

# **PART 8 – OTHER RULES OF PROCEDURE**

## **A – CONTRACT AND TENDERING PROCEDURE RULES**

# **CONTRACT AND TENDERING PROCEDURE 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 fit for purpose goods, services and works.
- Safeguards its reputation from any implication of dishonesty or corruption.
- Is open, fair, transparent, and proportionate and fully compliant with Procurement Law (the Public Contracts Regulations 2015 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.

The Procurement Team can be consulted for any requirements, however, 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. Where a Concession contract is being considered Procurement must be consulted to establish whether the proposal meets the criteria to be considered a Concession Contract. 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 Concession contracts, Service Level Agreements (SLAs), Memorandum of Understandings (MoUs); grants 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).
  - 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.
- 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 directorate complies with these Contract and Tendering 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.
- 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.

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 Councillor has a monetary interest in the business, or a close member of their family must be approved by the Chair of Cabinet and the Cabinet 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, and who should make the Monitoring Officer aware, 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, via the Head of Finance.

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, via the Head of Finance.

### **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 must use. They may be managed by an officer in a different service to the Responsible Officer. Unless otherwise agreed by the Procurement 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 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, variations 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 Procurement Law and/or these Contract and Tendering Rules.
- 3.4 Procurement Law covers contracts which are below the relevant UK Procurement threshold where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers must seek advice from the Procurement Team on the application of Procurement Law where repeat purchases and/or purchases of a similar type may be required.
- 3.5 As the Responsible Officer may not know of all of the requirements outside of their service area, the Procurement 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 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/output based. All works, goods and services must be specified by reference to European standards, or national standards where no European standards exist and with the words “or equivalent” added. Named products or manufacturers must not be specified as to do so would be in direct contravention of Procurement Law.
- 4.3 The statement of requirements should incorporate measurable and, 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 Framework will be used.
- 5.2 Frameworks are contracts set up by central/ collaborative bodies which other parties can utilise. Use of a Framework can speed up the supplier selection process and leverage economies of scale. The Procurement Team can provide guidance on how to find out more about specific Frameworks. Responsible Officers must check that:
- the Council is legally entitled to use the Framework;
  - the purchases to be made legally fall within the coverage of the Framework;
  - the Framework meets the Council's own requirements in terms of quality and cost;
  - any other pros and cons of using the Framework versus running a Council competition must be considered.
- 5.3 Each 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. Legal services do not have to be involved in contract terms and conditions set by the Framework Provider unless procurement consider it necessary.
- 5.4 If a Framework is not the most appropriate route, the Council will need to run its own competition. The tables below provide details of the process that must be followed depending on the contract value, unless an exception is granted by the Procurement Manager.

## For Supply/Services contracts

<b>Activity</b>	<b>£0 - £50k</b>	<b>£51k – UK Procurement Supply/Services Threshold (as at 01/22 £213k)</b>	<b>&gt; UK Procurement Supply/Services Threshold (as at 01/22 £213k)</b>
<b>Minimum Number of Suppliers</b>	No minimum	Three  Notices can be placed in Contracts Finder.	The Regulations.  Notices must be placed in Find A Tender (FTS) and Contracts Finder.
<b>Minimum Time for Supplier Response</b>	No minimum but must be reasonable.	Not less than ten calendar days but must be reasonable.	As per regulations / rules governing Procurement Route selected.



## For Works and Concession contracts

<b>Activity</b>	<b>£0 - £50k</b>	<b>£50 - £500k</b>	<b>£501k - UK Procurement Works/Concession Threshold (as at 01/22 £5.3M)</b>	<b>&gt; UK Procurement Works/Concession Threshold (as at 01/22 £5.3M)</b>
<b>Minimum Number of Suppliers</b>	No minimum	Three Notices can be placed in Contracts Finder. Constructionline may be used.	Five Notices can be placed in Contracts Finder. Constructionline may be used.	The Regulations. Notices must be placed in Find A tender (FTS) and Contracts Finder.
<b>Minimum Time for Supplier Response</b>	No minimum but must be reasonable.	Not less than ten calendar days but must be reasonable.	Not less than ten calendar days but must be reasonable.	As per regulations / rules governing Procurement Route selected.

## 6. Set the Assessment Criteria

- 6.1 A minimum level of capability must be set. This may include financial stability, having essential policies in place and evidencing relevant experience. These are known as the selection criteria. The selection criteria must be set proportionately to the value and risk associated with the requirement and be fair and open to all potential bidders.
- 6.2 Suppliers who meet the selection criteria should be considered on a more detailed basis. Responses would normally be evaluated on a combination of quality and price criteria this is known as the award criteria. The combination of quality and price is known as MEAT (Most Economically Advantageous Tender).
- 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 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 but may not include elected Members of Council, or Consultants. 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, Concession and Works:

Activity	Under £50k	£51k - £213k	> £213k
Selection of Terms and Conditions	PO Terms and Conditions or Self Service Terms and Conditions from SharePoint.	Self Service Terms and Conditions from SharePoint.	Legal Services must be instructed.

