

PART 8 – OTHER RULES OF PROCEDURE

A – CONTRACT AND TENDERING PROCEDURE RULES

CONTRACT AND TENDERING RULES

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Part 1

Introduction – Purpose of the Contract and Tendering Rules

These Contract and Tendering Rules are made in accordance with the requirements of Section 135 of the Local Government Act 1972, and take into consideration the Public Contracts Regulations (PCR) 2015. These rules form part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for undertaking expenditure on behalf of the Council. It should be noted that in the event of conflict between these Contract and Tendering Rules and any current legislation governing procurement, the legislation will prevail. Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract and Tendering Rules is to provide a structure within which purchasing decisions are made and implemented and which ensures that the Council:

- Furthers its corporate objectives
- Uses its resources efficiently and secures value for money
- Purchases quality goods, services and works
- Safeguards its reputation from any implication of dishonesty or corruption
- Is open, fair and transparent and fully compliant with EU public procurement law (the Public Contracts Regulations 2006 as amended)

The Monitoring Officer (the Council's Monitoring Officer, means the officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration) is accountable for advising on and interpreting these Contract and Tendering Rules, issues of precedence, and the law relating to Council contracts and overseeing adherence. Day-to-day advice in respect of these Contract and Tendering Rules is delegated to the Procurement Team. & Commissioning Team. The Procurement Team & Commissioning Team can be consulted for any requirements. They must be consulted, in advance of any undertaking, for all requirements over £50,000. They will provide detailed guidance and support and supply the appropriate mandatory templates. They can also provide contact details for any other officers referenced in this document.

Part 2

General Principles – Application and Compliance with the Contract and Tendering Rules

1. Application and Scope of the Contract and Tendering Rules

1.1 The Contract and Tendering Rules apply to all contracts for the supply of works (e.g. construction and maintenance of roads and buildings), goods (or supplies) or services to the Council, regardless of value. This includes Service Level Agreements (SLAs), Memorandum of Understandings (MoUs); grants ~~whereby the Council requires a certain outcome in return for a monetary sum~~ and any applications for funding. In these cases, the relevant approvals to the outcome, set out in Section 14 'Seek approval to the Outcomes; must be obtained before proceeding.

1.2 The Contract and Tendering Rules do not apply to contracts:

- for the appointment of permanent or fixed-term employees (but do apply to the appointment of temporary workers or consultants);
- ~~contracts~~ for the purchase or sale of any interest in land (including leasehold interests);
- direct care payments to residents;
- the supply of works, goods and services by the Council.
- ~~SLAs, MOUs, and grants whereby the Council does not require a particular outcome in return for a monetary sum~~

1.3 Schools are encouraged to use these Contract and Tendering Rules as best practice when entering into all contracts, adapting them as required to meet their governance arrangements.

2. Responsibilities

2.1 Each Director is responsible for ensuring that their department complies with these Contract and Tendering Rules. ~~The director must nominate a Responsible Officer in writing in line with the Council's Scheme of Delegation. The Responsible Officer has responsibility for conducting timely purchasing processes for the purchase of particular works, supplies or services on behalf of the Council in line with these Contract Rules. Heads of Service must be conversant with the Contract and Tendering rules.~~

3. Conflicts of Interest and Standards

3.1 All officers will comply fully with the provisions of Section 117 of the Local Government Act 1972 in respect of the declaration of interest. ~~No officer with~~

~~any monetary interest in a contract shall play any part in the specification, procurement or supervision of any such contract.~~

- 3.2 Consultants who assist in the preparation of a specification must not be invited to quote for the contract ~~, or form part of the evaluation panel, they may provide expert guidance on the tender submissions to assist officers in evaluating submissions.~~
- 3.3 Any officer who is a relative, friend, personal associate or close acquaintance of any individual involved in the procurement process or in a senior position with any organisation bidding for any contract with the Council of which he/she is aware or should be aware must declare that relationship to his/her senior officer. Express permission must be sought from the relevant Director for that individual to take part in the specification, procurement, evaluation or supervision of any such contract. ~~and must take no part in the specification, procurement or supervision of any such contract.~~
- 3.4 Officers must adhere to the highest standards of integrity. Further guidance on officer conduct is available in Council policies.
- 3.5 Any proposed contract for provision of works or services between the Council and an Elected Member of the Council or their business, or where an Elected Member has a monetary interest in the business, or a close member of their family must be approved by the Chair of Cabinet and the Lead Member for Finance, (in the event of a conflict of interest or when necessary by their appointed Deputies who must be a member of the Executive) and be recorded by the relevant Officer, prior to any works or services being supplied or paid for. Declarations of Interest must be amended to reflect the proposed new contract.

