

Part 4 – Rules

Chapter 1 – Contract Rules

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SECTION A

GENERAL APPLICATION OF THE RULES

1. Introduction

- 1.1. These Contract Rules (“Rules”), issued in accordance with section 135 of the 1972 Local Government Act), are the Council’s procedure rules for procuring, (buying, renting, leasing etc) goods, services and works for the Council. They are intended to promote good purchasing practice and public accountability and to deter acts of corruption.
- 1.2. The Rules are part of the Council’s Constitution and therefore Officers have a duty to ensure they have fully understood them prior to commencing any procurement or contracting activity.
- 1.3. These Contract Rules are to be read alongside current UK legislation / regulations. Where there is any conflict between the Regulations and these Rules the legislation / regulations shall prevail.

2. Definitions

- **Approval Table** - means the table set out in Rule 10.2 detailing the Contract Value bands together with the level of approval required.
- **Bronze Category** - means any procurement for Project, Goods, Works, or Service’s identified as costing up to £30,000 inclusive of VAT.
- **Contract** - means any contract, agreement or order for the carrying out of work, the provision of services or the supply of goods or materials to or for the Council, whether by the purchase, lease, rental or hire purchase, including the provision of services to the public on the Council’s land or premises or a concession contract. It shall not include contracts for the employment of staff or the sale, purchase, lease or license of land or buildings.
- **Contract Award Notice** - means the notice required to be published in FTS and Contracts Finder indicating that a relevant contract has been awarded by the Council pursuant to the Regulations which also encompasses the requirements of Regulation 84 of the Public Contract Regulations 2015.
- **Contract Award Report** - means the formal written report detailing the procurement conducted as provided for in Rule 58.
- **Commercial Services Team** - means the commercial services team who can be contacted via email on commercialservice@lbbd.gov.uk
- **Contract Notice** - means the notice required to be published in FTS and Contracts Finder indicating that the Council intends to commence a relevant procurement pursuant to the Regulations.
- **Contract Value** - means and shall be measured as the aggregate amount the Council expects to pay the Contractor over the total duration of the contract (including any inflation uplift and any extension period) or where the Council is not paying a contractor directly, the Contract Value will be the financial benefit

that the contractor will receive over the duration of the contract. If there is any doubt in respect of such a valuation, Corporate Procurement must be consulted. Please note the total value must include VAT as detailed in PPN10/21

- **Corporate Procurement** - means the Council's procurement function <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Corporate-Procurement.aspx>
- **Council Company** - means any company or organisation owned or controlled by the Council.
- **Cross-border interest** - means the potential interest that providers in EU Member States may have in tendering for a contract.
- **Emergency** - means a serious unforeseen event, situation or occurrence that happens unexpectedly, and which is likely to cause immediate danger to the Council, its residents or property if immediate action is not taken. The Emergency must be urgent and unforeseen – for example, natural disasters such as flooding, fires or bombing, or financial or operational, such as a current supplier ceasing to operate leaving residents without critical services.
- **Framework Agreement** - means any agreement between the Council or the Council and one or more contracting authorities and/or one or more contractors, the purpose of which is to establish the terms governing contracts to be awarded to contractors during a given period, in particular regarding price, and where appropriate, the quantity envisaged.
- **HWB** - means the Council's Health and Wellbeing Board as established and set out in Part 2, Chapter 7 the Council's Constitution.
- **ITT (Invitation to Tender)** - means an invitation to prospective bidders to submit tenders for contracts with a Contract Value that falls under the Gold Category.
- **ITQ (Invitation to Quote)** - means an invitation to prospective bidders to submit quotes for contracts with a Contract Value that falls above the Silver Category but below the Gold Category.
- **Gold Category** - means any procurement conducted with a value of £213,477 inclusive of VAT or more
- **Key Decision** - means a decision which must be made by the Cabinet/HWB in accordance with Part 2, Chapter 16, paragraph 3 of the Constitution.
- **Legal Services** - means the Council's in-house Legal Services team ([Legal Services \(sharepoint.com\)](#))
- **Light Touch Regime** - means the regime prescribed and covered by Part 2, Chapter 3, Section 7 of the Public Contract Regulations 2015 for social and other specific services.
- **Non-commercial considerations** - means the considerations fully defined in Section 17 of the Local Government Act 1988 (as amended);
- **Officer Scheme of Delegation** - means the corporate / departmental financial authorisation scheme of delegation for officers set out in the Council's Financial

Rules as the same may be amended from time to time by the Chief Financial Officer.

- **PAS91** - means the industry standard SQ for works entitled 'Construction Pre-qualification Questionnaires'.
- **Personalised Contract** - means a contract that relates to the social, educational or welfare/care needs of a child or an individual adult.
- **PIN** - means a Prior Information Notice. A PIN can be published before a procurement commences, when a requirement is above UK thresholds, and makes it possible to reduce the time needed to complete the competition.
- **Procurement Board** - means the Council's corporate Procurement Board.
- **Procurement Documents** - means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.
- **Procurement Strategy Report** - means the formal written report provided for in Rule 38.1 setting out the Procurement Strategy for the proposed procurement.
- **Regulations/Legislation** - means the Public Contract Regulations 2015 and Concession Contracts Regulations 2016 , as amended.
- **Retained EU Law** - means the definition as set out in the s 6(7) European Union (Withdrawal) Act 2018, which defines it as anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4.
- **Retained Treaties** - means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before 31 December 2020 in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section.
- **SQ** - means a Pre-Qualification Questionnaire (Supplier Questionnaire).
- **Scheme of Delegation** - means the corporate scheme of delegation set out in Part 3 of the Council's Constitution and/or the Officer Scheme of Delegation as appropriate.
- **Silver Category** - means any procurement conducted between the value of £30,001 to £213,476 (including VAT)
- **Suitability Assessment Questions** means a question which relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing.

3. Scope of the Contract Rules

- 3.1. These Rules apply to all contracts and procurements for goods, works or services entered into by or on behalf of the Council, irrespective of whether the contract is financed from Council funds or from external funds, grant or other funds intended to be spent on procurement by the Council.
- 3.2. These Rules apply to all Officers of the Council and third-party contractors providing goods and services for and/or on behalf of the Council where the relevant contract between the Council and contractor provides for the contractor to comply with these rules.
- 3.3. These Rules shall not apply to Council-owned companies, who shall be responsible for ensuring that their procurement arrangements are robust, achieve best value and are legally compliant except where the relevant agreement provides for the company or organisation to comply with these Rules.
- 3.4. Where a Council -owned company procures on the Council's behalf, the company must comply with the Council's requirements and processes as defined in these rules unless the relevant agreement permits them to follow their own processes.

4. Exempt and Partially Exempt Procurements

Exempt Procurements

- 4.1. These Rules do NOT apply to:
 - a) The acquisition or disposal of land or any interest in land - The Rules do not apply where the Council is acquiring or disposing of any interest in land, whether by freehold, lease, license etc. Legal Services and Property Services must be consulted on Development Agreements, as these may be considered a 'works' contract.
 - b) Contracts of employment - Human Resources should be consulted in respect of such contracts.
 - c) In-House Contracts - The tendering and contract award provisions of these rules shall not apply to the award of contracts between the Council and Council owned companies or such other bodies over which the Council has oversight provided the following conditions can be met:
 - (i) the Council exercises control over the entity similar to that which it exercises over its own departments.
 - (ii) more than 80% of activities of the entity relate to the performance of tasks entrusted to it by the Council; and
 - (iii) there is no direct private capital participation in the entity (with the exception of non-controlling and non-blocking forms of private capital participation required by national law in conformity with the EU Treaties).Where Officers are unsure about the application of this rule they must consult with Legal Services.
 - d) Subscriptions/ Membership fees - These Rules do not apply where the Council

is paying a subscription fee for any professional, political or other such grouping to which the Council or Council Officers belong on a professional or representative basis.