- 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). A copy of the Purchase Order terms and conditions can be found on Sharepoint in Procurement Templates. 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 UK Procurement Services threshold (£213k as at 01/22) or of any value that is considered high risk (e.g., involves safeguarding, statutory requirements, intellectual property rights or is high profile), Legal Services must be instructed via Sharepoint to provide Terms and Conditions. For similar, repeat requirements, a single instruction to Legal Services for template Terms and Conditions is acceptable. Any template Terms and Conditions must not be altered without reference to Legal Services. 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 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 Legal Services and the circumstances have been agreed with the Procurement Manager.
- 7.5 The Responsible Officer must give full instructions to Legal Services so that the contract is an effective 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 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)
    - **£10 million** 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 be 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 other 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 (Go out the Market)**

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

For Supply/Services:

<b>Activity</b>	<b>&lt;£213k (Below threshold) (as at 01/22 £213k)</b>	<b>£213k+ (Above threshold) (as at 01/22 £213k)</b>
<b>Seek Approval to Proceed</b>	<b>Head of Service / Assistant Director</b> , A record of the request for approval can be done via email and must be kept for audit purposes and be available on request.	<b>Relevant Head of Service / Assistant Director, in consultation with Heads of Service Group and relevant Cabinet Member(s)</b>  A record of the request for approval can be done via email. A briefing note must be prepared for the group to be consulted. Sufficient time must be given to review and provide comments. Once consultation has concluded, the HOS should complete an Officer Decision form.

The exception to the above is that for emergency social care placements, the Director of People may grant approval for placements. A record of these placements must be maintained by the DASS/DCS and the Contracts Register.

For Works and Concession Contracts:

<b>Activity</b>	<b>&lt;£500k</b>	<b>£501k+</b>
<b>Seek Approval to Proceed</b>	<b>Head of Service / Assistant Director</b>  A record of the request for approval can be done via email and must be kept for audit purposes and be available on request.	<b>Relevant Head of Service / Assistant Director in consultation with Heads of Service Group and relevant Cabinet Member(s)</b>  A record of the request for approval can be done via email. A briefing note must be prepared for the group to be consulted. Sufficient time must be given to review and provide comments. Once consultation has concluded, the HOS should complete an Officer Decision form.

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.

8.2 Decisions must be recorded as per the tables above.

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 Team):

- Analysis and evaluation of all options for contract packages and methods of procurement, referring to market analysis and collaborative/ shared arrangements.
- Demonstration of alignment to Council vision and priorities.
- 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., Single Use Plastic (SUP); electric vehicles, 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).
- GDPR consideration, Privacy Impact Assessments completed.
- 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 (go out to the market) has been obtained, where required, advertisements can be placed. Above threshold procurement, where a Framework is not being used requires a Find A tender (FTS) Notice and a Contracts Finder Notice. Only the Procurement Team can place an FTS advertisement; Contracts Finder Notices can be placed by anyone with a logon userid.

9.2 For below threshold procurements, unless otherwise agreed in writing by the Procurement Manager the instructions to suppliers must be in the latest version of the templates created and maintained by the Procurement 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.

## **10 Receipt of Submissions**

10.1 For all above threshold procurements the Council's e-procurement system must be used. For below threshold procurements the Responsible Officer is responsible for receiving and holding secure all emailed submissions. It is preferred that a Generic Email address is used for receipt of submissions. Emails and their attachments must not be opened until after the submission date and time has expired.

10.2 For any responses that are received after the date and time specified for return the supplier must be advised accordingly. The Responsible Officer must obtain advice from the Procurement Manager if they wish to accept a late response. The Responsible Officer must notify the Procurement Manager 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.

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; 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 Procurement Law and are therefore not to be undertaken. Clarification questions and answers must be fully documented in a form approved by the Procurement Manager. Responses must not be finally evaluated and scored until clarifications have been completed.
- 11.3 All responses received that have met our minimum stated requirements 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 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.

## **13 Lack of Suitable Responses**

- 13.1 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.