4. Compliance

- 4.1 All members of staff and consultants engaged in any capacity to manage or supervise the procurement of any works, goods or services for the Council must comply with these Contract and Tendering Rules. Failure to comply with these Contract and Tendering Rules may result in disciplinary action and legal proceedings against members of staff and consultants concerned.
- 4.2 Breaches of these Contract and Tendering Rules must be reported to the Monitoring Officer and the Head of Audit.
- 4.3 Any officer or member of staff who suspects any misconduct or corruption in relation to any purchase by or on behalf of the Council must immediately report that suspicion to the Council's Monitoring Officer and the Head of Audit.

Part 3

Procedure – The Mandatory Sequential Steps in any given Procurement Process

1. Procedural Requirements

- 1.1 If there is a Corporate Contract it must be used. If not the following steps must be completed in sequence for any requirement:

2. Corporate Contracts

- 2.1 Corporate Contracts are Council-wide contracts that all officers should use. They may be managed by an officer in a different service to the Responsible Officer. Unless otherwise agreed by the ~~Procurement & Commissioning~~ Manager, where there is a corporate contract for the supply of any works, goods or services, the Responsible Officer must buy through that contract, rather than awarding a separate contract for his/her own use. The Procurement & ~~Commissioning~~ Team can advise on available Corporate Contracts.

3. Calculate the Contract Value

- 3.1 The estimated value of a contract or series of related contracts shall determine the way in which the contract is let.
- 3.2 The contract value shall be the genuine pre-estimate of the value of the entire contract (excluding Value Added Tax). This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options). This includes requirements across the entire Council, not just the requirements of a single team or service area.
- 3.3 Contracts must not be artificially split to avoid the application of the provisions of the EU Rules and/or these Contract and Tendering Rules.
- 3.4 The EU Rules can cover contracts which are below the relevant EU threshold where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers ~~should must therefore~~ seek advice from the Procurement & ~~Commissioning~~ Team on the application of the EU Rules where ~~they envisage that they may~~ require repeat purchases and/or purchases of a similar type may be required.
- 3.5 The Responsible Officer may not know of all of the requirements outside of their service area. The Procurement & ~~Commissioning~~ Team will provide advice in this respect.

4. Describe Requirements

- 4.1 The Responsible Officer must prepare a clear and comprehensive statement of the Council's requirements with regard to the works, goods or services to be

supplied (a specification). As part of this process the Responsible Officer must obtain all necessary professional and technical advice and assistance and undertake market research so that options and the cost of the requirements are fully understood.

- 4.2 Generally the statement of requirements should be as open as possible, describing what is needed, rather than how the need is to be fulfilled, to enable suppliers to contribute their knowledge and experience i.e. outcome based. ~~Allowing variant responses enables the suppliers to make suggested amendments based upon their expertise. In case such suggestions are not acceptable to the Council all suppliers must be required to submit a mandatory reference response based on the statement of requirements and terms and conditions provided so that all responses may be compared fairly.~~ All works, goods and services must be specified by reference to European standards, or national standards if no European standards are set with the words “or equivalent” added. Named products or manufacturers must not be specified as to do so would be in direct contravention of EU Regulations.
- 4.3 The statement of requirements should incorporate measurable and, ~~so far as is where~~ possible, objective quality and performance criteria to enable the Responsible Officer to see whether the Council’s requirements have been met.

5. Determine the Procurement Route

- 5.1 Determine if the Council will run its own competition or if a ~~Purchasing Scheme Framework~~ will be used.
- 5.2 ~~Purchasing Schemes Frameworks~~ are contracts set up by central/ collaborative bodies which other parties can utilise. Use of a ~~purchasing scheme Framework~~ ~~should be considered to fast track~~ ~~can speed up~~ the ~~ss~~ supplier selection process and ~~to~~ leverage economies of scale. The Procurement ~~and Commissioning~~ Team can provide guidance on how to find out more about specific ~~Framework schemes~~. Responsible Officers must check that:
- the Council is legally entitled to use the ~~Purchasing Scheme Framework~~;
 - the purchases to be made legally fall within the coverage of the ~~Purchasing Scheme Framework~~;
 - the ~~scheme Framework~~ meets the Council's own requirements in terms of quality and cost;
 - any other pros and cons of using the ~~Purchasing Scheme Framework~~ versus running a Council competition must ~~—~~be considered.
- 5.3 Each ~~purchasing scheme Framework~~ will have its own procedure to follow. These requirements will supersede those in this document with the exception of the Council’s approval steps as outlined in these Contract ~~and Tendering~~ Rules.

5.4 If a Purchasing Scheme Framework is not the most appropriate route, the Council will need to run its own competition. The table below provides details of the process that must be followed depending on the contract value, unless an exception is granted by the Procurement ~~and Commissioning~~ Manager.