Partially Exempt Procurements

- 4.2. The procurements and contracts listed below are exempt from the full tendering requirements in that Officers do not need to undertake a full procurement tender exercise. Officers must ensure however that the requirements of Rule 10.2 are adhered to, that the appropriate procurement strategy approval process has been followed e.g. by the Procurement Board, and that any necessary waiver has been granted.
- a) Framework Agreements/Contracts - Procurements from Frameworks are exempt from the full application of the Rules provided the framework has been properly procured under the Regulations and the procurement is made in accordance with the Framework's terms and conditions.
 - b) Consortia Arrangements - Where a procurement is made by another public authority or body (as lead contracting authority) acting with, by, or for the Council and any other authority, these Rules will not apply provided the Regulations and standing orders of the lead contracting authority or body have been followed and the provisions of Rule 10.2 followed.
 - c) Emergency procurements - Goods, works or services may be procured in a genuine Emergency without complying fully with the Rules provided an appropriate waiver has been obtained in accordance with Rule 35.9.
 - d) Personalised Contracts - Chief Officers may exempt Personalised Contracts from the full tendering requirements of these Rules. Officers must ensure however that the requirements of Rule 10.2 are adhered to where possible. Procurement Strategy Reports must be prepared before any procurement for such contract which meets the Gold Category is commenced. Such report shall be submitted for consideration and approval by the relevant Chief Officer rather than the Procurement Board. Personalised Contracts, where the Council is statutorily obliged to enter into the contract, may be approved by the Chief Officer rather than by the Cabinet / Health and Wellbeing Board (HWB).
 - e) The instructing of counsel or lawyers by the Chief Legal Officer where the Contract Value falls into the Bronze or Silver Category.

5. Chief Officer Responsibilities

- 5.1. Each Chief Officer for the department procuring the goods, works or services shall be responsible for the compliance by Officers within their department with these Rules.
- 5.2. Authority to make decisions under these Rules may be further delegated by Chief Officers to other Officers within their department. Those officers who have delegated authority to take decisions in the name of the Chief Officer must be identified in the Officer Scheme of Delegation for the relevant department.
- 5.3. Chief Officers will be held accountable for all decisions made within their department under delegated authority and these Rules.

- 5.4. The Chair of the Council's Procurement Board shall be the Council's lead Officer responsible for procurement overview and obtaining value for money.

Officers' Responsibilities

- 5.5. Procurements and contracts can only be made or entered into by duly Authorised Officers and in accordance with the Scheme of Delegation.
- 5.6. Officers must also ensure that any persons and/or organisations acting on behalf of the Council and spending Council funds e.g. contractors, agents, consultants and partners) fully comply with these Rules.
- 5.7. Officers responsible for purchasing on behalf of the Council must comply with these Rules, any accompanying Guidance, the Council's Procurement Strategy, Social Value Policy, applicable Financial Rules, and all UK and European Union law (if applicable) and binding legal requirements. In particular, where appropriate, Officers must comply with the provisions of the [Public Contract Regulations 2015](#).
- 5.8. It is Officers' ultimate responsibility before embarking on any procurement activity and particularly if they are in any doubt about whether the Rules apply, to seek appropriate advice, support and guidance from the Council's Corporate Procurement team and/or Legal Services.

6. Boards and their Roles

Cabinet and Health and Wellbeing Board (HWB)

- 6.1. Cabinet is ultimately responsible for all the Council's strategic procurement. Whilst Chief Officers have delegated authority to procure and award contracts with a Contract Value of less than £500,000, Cabinet shall be entitled to require any such procurement or contract to be approved by Cabinet if it deems fit.
- 6.2. Whilst Cabinet and Cabinet Members may propose, agree, or participate in setting the procurement strategy for any procurement or contract, Members, and in particular Cabinet Members, should avoid direct participation in the procurement and evaluation process for any contract.
- 6.3. The HWB has the same power as Cabinet to authorise the procurement and award of contracts where such procurement /contract is funded in part or in whole from the Public Health Grant or from within social care budgets.
- 6.4. Where a procurement or contract is funded partly or entirely from the Public Health Grant or a social care budget, any approval, authorisation, waiver, reference, or consultation required from Cabinet can be made either by Cabinet or the HWB. The relevant Chief Officer shall determine the appropriate body to make the decision.
- 6.5. Cabinet/HWB must agree the Procurement Strategy for all procurements of:
- a) all proposed revenue contracts with a Contract Value of £500,000 or more and
 - b) contracts where the final award may involve outsourcing any part of an existing in-house service or bringing a service back in-house.

Procurement Board

- 6.6. The Procurement Board's primary role is to review, assess and challenge procurement strategies to ensure the required outputs align with the Council's core priorities.
- 6.7. Procurement Board is a required gateway to review the detail contained in the strategies prior to being submitted to Cabinet/HWB for Member scrutiny and approval or, depending on value, being signed off by the relevant Chief Officer.
- 6.8. The Procurement Board as a minimum will provide scrutiny to ensure commercial and operational benefits are to be achieved through the strategy. This will include Social Value, Equalities Impact Assessment, Carbon Net Zero and sustainability (this is not exhaustive and should cover the key priorities as set out in the Council's 5-year plan).
- 6.9. Procurement Board is also responsible for maintaining a Procurement Forward plan for all procurements existing or new that exceed the Gold Category
- 6.10. Promotes and shares best practice and any changes in legislation/mandate to ensure compliance is maintained and communicated.

7. Annual Procurement Plan

- 7.1. Corporate Procurement shall prepare and maintain an annual forward-looking Procurement Plan. The Plan shall consist of details of all the new contracts which have been registered with Corporate Procurement and for which procurements (including extensions, additions and renewals) are planned for the forthcoming financial year. The Plan shall include all contracts with a Contract Value of £500,000 or above scheduled to commence in the forthcoming financial year.
- 7.2. The Procurement Plan serves two principal purposes:
 - a) To provide Cabinet and other readers with an overview of significant procurement activity; and
 - b) To inform potential suppliers of major future market activity.
- 7.3. Corporate Procurement shall each year prepare and submit an annual report to Cabinet detailing the contracts on the Procurement Plan and a brief summary of the proposed procurement strategy for each contract.
- 7.4. Upon consideration of the Procurement Plan report, Cabinet may confirm its agreement to the complete proposed Plan or in part any individual procurements or contracts which requires more detailed Procurement Strategy Reports to be submitted to it for closer consideration.
- 7.5. The procurement strategy for any contract with a Contract Value above £500,000 which has not been approved by Cabinet as part of the Procurement Plan in accordance with Rule 7 must be approved in line with the Gold Category.
- 7.6. The Procurement Plan shall be regularly reviewed and updated with any new planned procurement activities to be added.
- 7.7. A similar plan and report as described in Rule 7 shall be prepared and maintained in

respect of contracts funded in part or in whole from the Public Health Grant or from within social care budgets and reports thereon submitted (following the same procedure as set out above) for approval by the HWB at such frequency as the HWB shall deem appropriate.

8. Conflict of Interests

- 8.1. If any Officer or Councillor involved in any procurement or award of contract has any connection - whether past or present, direct or indirect - with any bidder, then:
- a) that connection should be declared and registered using the appropriate conflict of interest form (see the Council's Constitution, in particular the Codes of Conduct for both Officers and Councillors); and
 - b) such officer or Councillor must not participate in any aspect of the tender process.

Any market research or consultation with third parties shall be conducted in accordance with Rule 12.

- 8.2. For all Gold Category procurements all officers/Councillors must complete conflict of interest statements.

9. Consequences of Non-Compliance with these Rules

- 9.1. If the Council enters into a contract without complying with these Rules, the procurement process and subsequent contract could be challenged by an aggrieved party. If challenged the courts have the power to award damages against the Council or may issue an injunction which could prevent the Council from entering into the contract with a successful bidder.
- 9.2. In the case of a contract that should be procured under the UK procurement regime, i.e. under the Regulations, the courts also have the power to fine the Council and more importantly, can declare the award of the contract 'ineffective' which means the Council may be prevented from entering into the contract or the contract may be cut short.
- 9.3. It is therefore imperative that there is strict compliance with these Rules when carrying out procurement on the Council's behalf.
- 9.4. Officers failing to comply with or found to have breached these Rules will be subject to disciplinary action.