## **14 Seek Approval to the Outcome (Approval to Award)**

- 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:

<b>Activity</b>	<b>&lt;£213k</b> <b>(Below UK Procurement Services threshold)</b> <b>(as at 01/22 £213k)</b>	<b>£213k - £500k</b>	<b>£500k+</b>
<b>Seek Approval to Contract</b>	<p><b>Head of Service / Assistant Director</b></p> <p>A record of the request for approval can be done via email. A briefing note must be prepared. Once consultation has concluded, the HOS should complete an Officer Decision form.</p>	<p><b>Relevant Head of Service / Assistant Director in consultation with the Corporate Leadership Team and relevant Cabinet Member(s)</b></p> <p>A record of the request for approval can be done via email. A briefing note must be prepared for the group to be consulted. Sufficient time must be given to review and provide comments. Once consultation has concluded, the HOS should complete an Officer Decision form.</p>	<p><b>Cabinet</b></p> <p>The Cabinet Report Template will be used, and the Cabinet Approval process followed.</p> <p>Responsible Officer will ensure that the requirement is placed on the Forward Plan in sufficient to reflect the agreed Procurement Timeline.</p>

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 and Concession contracts:



Activity	<£250k	£251k - £500k	£501k+
<b>Seek Approval to Contract</b>	<p><b>Head of Service / Assistant Director</b></p> <p>A record of the request for approval can be done via email. A briefing note must be prepared. Once consultation has concluded, the HOS should complete an Officer Decision form.</p>	<p><b>Relevant Head of Service / Assistant Director in consultation with the Corporate Leadership Team and relevant Cabinet Member(s)</b></p> <p>A record of the request for approval can be done via email. A briefing note must be prepared for the group to be consulted. Sufficient time must be given to review and provide comments. Once consultation has concluded, the HOS should complete an Officer Decision form.</p>	<p><b>Cabinet</b></p> <p>The Cabinet Report Template will be used, and the Cabinet Approval process followed.</p> <p>Responsible Officer will ensure that the requirement is placed on the Forward Plan in sufficient to reflect the agreed Procurement Timeline.</p>

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.

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 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 Council's vision and priorities.
- 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.

**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 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-Procurement Portal. Letters must state that award of the contract is subject to formalisation of a contract.
- 15.2 At the same time, the Responsible Officer must write to each unsuccessful supplier, again using the template provided by the Procurement Team. Any specific content must be approved by the Procurement Team.
- 15.3 If a supplier asks for a de-briefing on why they were unsuccessful, the Responsible Officer must immediately contact the Procurement Team to agree on the de-briefing arrangements.
- 15.4 For above threshold procurements there must be a standstill period of a clear ten (10) days 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.

**16 Agree/ Sign the Contract**

- 16.1 The Council now uses online signature software (DocuSign) to secure contracts with suppliers. Where Procurement and/or Legal have been involved in the procurement exercise, they will coordinate contract signatures with legal services. Where the self-service process has been followed the Responsible Officer is responsible for coordinating with legal services. Both processes will result in the signed contracts being stored securely and shared to the interested parties, with the Contracts Register being updated.

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

For all contracts:

Activity	Under £50k & Low Risk Category	£51k - *£213k (UK Procurement Services Threshold)	>*£213k (Above Threshold)
Contract Signature	None required if Purchase Order or P Card.	Director	Sealed as a deed by legal services using DocuSign.

	If another form of contract, the Head of Service / Assistant Director		
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\* UK Procurement Services Threshold used for all contracts including Supply, Services, Works, and Concession Contracts.

- 16.2 Procurement Team will arrange for publication of a contract award notice if appropriate (in the case of contracts above the UK Procurement 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 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.

## Part 4

### During the Contract Duration

#### 1 Contract Management

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

1.2 The Contract Manager is responsible for:

- Ensuring that the Contract is on the Contracts register and updated with any changes made to the Contract.
- 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).
- Ensuring that the supplier complies with the Council's policies e.g., equal opportunities, safeguarding, counter-fraud and corruption, and whistle-blowing policies, and any changes in legislation, as agreed during the procurement process.
- 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, and following the variation instructions in Part 4, Section 3.
- 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 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 Responsible Officer must speak to the Procurement Manager before extending a contract.

2.3 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.

2.4 If a contract specifically includes an option to extend its initial fixed term the following shall apply (if applicable):

- The FTS Notice, other advertisements and the Procurement Documentation for the contract stated that an extension contract may be awarded.
- The estimated value of the contract in the FTS Notice or other advertisements took account of the potential extended contract.

If the value of the contract extension is below £500,000 the approval levels in paragraph 14.1 of Part 3 must be followed.

If the value of the contract extension is **£500,000** or more, the decision to award **the extension must be made by Cabinet**.

2.5 Legal Services must be instructed to formalise, archive and provide copies of any extensions.

2.6 An expired contract cannot be extended and must not be permitted to roll. Procurement must be consulted with adequate time to discuss future requirements. Any further agreements will be new contracts and must follow Council Contracts and Tendering Rules.

## 3. Variations to the scope of contracts

3.1 A variation to a contract is where material changes are made to the contract, e.g. add new services, change the way services are delivered, buy additional goods. Above threshold Contracts must not be varied unless variations have been anticipated within the terms of contract, by:

- The FTS 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 FTS Notice or other advertisements took account of the potential variation of the contract.