For Supply/Services contracts:

<u>Activity</u>	<u>£0 - £50k</u>	<u>£51k – EU Supply/Services Threshold</u> <u>(as at 01/18 £181k)</u>	<u>> EU Supply/Services Threshold</u> <u>(as at 01/18 £181k)</u>
<u>Minimum Number of Suppliers</u>	<u>No minimum</u>	<u>Three</u> <u>Notices can be placed in Contracts Finder.</u>	<u>Official Journal of the European Union (OJEU)</u> <u>Notices must be placed in OJEU and Contracts Finder.</u>
<u>Minimum Time for Supplier Response</u>	<u>No minimum but must be reasonable.</u>	<u>Not less than ten calendar days but must be reasonable.</u>	<u>As per rules governing Procurement Route selected.</u>

For Works contracts:

<u>Activity</u>	<u>£0 - £50k</u>	<u>£50 - £500k</u>	<u>£501k - EU Works Threshold</u> <u>(as at 01/18 £4.5M)</u>	<u>> EU Works Threshold</u> <u>(as at 01/18 £4.5M)</u>
<u>Minimum Number of Suppliers</u>	<u>No minimum</u>	<u>Three</u> <u>Notices can be placed in Contracts Finder.</u> <u>Constructionline may be used.</u>	<u>Five</u> <u>Notices can be placed in Contracts Finder.</u> <u>Constructionline may be used.</u>	<u>Official Journal of the European Union (OJEU)</u> <u>Notices must be placed in OJEU and Contracts Finder.</u>
<u>Minimum Time for Supplier Response</u>	<u>No minimum but must be reasonable.</u>	<u>Not less than ten calendar days but must be reasonable.</u>	<u>Not less than ten calendar days but must be reasonable.</u>	<u>As per rules governing Procurement Route selected.</u>

6. Set the Assessment Criteria

- 6.1 A minimum level of capability ~~should~~must be set. This may ~~include the size of the company,~~ financial stability, having essential policies in place and evidencing relevant experience. These are known as the selection criteria. The selection criteria ~~Care should be taken to set~~must be set ~~this level~~ proportionately to the value and risk associated with the requirement and be fair and open to all potential bidders. ~~not to unintentionally exclude small businesses.~~

- 6.2 -Suppliers who meet this level should be considered on a more detailed basis. Responses ~~w~~should normally be evaluated on a combination of quality and price criteria ~~and sub-criteria~~this is known as the award criteria. The combination of quality and price is known as MEAT (known as Mmost Economically Advantageous Tenderer criteria). ~~These are known as the award criteria. With the permission of the Procurement & Commissioning Team, responses may be evaluated on the basis of price only.~~
- 6.3 Weightings must be set for each of the criteria and sub-criteria relative to their importance.
- 6.4 The mandatory templates have a section for criteria and weightings and the Procurement ~~& Commissioning~~ Team can provide further guidance.
- 6.5 If the basis of evaluation is most economically advantageous the Responsible Officer must arrange for an appropriate evaluation panel to consider the responses. The evaluation panel may include service ~~users~~users but may not include elected members of Council, and/or external Consultants ~~but may not include elected members of the Council.~~ The evaluation panel should, as a rule, comprise those people who have significant input into drawing up the specification and/or relevant expertise and the contract manager (if it is not the Responsible Officer).
- 6.6 External Consultants may review tender submissions, and provide a narrative report to assist and inform the evaluation panel, but they cannot score tender submissions.

7. Determine the Terms & Conditions

For Supply/Service and Works:

<u>Activity</u>	<u>Under £50k</u>	<u>£51k - £181k</u>	<u>> £181k</u>
<u>Selection of Terms and Conditions</u>	<u>PO Terms and Conditions or Self Service Terms and Conditions from the Hyperwave.</u>	<u>Self Service Terms and Conditions from the Hyperwave.</u>	<u>Shared Legal Services must be instructed.</u>

- 7.1 If the value of the contract is under £50k and the services or goods are low risk, Purchase Order terms and conditions can be used (these are printed on

the reverse of the document that is sent to the supplier when a Purchase Order is raised). As an alternative to using the Council's standard Purchase Order the Responsible Officer may use the Council's Purchasing Card (where appropriate as defined by the Purchasing Card Guidelines). Purchase Orders or Purchasing Cards cannot be used for works, ICT, care and consultancy contracts regardless of value.

