst bids are being evaluated, except, formally, through the Tendering Portal. Exceptional circumstances, where contact forms part of the process (e.g. under the competitive flexible procedure permitted by the Procurement Act), can only be conducted with the prior written consent of the Director of Law and Corporate Services, (Monitoring Officer) and Head of Commercial Procurement.

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17. Reporting to Members

17.1 The Head of Commercial Procurement shall report at half yearly intervals to the Audit and Risk Management Committee, whenever:

- a contract is awarded the total value of which exceeds £500,000; or
- a variation or extension to a contract value of £100,000 or greater is approved by the Director of Finance, (S151 Officer); or
- there is a waiver of the Contract Procedure Rules in relation to a contract which exceeds £100,000 in value.

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18. Contract Management

18.1 All Contracts must have a Council Contract Owner for the entirety of the Contract. In the event that there is no named Contract Owner the AO will fulfil the role of Contract Owner.

18.2 The Contract Owner will be responsible for reviewing monitoring and evaluating the contract to ensure that its provisions and the services within it are being followed and performed as they should be.

18.3 During the life of the Contract, the Contract Owner should monitor the Contract in respect to the following:

- a. Performance (against agreed KPIs where relevant);
- b. Compliance with specification and contract;
- c. Cost;
- d. Any Best Value duties;
- e. Continuous Improvement;
- f. user satisfaction;
- g. Risk Management; and
- h. Exit Strategy for renewable Contracts.

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18.4 During the life of the Contract, the Contract Owner should be responsible, in accordance with the Council's Equality Duties, for ensuring that workforce profiles are submitted (where required) annually from all contractors.

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18.5 Where the Contract is to be re-let, this information should be available early enough to inform the approach to re-letting the next contract.

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18.5 Corporate Procurement can provide advice and support on good practice in performance management of Contracts £25,000 and over.

18.6 All Contracts of £25,000 and over in value, must be included and published on the Contracts Register maintained by Corporate Procurement. This is a mandatory requirement and it is the responsibility of the SRO for each Service to ensure that they have informed Corporate Procurement of the Contracts they are responsible for and provided them with the information necessary to update the Contracts Register accordingly.

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19. **Retaining Relevant Documents**

19.1 All records in relation to the award of Contracts and the associated procurement process, including supporting documentation, shall be stored by Corporate Procurement in an electronic filing system to be available for inspection by the Council's internal and external auditors, or Officer, immediately upon request. Records will be retained in accordance with relevant regulations applicable to electronic record retention and for a minimum period of 3 years.

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19.2 Records of contracts shall be retained as follows:

Contracts with a value between £25,000 and £249,999	For six years after the end of the Contract
All sealed Contracts and Contracts with a value of £250,000 and above	For twelve years after the end of the Contract
Contracts that are grant funded regardless of value	Must comply with retention period above or the terms and conditions of the grant, whichever is the longer

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19.3 If legislation related to any individual Contract stipulates a longer retention period than this, then the legislation requirements takes precedence over the Council's minimum periods.

19.4 Once executed, the Council shall retain one original of the complete Contract documents in line with the timescales in the table above and one copy of the complete Contract documents shall be provided to the Contractor.

19.5 A copy all Contracts above £100,000 shall be saved on the e-tendering portal.

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20 **Summary of Procurement Decision Processes**

This is contained in the Table below which is intended to be an overview of the decision making processes for procurements which are more particularly described in the preceding paragraphs of these Rules.

PROCUREMENT THRESHOLDS					
Table 1					
CONTRACT VALUE	CONTRACT TYPE	MINIMUM COMPETITION REQUIREMENTS	PROCESS MANAGED BY	OTHER REQUIREMENTS	CPR SECTION

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<u>£0-£1,999.99</u>	<u>Goods, Services, Works or Concessions</u>	<u>No requirement for a Quotation</u>	<u>Departmental responsibility</u>	<u>Must be able to evidence value for money</u>	
<u>£2,000 - £24,999</u>	<u>Goods, Services, Works or Concessions</u>	<u>Minimum one Quotation</u>	<u>Departmental responsibility</u>	<u>Must be able to evidence value for money</u>	<u>8 – Quotations</u>
<u>£25,000 – prescribed Thresholds</u>	<u>Goods, Services, Works or Concessions</u>	<u>Minimum of five suppliers approached unless a Framework or restricted tendering is applicable in which case the number shall be whatever is appropriate for the procurement in question</u>	<u>Corporate Procurement</u>	<ul style="list-style-type: none"> • <u>Must be supported by an officer from the Procurement Team</u> • <u>A SmartForm must be completed</u> • <u>Prepare all tender documents prior to placing advertisement</u> • <u>Must be advertised</u> • <u>Contracts over £100k require an Officer Decision Notice. Contracts over £500k must be included on the Forward Plan (refer to Key Decision Process)</u> • <u>Social Value is mandatory for contracts above</u> 	<u>9</u>