SECTION B

PROCUREMENT AND GOVERNANCE THRESHOLDS

10. Procurement Legal Thresholds and Governance Categories

10.1. The current UK thresholds (at 1 January 2023) are as follows;

Type	Threshold (inclusive of VAT @ 20%)	Threshold (excluding VAT)
Goods and Services	£213,477	£177,897
Works	£5,336,937	£4,447,447
Concession	£5,336,937	£4,447,447
Light Touch	£663,540	£552,950

10.2. The Council has internal governance thresholds for procurement classified as Bronze, Silver and Gold categories. The values and governance required at these thresholds is set out below.

	BRONZE	SILVER	GOLD (
Value	£0 – £30,000 inc VAT	£30,001 - £213,476 inc VAT	£213,477 and above inc VAT
Minimum tender requirements	Two quotes – one of which must be from a local company	Three quotes (minimum) - one of which must be from a local company	Formal tender
Approval route	Budget holder unless less than two quotes are obtained, then a Delegated Authority report is required and signed by the budget holder	Budget holder unless a minimum of three quotations cannot be obtained, then a Delegated Authority report is required and signed by the budget holder. A copy of the Delegated Authority is to be attached to the Purchase Order at point of raising.	A Procurement Strategy Report is required to be presented to Procurement Board (and if required then Cabinet/HWB). Once approved by the Board(s) the strategy will need to be signed by the responsible officer within the delegated level of approval
EIA	No	No	Yes
Requirement to advertise	No	Yes – e procurement tool	Yes - e-procurement tool
Award Report Required	No	Yes	Yes

SECTION C

PRE-PROCUREMENT CONSIDERATIONS

11. Collaborative Options – Internal and External

- 11.1. As part of the initial strategic review and strategy development, consideration should be given to collaborative working or pooling of resources/spend profiles.
- 11.2. As part of the data and spend analysis it should be identified if there are any other areas of the Council that is purchasing the same or similar goods or services to ensure we aggregate the spend to give the best commercial envelope to take to the market.
- 11.3. In the event there are similar or complimentary requirements, further consideration should also be given for splitting the procurement into smaller or separate Lots to maximise process efficiencies and to achieve the outputs required for each of the requirements.
- 11.4. As part of the strategy development external collaborative opportunities should be explored, this would enable a larger spend profile to be taken to market to drive economies of scale. Although this may not be possible in some cases due to funding restrictions.

12. Market Research and Soft market Testing

- 12.1. Officers responsible for procurement may consult potential providers prior to the commencement of a procurement exercise with a view to preparing the procurement and informing providers of their procurement plans and requirements. This may include seeking or accepting advice from independent experts, authorities or from market participants. Advice obtained in the preliminary market consultation process can be used in the subsequent planning and conduct of the procurement procedure provided that the advice does not have the effect of distorting competition and does not breach requirements for non-discrimination and transparency. Officers should consult Corporate Procurement for advice.
- 12.2. Where a candidate or tenderer, or an undertaking related to a candidate or tenderer, has been involved at the pre-procurement stage (for example they have advised the Council in relation to 11.1 above or have otherwise been involved in the preparation of the procurement procedure) the Council must take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer, for example by providing the information which has been made available at the pre-procurement stage to all tenderers. Such measures shall be recorded in a Regulation 84 report.
- 12.3. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to treat suppliers equally.
- 12.4. Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.
- 12.5. Officers must avoid any conflict of interest as provided for in Rule 8 of these Rules.

13. Pre-Procurement Notices

- 13.1. Officers must ensure that any Notice (Prior Information Notice (PIN) or Contract Notice) required for the UK Procedure are placed in Find A Tender by a member of Corporate Procurement.
- 13.2. A PIN may be used by the Council:
 - a) to make known their intention of planned procurements through the publication of a prior information notice, or
 - b) as a call for competition.
- 13.3. In each such case the provisions of [Regulation 48](#) shall be complied with.
- 13.4. Where officers wish to use this method, advice must be sought from Corporate Procurement and Legal Services.

14. Review the Council's Contracts Register

- 14.1. Prior to any Procurement Process being developed the contracts register should be consulted to determine whether contracts are already in place to deliver Projects, Works Goods or Services of this type which the service could access. The Contracts Register can be accessed here: [Contract Register](#)
- 14.2. If contracts are already in place, this could remove the requirement for an additional exercise, saving on both time for the service having to undertake a procurement, and possibly cost where an improved price may be possible through economies of scale etc. Contact Corporate Procurement to ensure this is permissible under the contract terms and scope.
- 14.3. If an appropriate contract does not already exist, then the service should continue with the procurement exercise.

15. Insurance and Bonds or Other Security

- 15.1. Before commencing procurement, Officers should take advice from the Council's Insurance team on levels and type of insurance that may be required for the contract.
- 15.2. Every contract for the carrying out of works or the provision of services shall require the contractor to take out and maintain Employers Liability, Public Liability and such other insurance policies as are deemed appropriate for the duration of the contract.
- 15.3. The contractor shall take out insurance for such a period as the Council's Insurance Team shall advise. Officers shall reserve the right to check insurance certificates for this period.
- 15.4. Where the contractor has not taken out the required insurance, the responsible Officer must notify the Council's Insurance team immediately.
- 15.5. Officers should seek advice from the Insurance team and Corporate Procurement to determine whether a performance bond, parent company guarantee (PCG) or other security will be required from the successful tenderer as a condition of the contract being awarded to such tenderer. Any such requirement shall be included in the ITT

or otherwise advised to tenderers before the deadline for submission of tenders.

- 15.6. Where the Insurance team advises that a bond, PCG or other form of security is required Officers shall ensure that arrangements are in place for the provision of the bond, or such other security required, before the contract start date. The Councils Insurance Team should be informed of the commencement of the contract and if applicable be provided with copies of the Contractor's policy documents.
- 15.7. The Bond, PCG or other security should be checked during the lifecycle of the contract to ensure it still offers the Council the surety from its original point.

16. Equalities Impact Assessment (EIA) and Corporate Risk

- 16.1. All Gold-level procurements must include a summary of Equalities Impact Assessment (EIA) conducted in relation to the proposed procurement in accordance with the Council's Equality Policies and procedures and conform with legislative requirements. A copy of the full EIA must be kept on file.
- 16.2. Officers are required to assess the risk associated with the contract being procured as part of the Silver and Gold Categories. The risk assessment is split into two parts:

Silver Category

- Operational Delivery Risk: The Commissioner will be responsible for assessing operational delivery risks which shall be measured by completing the Council's Risk Assessment tool, the tool can be accessed at <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Contracts-and-Procurement-Team.aspx>
- The risks and mitigations set out within this risk assessment should be used to drive contract management good practice as detailed in Rule 63 and in conjunction with the Contract Management Toolkit which can be accessed at <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Contracts-and-Procurement-Team.aspx>

Gold Category only

- In addition to the risk process detailed in the Silver Category above, the below process is required;
- Financial Risk: The Commissioner and Corporate Procurement will undertake a risk assessment using the Councils Risk Assessment Tool to establish which of the two financial evaluation methodologies will be used as detailed in Rule 25 and can be accessed at <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Contracts-and-Procurement-Team.aspx>

17. The Council's Social Value Policy

- 17.1. Officers should procure in compliance with the Public Services (Social Value) Act 2012 which requires that officers undertaking procurement consider:
 - a) how what is proposed to be procured might improve the economic, social and environmental well-being of the Council's geographical area;