- 7.2 If the value of the contract is over the EU Services threshold (£181k as at 01/18) or any value but considered high risk £50k or under £50k but high risk (e.g. involves safeguarding, statutory requirements, intellectual property rights or is high profile), Shared Legal Services must be instructed to provide Terms and Conditions. For similar, repeat requirements, a single instruction to Legal for template Terms and Conditions is acceptable. Any template Terms and Conditions must not be altered without reference to Shared Legal Services. Shared Legal Services may use Council specific or industry standard Terms and Conditions as appropriate to the subject matter.
- 7.3 In certain instances the Council may have to use a supplier's Terms and Conditions. These must be provided to Shared Legal Services for review so that any onerous provisions can be amended or the risk can be acknowledged and managed by the Responsible Officer.
- 7.4 Letters of Intent may not be used as a substitute for a contract. Exceptionally they may be used in advance of a contract if the format has been agreed with Shared Legal Services and the circumstances have been agreed with the Procurement & Commissioning Manager.
- 7.5 The Responsible Officer must give full instructions to Shared Legal Services so that the contract is a meaningful document. These include:
- a comprehensive description of the requirements (the specification) and any other relevant documents;
 - the start and end dates for the contract (indefinite/ rolling contracts are not permitted. Any exceptions must be agreed by the Procurement & Commissioning Manager)
 - appropriate and adequate levels of insurance cover. Unless otherwise agreed with the Insurance & Risk Manager, the minimum levels of cover shall be £5 million for public liability insurance, £2 million for professional indemnity insurance (if appropriate) and £10m for employer's liability. (The Insurance and Risk manager can also advise on the appropriateness of bonds and parent company guarantees);
 - details of any staff that may transfer to a new supplier so that provisions can be made for TUPE (Transfer of Undertakings (Protection of Employment) Regulations). Human Resources must also be consulted if TUPE may apply to Council employees;
 - on what basis the supplier will be paid (and in what instances they will not paid);

- how performance will be managed (including performance indicators, dispute resolution, complaints handling, business continuity, damages in case of non-performance and reasons for termination);
- any others particular requirements (e.g. if safeguarding or intellectual property provisions apply).

7.6 The contract must provide for payment by the Council after the supply of the works, goods or services and the approval of associated invoices. Exceptionally, and only with the consent of the Council’s Head of Finance, a contract may provide for payment in full or part in advance.

7.7 For the avoidance of doubt, Purchase Orders must still be raised where a contract is in place as they fulfil an independent financial and governance function (as well as providing terms and conditions for low value and risk requirements).

8. Approval to Seek Proposals

8.1 ~~If/once~~Once a budget has been allocated for the expenditure the following levels of approval to seek proposals apply:

For Supply/Services:

<u>Activity</u>	<u><£181k</u> <u>(Below threshold)</u> <u>(as at 01/18 £181k)</u>	<u>£181k+</u> <u>(Above threshold)</u> <u>(as at 01/18 £181k)</u>
<u>Seek Approval to Proceed</u>	<u>Head of Service</u>	<u>Senior Management Team and consultation with Lead Member</u>

The exception to the above is that for emergency social care placements, the respective Directors of Adult and Children’s Services may grant approval for placements in their respective directorates. A record of these placements must be maintained.

For Works:

<u>Activity</u>	<u><£500k</u>	<u>£501k+</u>
<u>Seek Approval to Proceed</u>	<u>Head of Service</u>	<u>Senior Management Team and consultation with Lead Member</u>

Where packages of Works are part of a Programme of Works, individual approvals are not required. The Programme of Works will be approved at the relevant level.

Activity	Under £50k	£50k— £100k	£100k— 150k	£150k— £500k	£500k+
Seek Approval to Proceed	Head of Service	Director	Directorate Management Team (DMT) and Lead Member	Corporate Management Team (CMT) and Lead Member	Cabinet/ Cabinet Prioritisation Sub-Committee (CPSC)

~~The exception to the above is that for emergency social care placements, the Director of Adult and Community Services and the Director of Children’s Services may grant approval for placements in their respective directorates. Directors must provide their Lead Member, the Lead Member for Finance and the Leader of the Council a summary of placements made under this arrangement following the end of each month.~~

8.2 Decisions must be recorded in writing (e.g. meeting minutes/ email).

8.3 In order for a meaningful decision to be made the following information must be included (as proportionate to the value/ risk of the specific requirement and as agreed with the Procurement & Commissioning Team):

- Analysis and evaluation of all options for contract packages and methods of procurement, making reference to market analysis and collaborative/ shared arrangements;
- Demonstration of alignment to corporate objectives;
- Consultation with stakeholders within and outside the Council;
- Analysis of lessons learnt from any current/ previous arrangements;
- Stimulation of diversity and innovation, enhancement of choice and quality for residents;
- Sustainability e.g. environmental factors, supporting local jobs;
- A breakdown of the anticipated costs, including options of different requirements with different costs and targeted savings;
- Risks (regarding the process and the supply);
- Has GDPR been considered, Privacy Impact Assessments done;
- An Equalities Impact Assessment (EQIA) if applicable;
- How the responses will be assessed and the weighting attributed to particular factors;
- Who the evaluation panel will be;

- The duration of the contract.