For **below threshold contracts** provided that a budget has been allocated for that expenditure, value for money can be demonstrated, Procurement has been consulted, and the total contract spend (existing plus proposed) does not exceed UK Procurement 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 be approved as per the approval levels in paragraph 14.1 of Part 3. Where Variations change values and/or dates, the Contract Register must be updated.

- 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 10% for Services and Goods and 15% for Works of the original contract value. If the variation is not more of the same, the Procurement Team must be consulted.
- 3.3 Authorisation must be given as per approval levels in paragraph 14.1 of Part 3. If the value of the contract variation is **£500,000** or more, this is a key decision and must be placed on the Forward plan and the decision to award **the variation made by Cabinet**.
- 3.4 Legal Services must be instructed to formalise, archive and provide copies of any variations.

## Part 5

### Waivers to Contract Rules

- 1.1 A waiver to Contract and Tendering Rules is a permission to not comply with one or more of the Contract and Tendering Rules, it should be noted that waivers must be the exception and not become accepted practice. Waivers granted should be for a limited time to enable compliant contracts to be put in place.
- 1.2 Elements determined by legislation (e.g., CPR 2015 and Procurement Law) cannot be waived.
- 1.3 The table below shows the approvals necessary for waivers.

Activity	Under £50k	£51k +
Waiver Approved	Head of Service / Assistant Director  Relevant Cabinet Member to have been consulted	Head of Service / Assistant Director & Executive Director  Relevant Cabinet Member to have been consulted

- 1.4 The relevant Cabinet Member, or if the Cabinet Member is not available another member of Cabinet must be consulted by the Responsible Officer.
- 1.5 Applications for exceptions must be made by using the online form on the Council's website. Rationale and commercial 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.
- 1.6 The Procurement Manager will keep a register of all Waivers to Contract and Tendering Rules and produce a summary report for the Corporate Leadership Team and the Monitoring Officer on a monthly basis. The Register will be available by appointment for inspection by Councillors and the public.
- 1.7 Waivers to Contract Rules will never be given retrospectively.
- 1.8 An application for a Waiver to the Contract and Tendering Rules, to allow a contract to be let without genuine competition will not be granted without a cogent reason and only for the shortest period possible. A lack of time caused by inadequate forward planning or resources 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 more than the market price and that the contract represents best value for money.

- 1.9 A waiver to the requirements to let a contract without genuine competition will be approved where a Director of Service considers that there is no alternative, but in making that decision they will take into consideration:
- Whether adequate market research has been evidenced, and that the proposal offers genuine good value.
  - That the requirement has been reviewed and meets the Council's requirements.
  - Whether it is a timely request, and whether sufficient time has been left to conduct a procurement exercise if rejected.
  - Whether this is a repeat request.
  - The length of contract requested, and where appropriate approve a shorter time if possible.
  - That in awarding the contract we are complying with current legislation, e.g. GDPR, Equality & Diversity, Environmental.
  - That this is a considered request and not an expedient avoidance of the Rules.
- 1.10 A specification and contract terms must be secured with the Supplier for all requirements that have been obtained via a waiver.
- 1.11 All completed waivers will be entered on to the Contracts Register.
- 1.12 For requirements that are above the UK Procurement threshold (as at January 2022), no waivers will be granted.
- Services Threshold - £213,477
  - Works and Concession Contracts Threshold - £5,336,937.

If there is continued need for the requirement, and there is insufficient time to secure a compliant contract the client will complete a waiver form with all the information required for a below threshold waiver but in addition will provide the following:

- A full project plan describing how compliance will be obtained and by when. The plan will include actions to be completed, resources required, and key parties to the plan and must be for the shortest time possible.
  - Background and explanation for the non-compliance.
- 1.13 The submission will be reviewed by the Procurement Manager, Head of Service / Assistant Director, Executive Director of Service and the Monitoring Officer. Once the Plan is agreed, the Executive Director of Service will be accountable for the plan being maintained.



- 1.14 If the request is £500k or more the Monitoring Officer will consult with the Chief Executive as this will require an emergency chief executive decision and be placed on the Forward Plan for Cabinet approval.
- 1.15 The agreed project plan end date will be entered onto the Contracts Register.
- 1.16 The monthly Waiver report will show all Non-Compliant Contract Project Plans that have been agreed, with the resolution date. The Head of Service / Assistant Director, and/or Executive Director of Service will report on progress regularly.
- 1.17 It should be noted that the agreement of the Project plan and the process to obtain compliancy does not constitute a waiver, it is an acknowledgement of the non-compliance and an agreement as to how that non-compliance will be resolved. In some circumstances the non-compliance will be placed on the Council's Corporate Risk Register to monitor progress.