- b) How, in conducting the process of procurement, it might act with a view to securing that improvement; and
 - c) In addition to the legal requirement to comply with the Public Services (Social Value) Act 2012, officers must comply with the Council's Social Value Policy (<https://www.lbbd.gov.uk/social-value-policy>) which states that all procurements over £100,000 must include a minimum 10% social value weighting in the scoring evaluation.
- 17.2. All Commissioners should consider securing outcomes that deliver to the following priorities:
- a) Investment in local people
 - b) Investment in local economy
 - c) Environmental sustainability
- 17.3. The Social Value Toolkit (<https://www.lbbd.gov.uk/social-value-policy>) provides more detail on the type of activities that suppliers can consider when developing their Social Value commitments to the council. It is recommended that the Toolkit be provided to potential suppliers as part of the procurement process.
- 17.4. For further assistance regarding Social Value, please contact the Social Value Coordinator socialvalue@lbbd.gov.uk
- 17.5. Wider Social Impact considerations should also be considered alongside the requirements to provide Social Value outcomes and the following points should be read in conjunction with this Section C.
- 17.6. In particular officers should wherever possible, but without breaching any law, use the Council's purchasing power to support local small and medium-sized enterprises (SMEs) or voluntary and community organisations. Officers should seek benefits and added value for the local geographical area and where this provides equal or better value for money for the Council than alternatives.
- 17.7. Officers must carefully review the required specifications and evaluation methodology of any procurement to ensure that small and medium sized enterprises are not being disadvantaged in their ability to tender for goods, works or services with the Council. Officers must not, however, conduct a procurement in any way that is likely to show bias towards or discriminate in favour of any such organisation.
- 17.8. Officers must ensure that processes do not over burden or restrict Small to Medium Enterprises (SMEs) or voluntary and community organisations (VCS) from having the same opportunity to respond to procurements as those in the commercial sector. Equally, consideration should be given to the supply chain and how each specific procurement can help the local community and local small medium enterprises within the borough.
- 17.9. Officers may incorporate questions in their Invitations to Tender and evaluate responses relating to local economic benefits, and regeneration within the community or any other benefits (such as apprenticeships and employment) that support the local economy and prosperity for the borough where this is appropriate to the procurement. Advice on the preparation of the ITT and where appropriate, the Selection-Qualification Questionnaire (SQ), can be obtained from Corporate

Procurement or the Council's Social Value Coordinator.

17.10. Officers must include a statement as to how the procurement meets and addresses the Council's Social Value policies in every Procurement Strategy Report covering the procurement.

17.11. Relevant bodies can, in exercise of the Community Right to Challenge (under the Localism Act 2011), propose a solution to provide a service that the Council currently provides. Advice on the process to follow should be obtained from the Council's Policy Team (should a challenge be received).

18. Sustainable Procurement

18.1. Sustainable procurement offers the Council the opportunity to encourage and work collaboratively with suppliers and contractors.

18.2. Officers must consider the environmental and social impacts of the procurement and endeavour to adopt practices that maximise service outcomes and at the same time minimise adverse impacts on the environment.

18.3. Officers are required to consider ways of procuring more resource and energy efficient alternatives and pay particular regard to the Council's environmental policies including the targets as set out in the Climate Emergency declaration.

19. Freedom of Information and Data Protection

19.1. The Council has specific obligations under the Freedom of Information Act 2000 and Data Protection Acts regarding disclosure of information, and all tenderers must be notified that any documentation produced and provided during the procurement process may be subject to disclosure under the Acts.

19.2. During tender processes, bidders must be informed that they should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information made to the Council. Bidders should state why they consider the information to be confidential or commercially sensitive. Any such information shall be identified in the contracts concluded between the Council and successful bidder. This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.

20. Term of Contract and Costs Assessment including extension periods

20.1. Officers must consider what the appropriate contract term is for each procurement and include provisions to enable contract extensions to be agreed at the Council's discretion. Officers must submit extensions for all Gold Category procurements to Procurement Board for approval.

20.2. For Goods and Services, it is recommended that the term should be a maximum of 5 years including any periods of extension unless there is clear justification set out in the Procurement Strategy Report.

20.3. In the event that capital repayment or concession payback periods need to be calculated, please discuss these with Corporate Procurement prior to setting the term.

- 20.4. Contract spend against the agreed pricing methodology (for example, price per item, bulk service cost/schedule of rates) should be monitored by the contract manager throughout the lifecycle of the Contract, to include any extended periods. Depending on the duration of the Contract and levels of competition, contracts should include Contract Reviews to enable both the Council and Supplier to assess spend levels to date to provide assurance that the service maintains value for money.
- 20.5. The spend over the contract term must NOT exceed the approved value contained within the approval documentation such as Delegated Authority, procurement strategy or waiver.
- 20.6. The spend must be equal or below the values agreed in the procurement process conducted, this should be validated prior to raising an initial purchase order or receipting to pay an invoice.

21. Key Decision

- 21.1. Officers must consider whether a procurement involves a Key Decision. Typically, a procurement would not qualify as a Key Decision, irrespective of the value, if the funding is already provided for within the service budget and the approval being sought merely relates to the proposed procurement route / strategy.
- 21.2. If it is decided that a procurement does constitute a Key Decision (ie. approval is also being sought for additional funding) and the Contract Value exceeds £500,000, Officers must include the Procurement Strategy Report on the Cabinet/HWB Forward Plan.
- 21.3. Chief Officers may approve the procurement and award of contracts with a Contract Value of up to £500,000, in accordance with paragraph 4.7(a) of Chapter 1, Part 3 of the Constitution.

22. The Application of IR35

- 22.1. If procuring an individual person or a person as a service, then prior approval must be obtained from Work Force Board (WFB) approval for the role.
- 22.2. If procuring a person as an individual or as a service, then an assessment must be undertaken to determine whether the IR35 regulations apply.
- 22.3. In the event that a temporary or interim worker accepts a new temporary or interim role with the Council and the role is different to the one previously conducted, then the officer must conduct a new IR35 determination process.
- 22.4. In the event that a temporary or Interim worker provides the same service to the Council and exceeds a 12-month period, a new IR35 determination must be conducted and each further 12-month period.
- 22.5. All records of IR35 Determinations must be kept in line with the data retention policy.
- 22.6. If advice or guidance is need on IR35 processes, the appropriate Human Resources Business Partner should be contacted.

23. Applicable Legislation and Health and Safety

- 23.1. Consideration must be given to the relevant legislation which covers the contract being procured. Examples include, but are not limited to: :
- Public Contract Regulations 2015 (PCR 2015)
 - Concession Contract Regulations 2016
 - Utilities Contracts Regulations 2016
 - Social Care Act 2014
- 23.2. Guidance should be sought from Corporate Procurement or the Legal Team to identify and agree the legislation that should be applied.
- 23.3. There is a need to ensure that contractors undertaking construction / maintenance works, either for or on behalf of the Council are well managed with regards to Health and Safety. Starting from pre-engagement through to completion.
- 23.4. For Bronze and Silver threshold contracts, the pre-engagement H&S questionnaire should be used, as well as the provision of information and monitoring documents <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Internal-Policies,-Forms,-and-Guides-regarding-Contractors.aspx>
- 23.5. For Gold threshold contracts the Corporate Procurement Team should be engaged and Pre-engagement H&S questions will form part of the process. However, the Provision of Information and Monitoring documents should still be used to assist with managing contractor risks on-site. <https://lbbd.sharepoint.com/sites/Intranet/SitePages/Internal-Policies,-Forms,-and-Guides-regarding-Contractors.aspx>

24. Development of a Specification or Schedule of Requirements

- 24.1. A specification is a description of needs or requirements. It provides a detailed description of the goods, services or works which a supplier is expected to supply during the lifetime of the contract. Prior to developing the specification knowledge of the market should be applied, or market research conducted, to determine which suppliers can meet the requirement. Detail should be proportionate to the purchase value, complexity and operational risk relating to the requirement in order not to deter SME's or the C&VS from bidding.
- 24.2. As a minimum, the following should be considered (note list is not exhaustive):
- Delivery timeframe
 - Deadline for works completion
 - Price format
 - For Services: day/hourly/all-inclusive rates (total cost)
 - Quality
 - Quantity
 - Required supplier experience
 - Size / dimensions
 - Performance (including KPI's and Service Credits)
 - Installation / maintenance / servicing / warranty
 - Delivery (should generally request "delivery inclusive" or "Delivery Duty Paid")
 - Features / options