8.4 Responsible Officers are encouraged to combine approvals where appropriate e.g. to the budget and/or there is a programme of similar requirements, such as schools capital projects.

9 Advertising and Communicating Requirements

9.1 Once approval ~~to seek Proposals has been achieved~~Obtained, where required, advertisements can be placed. Above threshold procurement require and OJEU Notice and a Contracts Finder Notice. ~~Only the Procurement & Commissioning Team can place an OJEU advertisement; -Contracts Finder Notices can be placed by anyone with a logon userid.~~

9.2 For below threshold procurements, u~~Unless~~ otherwise agreed in writing by the Procurement ~~& Commissioning~~ Manager the instructions to suppliers must be in the latest version of the templates created and maintained by the Procurement ~~and Commissioning~~ Team (i.e. the quotation, PQQ or tender documents). This will enable the Responsible Officer to satisfy themselves that the suppliers invited to quote have the legal, financial and technical capacity (including their health & safety, equal opportunities, and other relevant policies) to undertake the contract for the Council and that they will provide value for money. They also provide assurance that a fair and transparent process will be followed.

~~9.3 Amendments by the Responsible Officer to documents following issue are possible if in line with the instructions to suppliers. Amendments must be sent out in sufficient time to allow suppliers to adjust their responses and in any event no later than five clear working days before close of responses. If necessary, the response period must be extended to allow for this.~~

10 Receipt of Submissions

10.1 For all above threshold procurements ~~If~~ the Council's e-procurement system must be used. For below threshold procurements is not used, ~~the~~ Responsible Officer is responsible for marking the response envelopes or parcels with the date and time they are received by the Council; keeping responses in a secure place until after the latest date and time for receipt.

10.2 Any responses that are received after the latest date specified for return or that identify the sender must be disposed of and the supplier advised accordingly. The Responsible Officer must obtain advice from the Procurement ~~& Commissioning~~ Team if they wish to accept a late response. The Responsible Officer must notify the Procurement Manager~~Monitoring Officer~~ of any rejection of a late response as soon as possible after this decision has been made and before the supplier is advised.

10.3 Responses must be opened one at a time by the Responsible Officer, in the presence and one other Officer of a member of the Procurement &

~~Commissioning Team.~~ Both of those persons must initial each page. The Responsible Officer must number all responses in the order they are opened.

10.4 The Responsible Officer must record :

- the works, goods or services to be supplied;
- the name of each supplier who quotes;
- the amount of each response or such other information as may be relevant to the procurement;
- the date and time of opening of each response;
- the names of all persons present at the time of opening; and
- any omissions and any non-compliant responses.

The Responsible Officer must certify the record as correct.

10.5 The Responsible Officer must keep securely one clean, archive copy of each submission in accordance with the document retention policy.

10.6 Until the contract has been awarded, the information obtained at the opening of responses is confidential to those involved in the opening process and those directly involved in evaluation of the responses. Even after award, any commercially sensitive information must be treated as such. Confidentiality must be maintained and any breach reported to the Council's Monitoring Officer.

11 Evaluate the Responses

11.1 Responses must be evaluated in line with the instructions given to suppliers (i.e. in the quotation, PQQ or tender documents).

11.2 Clarifications must be designed to ensure that the Council has fully understood the response submitted e.g. TUPE implications have been fully priced and there are no material exclusions or assumptions. Finance can assist with financial clarifications. Negotiations with suppliers are not permitted by EU law and are therefore not to be undertaken. Clarification questions and answers must be fully documented in a form approved by the Procurement ~~& Commissioning~~ Manager. Responses must not be finally evaluated and scored until clarifications have been completed.

11.3 All valid responses received must be evaluated. Each member of the evaluation panel must make full notes of his/her evaluation and pass the notes to the Responsible Officer for retention as part of the record of the procurement. Consensus scores must be reached and the rationale recorded. It is important that any notes and records are comprehensive as they may be shared with the suppliers.

11.4 A response that is qualified or expressed to be conditional upon the Council's acceptance of material alterations to the statement of requirements or the

terms and conditions of contract must be treated as non-compliant and rejected.

- 11.5 The Responsible Officer must notify the ~~Monitoring Officer~~ Procurement Manager of any rejection of a non-compliant response as soon as possible after this decision has been made and before the supplier has been notified.