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				<p><u>£100k and encouraged for contracts below £100k</u></p> <ul style="list-style-type: none"> <u>Contracts over £250k must be sealed</u> <u>Tenders must be received via the Council's e-Tendering Portal</u> 	
<u>Above the prescribed Thresholds</u>	<u>Goods, Services, Works or Concessions</u>	<u>In accordance with the most appropriate procedure permitted by the Procurement Act</u>	<u>Corporate Procurement</u>	<ul style="list-style-type: none"> <u>Must be supported by an officer from the Procurement Team</u> <u>A SmartForm must be completed</u> <u>Prepare all tender documents prior to placing advertisement</u> <u>Must be advertised</u> <u>Minimum Procurement Act time limits for tender submissions must be followed</u> <u>Contracts over £100k require an Officer Decision Notice.</u> 	<u>10 – Tenders</u>

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				<p><u>Contracts over £500k must be included on the Forward Plan (refer to Key Decision Process)</u></p> <ul style="list-style-type: none"> • <u>Social Value is mandatory for contracts above £100k</u> • <u>Tenders must be received via Council's e-Tendering Portal</u> • <u>Contracts over £250k must be sealed</u> 	
<u>Light-Touch Regime (below prescribed Thresholds)</u>	<u>Light-Touch</u>	<u>As above depending on the value of the contract</u>	<u>Departmental responsibility</u>	<ul style="list-style-type: none"> • <u>As above depending on the value of the contract</u> • <u>A SmartForm must be completed if the contract is above £25k</u> • <u>Contracts over £250k must be sealed</u> 	
<u>Light-Touch Regime (above prescribed Thresholds)</u>	<u>Light-Touch</u>	<u>In accordance with the most appropriate procedure permitted by the Procurement Act</u>	<u>Corporate Procurement</u>	<ul style="list-style-type: none"> • <u>Must be supported by an officer from the Procurement Team</u> • <u>A SmartForm</u> 	

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				<p>must be completed</p> <ul style="list-style-type: none"> • Prepare all tender documents prior to placing advertisement • Must be advertised • Minimum Procurement Act time limits for tender submissions must be followed • Social Value is mandatory for contracts above £100k and encouraged for contracts below £100k • Tenders must be received via Council's e-Tendering Portal • Contracts over £250k must be sealed 	
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AUTHORISATION THRESHOLDS		
7. PRE-PROCUREMENT PROCESS		
CONTRACT VALUE	AUTHORISATION REQUIRED FROM:	DOCUMENTS REQUIRED
<u>£5,000 - £25,000</u>	<u>I.T. or Telecomms products or services must be referred to the Head of Digital by the SRO for approval to proceed further</u>	<u>No formal report required</u> <u>No Officer Decision Notice Required</u>

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<u>£25,000 - £100,000</u>	<u>I.T. or Telecomms products or services must be referred to the Head of Digital by the SRO for approval to proceed further</u>	<u>SmartForm</u> <u>No Decision Notice Required</u>
<u>£100,000 or over, but less than £500,000</u>	<u>I.T. or Telecomms products or services must be referred to the Head of Digital by the SRO for approval to proceed further</u>	<u>SmartForm</u> <u>No officer decision notice required, but consideration of whether consultation with relevant Chair and Group Spokes is required</u>
<u>£500,000 or over, but less than £1.5m</u>	<u>I.T. or Telecomms products or services must be referred to the Head of Digital by the SRO for approval to proceed further</u>	<u>SmartForm</u> <u>Inclusion on the forward plan required, consultation with relevant Chair and Group Spokes required, and an officer decision notice is required</u>
<u>Exceeding £1.5m</u>	<u>I.T. or Telecomms products or services must be referred to the Head of Digital by the SRO for approval to proceed further</u>	<u>SmartForm</u> <u>Relevant Committee approval required as well as inclusion on the forward plan</u>

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AWARDING A CONTRACT THRESHOLDS		
AWARDING A CONTRACT		
CONTRACT VALUE	AUTHORISATION REQUIRED FROM:	DOCUMENTS REQUIRED
<u>£5,000 - £25,000</u>		<u>No Officer Decision Notice Required</u>
<u>£25,000 - £100,000</u>		<u>No Officer Decision Notice Required</u>
<u>£100,000 or over, but less than £500,000</u>		<u>Non-Key officer decision notice required</u>
<u>£500,000 or over, but less than £1.5m</u>		<u>Further inclusion on the forward plan required (separate forward plan entry), consultation with relevant Chair and Group Spokes required, and an officer decision notice is required</u>
<u>Exceeding £1.5m</u>		<u>Relevant Committee approval required as well as further inclusion on the forward plan, unless delegation to the director to award the contract was</u>

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		<u>granted by the Committee when agreeing to commission the service</u>
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