- Technical requirements
- Integration with existing goods / services
- Software and training
- Health and Safety
- Sustainability Considerations
- Equalities
- Social Value for all spend over £100,000

24.3. Consideration may also need to be given to:

- Will cost be inclusive of delivery, maintenance, installation, upgrades, etc.?
- VAT inclusive?
- International purchase? If so, have I considered which party will be responsible “incoterms” e.g., potential import taxes or customs fees?
- Will this item fit through the door or will the floor support it?
- Are there any additional regulatory requirements, e.g., Health and Safety legislation?
- Are there any relevant Council Policies to be aware of?
- Is sustainability a relevant consideration? Examples:
 - Are poor working conditions, low pay or environmental issues an issue in the supply chain?
 - Is there an appropriate way to address this in my specification, e.g. to require a Fair Trade Label or equivalent?
 - Is there any way to conduct this purchase in a way that contributes to the Council’s goal to reach Net Zero Carbon target by 2030, e.g., to require higher energy efficiency in equipment?
- For the Bronze Category, if a specification is submitted to a supplier by email, it should be made clear that a quotation is being requested.
- For the Silver Category, when a specification is sent via the e-portal it must be made clear that this is an Invitation to Quote.
- For all Gold level spend it is recommended that the specification is reviewed by the Commissioning lead, Corporate Procurement and the Legal Team.

25. Evaluation Criteria (Quality and Financial) and Expectations including Ratio’s and Credit Reference Check

25.1. An essential part of the procurement process is setting out how returned bids will be evaluated, and to make sure set the methods out clearly to ensure all bidders can understand how this will be conducted, but also ensures the Officers have written processes to comply with during the tender process.

25.2. The Evaluation Criteria will predominantly be split into three main elements:

- a) **Quality:** This element will contain questions or method statements which will enable an evaluator to review response against a set of requirements that can be scored against the methodology set out in the ITT.

To assist with the scoring, it is recommended the following scoring matrix is used:

Score	Rating	Criteria for Awarding Score
5	Excellent	Excellent response that fully meets and exceeds the essential requirements and demonstrates exceptional understanding and evidence in their suggestion/proposed solution to the question. May demonstrate ability to deliver against additional desirable requirements. Response puts forward ideas that will offer added value and significant positive impact for the borough, with evidence to support the response.
4	Good	Good response that meets the essential requirements and demonstrates sound understanding and evidence in their suggestion/proposed solution to the question. Some reference to desirable requirements may be provided. Response puts forward ideas that will offer potential added value and positive impact for the borough, with evidence to support the response.
3	Satisfactory	Satisfactory response. Demonstration by the Tenderer of meeting some of the essential requirements and demonstrates some understanding and evidence in their proposed solutions to the question. Response puts forward ideas that offer limited added value and positive impact for the borough, with limited evidence to support the response.
2	Fair (potential fail)	Fair response but does not meet the essential criteria. Reservations of the Tenderer's understanding and proposed suggestions/solutions. Little added value or positive impact suggested and evidenced.
1	Poor (fail)	Poor response that has not addressed the question. Major reservations of the Tenderer's understanding and proposed suggestions/solutions, with little or no evidence to support the response.
0	Unacceptable (fail)	No response to the question or the response does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Tenderer has the understanding or suitable methodology, with no evidence to support the response.

If the standard scoring matrix is not to be used, any other form must be agreed with Corporate Procurement and Legal Services.

- b) **Price:** This element must clearly show how financial bids will be evaluated against other bids, and what calculation will be used to determine the outcome and against the % weighting, this also applies to e-auctions, the standard

approach is as follows:

$$(A \text{ divided by } B) \times C = X$$

A = the lowest submitted price

B = the price submitted by the bidder

C = the weighting (%)

X = the score

If the standard scoring matrix is not to be used, any other form must be agreed with Corporate Procurement and Legal Services.

- c) **Ratios and Credit Reference Agencies:** These can be used to incorporate pass/fail criteria, this must be set out in the ITT and discussed with Corporate Procurement, Corporate Finance and Legal Services prior to inclusion.

Ratio (Gold Category)

There will be industry specific ratio evaluation models developed by Corporate Finance, these will be used for all procurements that are deemed as high risk and have been rated Red through the Council's risk matrix (see paragraph 16 for more information).

The Ratio will evaluate a company based on financial risk, its cash flow and liquidity, this will reduce or mitigate the risk of failure due to financial performance.

Credit Reference Agency (Gold Category)

For all over threshold procurements that are not rated as Red through the Council's risk matrix, the use of a Credit reference agency will be applied. There will be model templates that include the process and the written explanation for use.

Credit Reference Agencies should also be used as part of Contract Management to assess the stability of a supplier during the contract lifecycle.

The Contract Management Team should be consulted in the use to ensure the good practice principles contained in the Contract management Toolkit are observed.

Social Value:

This element will contain questions or method statements which will enable an evaluator to review response against a set of requirements that can be scored against the methodology set out in the ITT.

To assist with scoring, it is recommended the following scoring matrix is used:

Score	Delivery Model (What)	Method Statement (How)
No response (0)	Question not answered	Either doesn't respond to the question or provides an answer which is not related to the Social Value question.
Poor (1)	Inadequate response, when a bidder has not provided measurable Social Value outcome which aligns with the specific requirements in the Council's Social Value.	Poor explanation or insufficient detail of how the measurable Social Value outcomes will be achieved.
Unsatisfactory (2)	Indicates an attempt to set out a measurable Social Value requirement but limited and the response doesn't outline or quantify what will be delivered.	Attempts to explain generically how the measurable Social Value outcome might be delivered but requires much more detail around the specifics and implementation plans to provide assurance the plan will deliver the outcomes.
Satisfactory (3)	Response meets the majority of our expectation and sets out a measurable outcome that shows; some level of link to the Social Value theme(s) and some explanation of this will deliver against the Social Value theme(s). Goes some way towards meeting part of our expectation around the impact & reach within the community or theme focused area.	Has the basis of a realistic plan of for how the Social Value outcome will be delivered including indicative timeframes and resources required. Shows a method has been considered of how to achieve impact within the defined community group or theme focused area.
Good (4)	Acceptable response which commits to the delivery of a measurable outcome which provides a good link to the Social Value theme(s), quantifies and explains expectations around delivery. Meets expectation around the impact & reach within the community or theme focused area.	Clearly outlines how the measurable Social Value outcome will be delivered in some detail, as well as giving an indication of timeframes. Explains the method for achieving targeted impact within the defined community group or theme focused area.
Very good (5)	Exceeds expectation, clearly quantifies Social Value outcomes against the particular theme(s) and offers significant additional benefits, in a specific way. Highlights the specific impact expected within the community group or theme focused area. Clear focus on the community & its needs.	Not only outlines in detail how the Social Value outcomes will be delivered but also gives certainty of the process and highlights the monitoring or reporting structures and accountability for delivery. Possible dedicates resources focused on achieving the outcome.

26. No Fault Termination / Break Clause

- 26.1. The Council may seek to insert a break/no fault termination clause into its contracts, this will enable the Council to give notice to a provider without recourse for costs outside of those for services already provided.
- 26.2. Generally speaking, a three-month notice period would be considered standard and the Council would need to outline this in the terms and conditions of contract being used.
- 26.3. In the event a break/no fault termination clause is considered, an assessment must be undertaken to show what impact this may have on bidding behaviours, or what risks may follow if the contract is terminated.
- 26.4. Consideration must be given whether this process is available to the supplier in tandem, or if the supplier should give a longer notice period, this generally would be the time required to undertake a re-procurement.
- 26.5. If this is built into the procurement process, Corporate Procurement Team and Legal Services must be consulted.