12 Amendments and Alterations to Responses

- 12.1 A supplier's response is their offer to the Council, which the Council may accept as it stands. Once they have submitted their response, a supplier is not permitted to make any material alterations to the amount or any of their proposals in the response.
- 12.2 If a supplier attempts to alter their offer after the latest date for receipt of responses, they must be given the opportunity to stand by or withdraw their original offer. ~~Correction of an obvious arithmetical error may be accepted at the discretion of the Procurement & Commissioning Team.~~

13 Lack of Suitable Responses

- 13.1 ~~Responsible Officers must not value engineer responses with one or more suppliers, except with the specific consent of the Procurement & Commissioning Manager and the Monitoring Officer. If all valid responses are too high to be accepted and consent has been achieved, the Responsible Officer may delete part of the statement of requirements and ask all suppliers invited to quote to re-price, by submitting a new response. In such cases, the Responsible Officer must set out the deletion in a bill of reductions or other document, to be incorporated into the contract document. If no suitable responses are received, the Responsible Officer must consult the Procurement Manager as to how the works, goods or services concerned may be procured.~~
- 13.2 ~~If no suitable responses are received, the Responsible Officer must consult the Procurement & Commissioning Manager as to how the works, supplies or service concerned may be procured.~~

14 Seek Approval to the Outcome

- 14.1 A response that exceeds the budget allocated must not be accepted. If a response exceeds the budget allocated, the Responsible Officer must obtain an additional allocation of funds in accordance with Financial Regulations before requesting approval to the outcome of the process. The following levels of approval apply:

For Supply/Services:

<u>Activity</u>	<u><£181k</u> <u>(Below EU Services threshold)</u> <u>(as at 01/18 £181k)</u>	<u>£181k - £500k</u>	<u>£500k+</u>
<u>Seek Approval to Contract</u>	<u>Head of Service</u>	<u>Corporate Leadership Team and Lead Member</u>	<u>Cabinet/Cabinet Prioritisation Sub Committee</u>

The exception to the above is that for emergency social care placements, the respective Directors of Adult and Children’s Services may grant approval for placements in their respective directorates. A record of these placements must be maintained.

For Works:

<u>Activity</u>	<u><£250k</u>	<u>£251k - £500k</u>	<u>£501k+</u>
<u>Seek Approval to Contract</u>	<u>Head of Service</u>	<u>Corporate Leadership Team and Lead Member</u>	<u>Cabinet/Cabinet Prioritisation Sub Committee</u>

Where packages of Works are part of a Programme of Works, individual approvals are required. Each proposed contract will be approved at the relevant level.

~~The exception to the above is that for emergency social care placements, the Director of Adult and Community Services and the Director of Children’s Services may grant approval for placements in their respective directorates. Directors must provide their Lead Member, the Lead Member for Finance and the Leader of the Council a summary of placements made under this arrangement following the end of each month.~~

- 14.2 Decisions must be recorded in writing (e.g. meeting minutes/ email).
- 14.3 The Responsible Officer is responsible for producing a report, which must include (as proportionate to the value/ risk of the requirement as agreed with the Procurement & Commissioning Team). For above threshold approvals the Cabinet Report template must be used.:

- reference to the basis on which approval was given to approach the market;
 - a summary of the process and the scores at each stage against the criteria;
 - confirmation that the procedure has complied with these Contract and Tendering Rules;
 - a financial summary, including any savings;
 - a benefits summary, referencing improvements for residents and corporate objectives;
 - details of the arrangements for contract management;
 - the name of the successful supplier, the length of the contract and any options for extension and the price or estimated price of the contract.
- ~~▪ if applicable, as an appendix, the record of response receipt and opening~~

~~14.4 Once approved, if the contract value exceeds £2k, the decision must be summarised for residents through the completion of an Officer Decision Form.~~

15 Inform the Suppliers

- 15.1 For below threshold procurements following approval and any call-in period, using the latest versions of templates from the Procurement ~~& Commissioning~~ Team, the Responsible Officer must write to inform the successful supplier of that decision. For above threshold procurements the Procurement Team will manage the communication process via the e-Portal. ~~The~~ Letter must state that award of the contract is subject to formalisation of a ~~the~~ contract.
- 15.2 At the same time, the Responsible Officer must write to each unsuccessful supplier, again using the template provided by the Procurement ~~& Commissioning~~ Team. Any specific content must be approved by the Procurement ~~& Commissioning~~ Team.
- 15.3 If a supplier asks for a de-briefing on why they he were was unsuccessful, the Responsible Officer must immediately contact the Procurement ~~& Commissioning~~ Team to agree on the de-briefing arrangements.
- 15.4 For above threshold procurements tThere must be a standstill period of a clear ten (10) days period between advising the suppliers of the provisional outcome of the procurement process and the formal confirmation of award of contract. This is to allow bidders the opportunity to challenge the process that has been followed before contracts are entered into. ~~and signing the contract (correspondence must be sent electronically, otherwise fifteen days applies).~~

16 Agree/ Sign the Contract

16.1 Depending upon the value/ subject matter of the contract, the following applies:

For all contracts:

<u>Activity</u>	<u>Under £50k & Low Risk Category</u>	<u>£51k - £181k (EU Services Threshold)</u>	<u>>£181k (Above Threshold)</u>
<u>Contract Signature</u>	<u>None required if Purchase Order or P Card.</u> <u>If another form of contract, the Head of Service</u>	<u>Head of Service and Director</u>	<u>Sealed as a deed (Shared Legal Services facilitate this) in presence of authorised signatory</u>

<u>Activity</u>	<u>Under £50k & Low Risk Category</u>	<u>Up to £100k</u>	<u>£100k – £150k</u>	<u>£150k – £500k</u>	<u>£500k+</u>
<u>Contract Signature</u>	<u>None required if Purchase Order or P Card. If another form of contract, the Monitoring Officer and the Head of Finance</u>	<u>The Monitoring Officer and the Head of Finance (via Legal Services)</u>	<u>Sealed as a deed (Legal Services facilitate this)</u>		

16.2 Procurement ~~& Commissioning Team will shall~~ arrange for publication of a contract award notice if appropriate (in the case of contracts above the EU threshold).

16.3 The Responsible Officer must ensure that all contract documents have been signed and/or sealed as appropriate by both parties and confirmation of such provided by Shared Legal Services (or Legal Services have agreed to the issue of a Letter of Intent) as soon as possible after contract award. The Contractor must not begin work until, either the contracts have been signed and/or sealed or the Contractor has been formally notified that they will be working on the terms and conditions as posted in the tender.

16.4 Legal Services must archive a copy and provide a copy of to the Responsible Officer.

~~16.5 A redacted version must be published.~~

Part 4

During the Contract Duration

1 Contract Management

1.1 The Responsible Officer ~~will shall~~ be the Contract Manager unless another officer is designated by the relevant Head of Service or Director.

1.2 The Contract Manager is responsible for:

- ensuring that the Contract is on the Contracts register;
- managing the contract and ensuring that it is carried out in accordance with its terms and conditions;
- monitoring the supplier's performance (-in accordance with the performance indicators in the contract);
- making the contractor aware that he is expected to comply with the Council's policies e.g. equal opportunities, counter-fraud and corruption, and whistle-blowing policies, and any changes in legislation;
- ensuring that the supplier maintains the insurance policies required by the contract;
- agreeing any minor changes to the contract (but not changes to prices) before they are carried out;
- keeping a record of all valuations, payments, claims, monitoring, changes and certificates under the contract;
- deducting liquidated damages, if appropriate;
- managing the transition between the ending of one contract and the beginning of another;
- business continuity and contingency planning;
- ensuring that dispute resolution is followed in accordance with the terms and conditions.

1.3 The Responsible Officer must consult the Procurement ~~& Commissioning~~ Manager for consideration of the Council's legal position :

- before any contract is terminated or suspended;
- in the event of a claim for payment not clearly within the terms and conditions of contract;
- before withholding payment to a supplier;
- before making any deduction from payments due to a supplier in respect of money owed to the Council;

- before consenting to sub-contracts, assignments to new suppliers and novations to new suppliers;
- before making any extension to a contract or variation of the scope of a contract.

2. Extensions to contracts

2.1 An extension to a contract is an additional period at the end of the initial fixed term of the contract, during which the works or the services to be carried out are a repetition of the works or services under the original contract.

2.2 Unless a contract specifically includes an option to extend its initial fixed term, that contract may not be extended. The contract will cease to exist at the end of its term.

2.3 ~~___~~ If a contract specifically includes an option to extend its initial fixed term ~~and the~~ following all apply (if applicable):

- the OJEU notice or other advertisements for the contract stated that an extension contract may be awarded;
- the estimated value of the contract in the OJEU notice or other advertisements took account of the potential extended contract;
- the extension represents good value for money for the Council.

~~If the value of the contract is below £500,000 the approval levels in 14.1 must be followed. GMT, in consultation with the Lead Member, the Lead Member for Finance and the Leader, may make a decision to award the extension contract if the value of the extension is not more than £500,000.~~ If the value of the extension is £500,000 or more, the decision to award the extension contract must be made by Cabinet.

~~2.4 Shared 2.4~~—Legal Services must be instructed to formalise, archive and provide copies of any extensions.