27. Early Termination

- 27.1. Legal Services and the Chief Financial Officer must be consulted in all instances where early termination or suspension of a contract is being proposed.
- 27.2. Irrespective of the reason for the termination of the contract, the final authorisation to suspend or terminate a contract can only be given by Cabinet/HWB or the commissioning Chief Officer or other Officer (as the case may be) with the level of authority to award contracts of the value of the contract which is to be terminated.
- 27.3. Approval for early termination of a contract shall not be given unless a report setting out the following has been prepared and submitted to the Officer or decision-making body:
 - a) The full circumstances leading to such termination;
 - b) The financial implications of such termination, including penalties or compensation liabilities;
 - c) The legal implications of such termination;
 - d) Proposals for ongoing service provision;
 - e) Continued funding capability following the termination;
 - f) Potential re-procurement requirements.
- 27.4. Except in an Emergency or where specific departmental processes have been approved for early termination or suspension (e.g. in Safeguarding cases) no High Value Contract shall be terminated or suspended without the express approval of the Procurement Board.

28. Shortlisting Criteria and Exclusion Criteria (including Pass/Fail)

- 28.1. Officers may introduce procedures for above threshold contracts aimed at reducing the number of bidders that it will invite to tender to a manageable number as part of the shortlisting process.
- 28.2. If a shortlist of potential bidders has to be drawn up in order to take forward a

manageable number of bidders, the criteria and reasons for shortlisting must be documented.

- 28.3. The shortlisting process must be open and transparent to all contractors and pre-determined selection criteria must be used.
- 28.4. The basis for both shortlisting and rejecting tenderers should be documented. These decisions must be based on factors that relate explicitly to the contractor's ability to deliver the contract.
- 28.5. The Council shall exclude a bidder from participation where a bidder has, or where the Council becomes aware, committed a criminal offence relating to fraud, corruption, terrorism, tax evasion, money laundering or such other offences as are prescribed in [Regulation 57 \(1\) – \(5\)](#).
- 28.6. The Council may exclude a bidder from participation where the bidder is found to be, or the Council becomes aware of the bidder becoming, bankrupt, guilty of professional misconduct, colluded with other bidders with a view to distorting competition and has shown significant deficiencies in the performance of a prior public contract or such other provisions as may be prescribed by [Regulation 57 \(8\)](#).
- 28.7. For full detail of the circumstances under which a bidder shall or may be excluded the Officer must obtain advice from Corporate Procurement.
- 28.8. These provisions will apply unless the bidder produces evidence that they have self-cleaned within the provisions of [Regulation 57 \(13\)](#).
- 28.9. Advice from Corporate Procurement should be sought before any bidder is excluded from the shortlist.

29. Terms and Conditions

- 29.1. The Council has a suite of standard contract terms and conditions, and these must be used unless where mandated by use of a framework or DPS.
- 29.2. Any framework or DPS terms and conditions (such as Access agreements, Header Terms, Call Off terms or the framework/DPS), must be reviewed by Corporate Procurement and Legal Services prior to acceptance.
- 29.3. If not using the Council's terms and conditions or approved framework terms and conditions and it is being proposed to contract using the Suppliers Terms, officers must not enter into any agreements without the express permission of Legal Services.
- 29.4. If there is any doubt on which terms to use or which would fit better with the procurement, please discuss this with the Corporate Procurement Team and/or the Legal Team.

30. TUPE (Transfer of Undertakings (Protection of Employment))

- 30.1. Where, as a result of any procurement, any employee either of the Council or of a current service provider is likely to be affected by changes to staffing or work conditions, redundancy, relocation or transfer of employment, Officers must have regard to the possible impact on such procurement and employee(s) of the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended. Such

TUPE issues should be included in the Procurement Strategy Report and any evaluation and award reports.

- 30.2. Officers must ensure that appropriate consultation with staff and trade unions is undertaken and that pension entitlements are considered and as far as possible, protected.
- 30.3. Advice regarding TUPE must be sought from Corporate Procurement and Human Resources and, where necessary, from Legal Services.

31. Route to Market and Process

- 31.1. Officers must consider what procurement method and procedure is most likely to best achieve the Council's objectives including, but not limited to:
 - a) Invitation to quote (for Bronze Category)
 - b) Procuring via an existing Corporate Contract or Council procured framework;
 - c) a full tender exercise;
 - d) Procuring via an existing Framework agreement; or
 - e) Utilising a buying consortium (e.g. ESPO, CCS) to procure on behalf of the Council, if this option is to be taken please discuss this with Corporate Procurement and Legal Services.
- 31.2. In addition, officers must also consider the options for the delivery of the required goods, services or works. The options include but are not limited to:
 - a) Providing the goods, services or works in-house;
 - b) Procuring a third-party public or private body to provide the goods, services or works on behalf of the Council;
 - c) Providing the goods, services or works in partnership with a third party; and
 - d) Commissioning jointly with another Council/public body.
- 31.3. Where a competitive tendering process is required by these Rules or by Regulations, there are six process that could be used as follows;
 - a) **Open procedure** – where all contractors expressing an interest in the contract are invited to submit tender bids in response to an advertisement.
 - b) **Restricted procedure** – where all interested contractors are invited to submit expressions of interest in response to an advertisement, and shortlisted contractors are then invited to submit a tender bid;
 - c) **Competitive Procedure with Negotiation** – where all interested bidders are invited to submit expressions of interest in response to an advertisement, and shortlisted contractors are invited to negotiate. This procedure can be concluded following evaluation of the bidders' initial tenders or can be carried out in successive stages in order to reduce the number of tenders to be negotiated provided this is indicated to bidders upfront. When the Council intends to conclude the negotiations, it must inform the bidders and set a deadline for

submission of new or revised tenders. The Council must then assess the final tenders based on the award criteria and award the contract.

- d) **Competitive dialogue** – where all interested contractors are invited to submit expressions of interest in response to an advertisement, and the Council enters into dialogue with shortlisted contractors to identify a solution (or solutions) which meets the Council’s requirements, and selected bidders are invited to submit tenders based on the solution/s resulting from the dialogue.
- e) **Innovation Partnership** – a procedure designed to allow the Council to establish a long-term partnership for the development and subsequent purchase of a new, innovative product, service or works. Officers must obtain advice from Corporate Procurement and Legal Services in relation to this procedure.
- f) **Negotiated Procedure without prior publication** – this procedure may be used in exceptional circumstances only and where the specific grounds for its application apply. Use of this procedure will require a waiver under Rule 35 and advice of Legal Services as well as Corporate Procurement has to be obtained before proposals for its use are progressed.
- g) **Light Touch Regime** – Contracts for social, education, health and other specific services listed in Schedule 3 of the Regulations and which have a contract value of £663,540 (inclusive of VAT) or over shall be subject to the Light Touch Regime. Light Touch Regime means that the procurement of these contracts are not subject to the same full regime as other above threshold service contracts but are subject to a lighter touch procedure which requires only that a contract notice or PIN be used to commence the procurement and a contract award notice published once a contract has been awarded. The Council has flexibility to determine what type of procedure it uses but any such procedure must comply with the principles of equal treatment and transparency and provide reasonable and proportionate timescales. Officers may use or adapt any of the procedures set out in Rule 31.

32. Setting up a Framework / Dynamic Purchasing System (DPS)

- 32.1. Officers must prepare a Procurement Strategy Report before they procure any Framework/DPS Agreement. Such procurement report must be approved by the Chief Officer or Cabinet/HWB, as the case may be, in accordance with the approval process set out in Rule 10.2 and ascertained on the basis of the aggregate Contract Value of the Contracts to be let under the Framework/DPS Agreement.
- 32.2. The term of any Framework Agreement must not exceed four years (Regulations requirement) except in exceptional circumstances relating to the subject of the Framework Agreement. Officers must seek advice and approval from Legal Services if a Framework Agreement for more than four years is required.
- 32.3. The term for a DPS will need to be discussed and validated by Corporate Procurement and Legal Services prior to publication.
- 32.4. The default for creating a call-off mechanism when creating a Framework Agreement should be a mini-competition. Proposals to resort to direct call-offs should be set out in the Procurement Strategy Report and approved by the Procurement Board or in the case of Personalised Contracts, by the relevant Chief

Officer.

- 32.5. The call-off mechanism for a DPS is by mini-competition only.
- 32.6. Officers must consider the impact of potentially closing the market in any sector to new suppliers during the period of the Framework Agreement and ensure that the benefits and length of the Framework Agreements are justified.

33. Project / Procurement Timeline including implementation timeframe

- 33.1. Procurement can take varying lengths of time depending on the Route to Market used and the complexity, size and longevity of the contract. To ensure the strategy can be delivered end to end, a project plan will need to be devised which sets out the key milestones, including, but not limited to:
- Approval Points (Officer, Chief Officer or relevant Board(s))
 - Pre-market engagement (if required)
 - Contract Drafting/Review
 - Development of the specification/schedule of requirements
 - Development of evaluation criteria, questions and methodologies
 - Advertising the opportunity (if over threshold mandated timescales)
 - Evaluation of returned bids
 - Moderation/mediation
 - Drafting and issuing de-brief letters
 - Standstill period (if required)
 - Contract sealing / signature
 - Implementation

SECTION D

PROCUREMENT CATEGORY PROCESS WORKFLOWS

34. Process Flows

34.1. Firstly, an assessment should be taken on the likely cost of the Project, Works or Service which is to be procured and then follow the appropriate category process workflow as set out below (for a summary of categories please refer to paragraph 10.2):



Bronze

Less than £30,000 inc
VAT

Led by the procuring
service with support from
Corporate procurement if
and when required



Silver

Between £30,001 –
£213,476 inc VAT

Led by the procuring
service in collaboration
with Corporate
Procurement




Gold

More than £213,477 inc
VAT


Led by the procuring
service in collaboration
with Corporate
Procurement (Category
Manager)

**Bronze Category Process Workflow: To be used for Project’s, Works,
or Service’s identified as costing less than £25,000**

	<h1 style="text-align: center;">Bronze Contract Rules</h1>		
<p style="text-align: center;">Goods, works, services, project costing less than £30,000 (inclusive of VAT)</p>			
	Key Steps	Tools / Templates / Quick Links	Guidance
<h1>1</h1>	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; width: fit-content; margin: auto;">Consult the contract register</div>	Contract Register	<p>If a contract already exists that meets your requirements this can be used, except when this would exceed the contract value. Please check with the Contract owner and Corporate Procurement.</p> <p>If you cannot use the existing contract, you must consult Corporate Procurement for advice.</p>
<h1>2</h1>	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; width: fit-content; margin: auto;">Develop a specification of requirements</div>	<p>Contracts and Procurement Team which includes links to:</p> <ul style="list-style-type: none"> • Purchase Order Terms • Short Form Terms 	<p>This includes:</p> <ul style="list-style-type: none"> • what you want and how do you want it to be delivered • evaluation criteria • the budget • what terms and conditions will be used (Council Purchase Order terms, short form terms or Supplier Terms) • value for money assessment if this reviewing an existing contract you can baseline costs to show savings, cost mitigations or service improvement <p>See paragraph 29 for further guidance on terms and conditions and paragraph 24 for details on what should be included within a specification</p>
<h1>3</h1>	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; width: fit-content; margin: auto;">Assess the market</div>		<p>You must have a minimum of 1 local supplier. If there are no local suppliers, seek advice from the Local Supply Chain Lead in Corporate Procurement before proceeding.</p>
<h1>4</h1>	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; width: fit-content; margin: auto;">Prepare the request for quote documentation and set return deadline</div>		<p>You must also agree the number of suppliers that will be invited to quote. This will depend on the market size.</p>

5	Issue Request to Quote to the identified suppliers		<p>You should issue the Request to Quote to all identified suppliers as close together to give all the same time to review and respond.</p> <p>If the brief changes, you must advise all potential bidders to ensure you have been fair to all.</p>
6	Review the quotes and select the proposal that meets both the quality and price aspect	Contracts and Procurement Team	<p>If you cannot comply with the requirement to source locally, then you will need to complete a Delegated Authority Form</p>
7	Inform successful and unsuccessful bidders of the outcome		<p>You should advise both the successful and unsuccessful suppliers by email and keep a record. For example.</p> <p>Thank you for your time to submit a quote/bid. Or this occasion you have not been successful.</p> <p>Or</p> <p>Thank you for your time to submit a quote/bid. I am pleased to inform you that you have been successful.</p>
8	Complete the contracts register form and submit to Corporate Procurement	Contracts and Procurement Team which includes links to the Contract Register Online Form	<p>If you have any questions in relation to the completion of the contracts register form, please contact Corporate Procurement.</p>
9	Commence contract and establish contract management over the contract period Observe 10-day standstill	Contracts and Procurement Team which includes links to the Contract Management toolkit.	<p>If Purchase Order Terms have been agreed these will be issued with the Purchase Order.</p> <p>Short form terms will need information from the bid being added to make up the contract</p> <p>If you are to use Supplier Terms please seek advice from Legal Services and Corporate Procurement to ensure acceptable liability coverage is maintained.</p>


Silver Category Process Workflow: For Project, Works, or Service identified as costing £30,001-£213,476 inc VAT

	<h1>Silver Contract Rules</h1> <p>Goods, works, services, project costing between £25,000 and £213,476 (inclusive of VAT)</p>		
	Key Steps	Tools / Templates / Quick Links	Guidance
1	Consult the contract register	Contract Register	If a contract/framework already exists that meets your requirements this can be used. Consult with Corporate Procurement who will be able to advise if the existing contract can be used. If both procurement and the contract owner agree to use of the existing contract a requisition can be raised using the normal purchase of goods/services process.
2	Assess value for money		<p>This includes:</p> <ul style="list-style-type: none"> • Baseline costs to evidence current position and to demonstrate savings or costs avoidance • Cost mitigations or service improvement <p>(Normally only applicable if existing service).</p>
3	Draft specification of requirements		<p>This is where you would consider what you want, how do you want it delivered, what are the outputs, what is the budget, how you will evaluate scores”</p> <p>See paragraph 24 for further guidance on what should be included within a specification.</p>
4	Assess the local market	Contracts and Procurement Team which includes links to the Delegated Authority Form	If there are no local suppliers that can deliver the service consult Corporate Procurement . If no local supplier exists, you will need to complete a Delegated Authority Form.
5	Consider terms and conditions	Contracts and Procurement Team which includes more information on terms and conditions	If Council terms will be used, please continue to the next step. You will need to consult with Legal Services if it is proposed that Supplier terms are to be used.