~~2.5 extensions.~~ An expired contract cannot be extended. Procurement must be consulted with adequate time to discuss future requirements. Any further agreements will be new contracts and have to follow these Contracts and Tendering Rules.

~~2.4~~

3. Variations to the scope of contracts

3.1 ~~Contracts should not varied unless variations have been anticipated within the terms of contract, by: Provided that a budget has been allocated for that expenditure and value for money can be demonstrated and Legal Services have been consulted, the Responsible Officer may agree with a supplier for them to carry out additional works or services that were not included in the original contract but which:~~

- The OJEU notice or other advertisements for the contract stating that a variation can/may be awarded. The Notice will describe what variations may be made;
- The estimated value of the contract in the OJEU notice or other advertisements took account of the potential variation of the contract;
- ~~through unforeseen circumstances have become necessary~~
- ~~cannot for technical or economic reasons be carried out or provided separately from those included in the original contract without major inconvenience to the Council~~

~~The additional works or services must not exceed 50% of the value of the original contract and authorisation must be given by CMT if the value of the additional works or services is less than £500,000 or by Cabinet if the value of the additional works or services exceeds £500,000. For below threshold contracts provided that a budget has been allocated for that expenditure and value for money can be demonstrated and Shared Legal Services have been consulted, and the total contract spend (existing plus proposed) does not exceed EU thresholds the Responsible Officer may agree with a supplier for them to carry out additional works or services that were not included in the original contract but which:~~

- through unforeseen circumstances have become necessary;
- cannot for technical or economic reasons be carried out or provided separately from those included in the original contract without major inconvenience to the Council;
- the additional requirement is more of the same.

The additional works or services must not exceed 50% of the value of the original contract and authorisation must be given by HOS.

3.2 For above threshold contracts, unless the variation has been anticipated, the variation must be more of the same as the original contract and not greater than 50% of the original value. If the variation is not more of the same, the Procurement Team must be consulted. Authorisation must be given as per approval levels in 14.1.

3.32 Shared Legal Services -must be instructed to formalise, archive and provide copies of any variations.

Part 5

Waivers to Contract Rules

1.1 1.1—A waiver to Contract and Tendering Rules is a permission to let a contract without complying with one or more of the Contract and Tendering –Rules. Elements determined by legislation (e.g.CPR 2015 and EU Regulations) cannot be waived, and it should be noted that this should be the exception and not become accepted practice.

<u>Activity</u>	<u>Under £50k</u>	<u>£51k - £181k (EU Services Threshold)</u>	<u>>£181k (Above Threshold)</u>
<u>Waiver Approved</u>	<u>Head of Service</u>	<u>Director</u> <u>Relevant Lead Member to have been consulted</u>	<u>Director and Managing Director</u> <u>Relevant Lead Member to have been consulted</u>

1.2 Approvals to waive the Contract and Tendering Rules are as per the table above. The relevant Lead Member, or if the Lead Member is not available another member of Cabinet must be consulted the Responsible Officer. Only the Chief Operating Officer or their authorised deputy may grant an exception to these Contract Rules. The Lead Member, or if the Lead Member is not available, another member of the Cabinet, must be consulted by the Responsible Officer.

1.3 Applications for exceptions must be made by using the online form in RBWM’s CMX Tool. Rationale and justification will be required. Finance will add commentary as to the budgetary provision for the requirement and Procurement will add commentary as to their involvement in the requirement and the potential risks posed to the Council in approving the waiver. Applications for exceptions must be made in writing and signed by the Responsible Officer and their Head of Service, following advice from the Procurement & Commissioning Manager. They must include the waiver that is requested and the justification for the waiver.

1.4 The- Procurement & Commissioning Manager will keep a register of all Waivers to Contract and Tendering Rules, and produce a summary report for the Chief Finance Officer on a quarterly basis. which shallThe register will -be available by appointment for inspection by members of the Council and the public.

1.5 Waivers to Contract Rules will never be given retrospectively, and should be for the shortest period possible.

- 1.6 An application for a Waiver to Contract and Tendering Rules, to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit a waiver to Contract and tendering -Rules. If an application to let a contract without genuine competition is granted, the Responsible Officer responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.
- 1.7 A waiver to the requirements to let a contract without genuine competition may be granted in the following circumstances:
- an unforeseeable emergency involving danger to life or health or serious damage to property, in which the work, goods or services are required more urgently than would be possible if the procedure were followed;
 - acquiring goods or services from a different supplier would result in incompatibility with existing goods or service or disproportionate technical difficulties;
 - when a grant from a public body includes a recommendation as to the supplier or is time limited;
 - ~~if there are exceptional circumstances in which it would not be in the Council's best interests to comply follow the procedure.~~