6	Place procurement onto the e-portal	<p>Procurement e-portal</p> <p>Training is available via i Learn</p>	<p>The Commissioner is responsible for this element with guidance from Corporate Procurement. This step will consist of the following:</p> <ul style="list-style-type: none"> • Advertise on the Local Business Forum and also through the BEC to engage the Local Supply Chain • Select known suppliers • Advertise in Contracts Finder unless using a framework or Dynamic Purchasing System (DPS) • Publish council terms and conditions unless using a framework or DPS • Publish on 'Find a Tender' Portal, The Council's Website as an opportunity <p>Training is required to gain access to the e-portal. Click here to access training via iLearn. If e-portal access is not available please contact Corporate Procurement who will be able to advise on next steps.</p>
7	Supplier/bidder clarifications		<p>Supplier/bidder may ask questions to clarify the specification. You must respond to all suppliers/bidders unless commercially sensitive information about the bidder. All response timelines must be the same. This ensures a fair, open and transparent process.</p>
8	Evaluate bids responses (via portal)	<p>Contracts and Procurement Team which includes links to the Delegated Authority Form</p>	<p>If there are less than 3 bids or less than 1 local supplier bid, then a Delegated Authority Form will need to be signed off by the budget holder.</p> <p>This should consists of the following:</p> <ul style="list-style-type: none"> • Client/commissioner – quality • If over 100k Social Value Co-ordinator/Commissioner – Social Value Return
9	Draft Award Report and obtain budget holder approval	<p>Contracts and Procurement Team which includes links to the Award Report.</p>	<p>The Commissioner will prepare the information required to enable the drafting of the report. Corporate Procurement can offer advice where necessary</p>

10	<p>Issue successful / unsuccessful letters and feedback via the e-portal. And respond to any challenge.</p>	<p>Procurement e-portal</p> <p>Training is available via i Learn</p>	<p>In the event there is a challenge to the decision then please contact Legal Services.</p>
11	<p>Publish award notice in contract finder via e-portal</p>	<p>Procurement e-portal</p> <p>Training is available via i Learn</p>	<p>This step consists of the following:</p> <ul style="list-style-type: none"> • Publish award notice on Contracts Finder portal • Add contract onto the central Contracts Register • File contract with Legal Services
12	<p>Commence the service</p>	<p>Contracts and Procurement Team which includes links to the Contract Management toolkit.</p>	<p>E-portal will send a reminder to the lead commissioner to advise when re- procurement should be reviewed and planned.</p> <p>It is the procuring service's responsibility to manage the contract and schedule its renewal, and to engage with Corporate Procurement and Legal Services to ensure sufficient resource can be allocated.</p>

Gold Category Process Workflow: For Project, Works, or Service identified as costing above £213,477 inc VAT

	<h1>Gold Contract Rules</h1> <p>Goods, works, services, project costing more than £213,477 (inclusive of VAT)</p>		
	Key Steps	Tools / Templates / Quick Links	Guidance
1	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; text-align: center;">Consult the contract register</div>	Contract Register	<p>If a contract/framework already exists that meets your requirements this can be used. Consult with Corporate Procurement who will be able to advise if the existing contract can be used. If both Procurement and the contract owner agree to use of the existing contract a requisition can be raised using the normal purchase of goods/services process.</p>
2	<div style="background-color: #f9cb9c; border: 1px solid #ccc; border-radius: 15px; padding: 10px; text-align: center;">Conduct Commercial Research</div>		<p>Procurement will lead this step, in conjunction with the Commissioner/ procuring service. This includes:</p> <ul style="list-style-type: none"> • Benchmarking • Market Warming • Market Capability
3	<div style="background-color: #f9cb9c; border: 1px solid #ccc; border-radius: 15px; padding: 10px; text-align: center;">Assess value for money</div>		<p>Procurement will lead this step, in conjunction with the Commissioner/ procuring service. This includes:</p> <ul style="list-style-type: none"> • Baseline costs to show savings • Cost mitigations or service improvement <p>(Normally only applicable if existing service).</p>
4	<div style="border: 1px solid #ccc; border-radius: 15px; padding: 10px; text-align: center;">Develop procurement strategy and obtain approval</div>	<p>Contracts and Procurement Team which includes links to the</p> <ul style="list-style-type: none"> • Procurement Strategy Report Template • Cabinet/ Board Report <p>Link to other Template Documents</p>	<p>You will need to complete a Procurement Strategy Report and present to Procurement Board for approval.</p> <p>Contracts over £500,000 A supplementary Cabinet/Board Report will need to be developed to obtain Cabinet or Health and Wellbeing Board approval. (Ensure the Forward Plan form is completed a minimum of 2 months prior to the Cabinet meeting the report will be presented at).</p>

5	Draft specification of requirements	<p>This is where you would consider what you want, how do you want it delivered, what are the outputs.</p> <p>Some of the content within the Procurement Strategy Report will form the basis of the specification</p> <p>See paragraph 24 for further guidance.</p>
6	Assess the local market	<p>Consult Corporate Procurement who will assist with this step. Together with Corporate Procurement you will establish if there are local suppliers that can deliver the service.</p>
7	Consider terms and conditions	<p>Legal Services will lead this step, in consultation with Corporate Procurement. If supplier terms are to be used then Legal Services will need to approve the terms in consultation with Corporate Procurement.</p> <p>Corporate Procurement will contact Legal Services to initiate the review.</p>
8	Place procurement onto the e-portal	<p>Procurement e-portal</p> <p>Corporate Procurement will lead this step and can consist of the following:</p> <ul style="list-style-type: none"> • Advertise on the Local Business Forum and also through the Barking Enterprise Centre (BEC) to engage the Local Supply Chain • Select known suppliers • Advertise in Contracts Finder unless using a framework or Dynamic Purchasing System (DPS) • Publish council terms and conditions unless using a framework or DPS • Publish on 'Find a Tender' Portal, The Council's Website as an opportunity
9	Evaluate bids responses (via portal)	<p>Corporate Procurement will lead this step. And consists of the following:</p> <ul style="list-style-type: none"> • Client/commissioner – quality • Corporate procurement – compliance/mandatory elements • Corporate Procurement/Finance – financial model return with support from Finance

			<ul style="list-style-type: none"> Social Value Co-ordinator/Commissioner – Social Value Return
10	Mediate Scores and rank bids against criteria.		<p>Corporate Procurement will lead this step and ensure all responses support the decision and Comply with PCR 2015. This will include any moderation.</p>
11	Draft award report and prepare feedback documentation	<p>Contracts and Procurement Team which includes links to the Award Report.</p>	<p>Corporate Procurement/Commissioner will prepare the information required to enable the drafting of the report, this will be commissioner-led, supported by Corporate Procurement.</p> <p>The feedback requirement will be led by Corporate Procurement with input from the Commissioner.</p>
12	Issue successful / unsuccessful letters and feedback via the e-portal. And respond to any challenge.		<p>Corporate Procurement will lead this step and will consult with Legal Services if there is any challenge.</p> <p>Observe 10-day standstill. The standstill period is a period of 10 calendar days, during which the contract award process is suspended.</p>
13	Publish and file the contract		<p>Corporate Procurement will lead this step, in conjunction with the Commissioner. This step consists of the following:</p> <ul style="list-style-type: none"> Publish award notice on Contract Finder and “find a tender” portals Add contract onto the central Contracts Register File contract with Legal Services
14	Commence the service	<p>Contracts and Procurement Team which includes links to the Contract Management toolkit.</p>	<p>E-portal will send a reminder to the lead commissioner to advise when re- procurement should be reviewed and planned.</p> <p>It is the procuring service’s responsibility to manage the contract and schedule its renewal, and to engage with Corporate Procurement and Legal Services to ensure sufficient resource can be allocated.</p>

35. Waiver Process and Impact of Waivers if not used correctly

- 35.1. A waiver is a process that can occur if the Council's Contract Rules cannot be adhered to providing there are justifiable grounds.
- 35.2. A waiver must not be used to disaggregate spend to negate the need to comply with the Council's Contract Rules and/or UK Legislation.
- 35.3. A waiver must not be used to avoid the administrative inconvenience of a process or formal tender process or as a direct consequence of poor planning and management.
- 35.4. The responsible officer must detail and evidence in a waiver report the grounds that support the need not to comply with the processes as set out in paragraph 10.2.
- 35.5. The following are the grounds on which a waiver may be granted by the Chief Officer:
- a) That an emergency situation exists, or
 - b) That there is clear evidence the goods, services or works to be procured are of a specialist technical, artistic or proprietary nature, or
 - c) That there is only one supplier in the market capable of providing the service, goods or works e.g. a specific artist with intellectual property rights in a work of art, such that there is no benefit to be gained from competition, or
 - d) For reasons of systems or software licence support or compatibility, or
 - e) The circumstances of the proposed contract are covered by legislative exemptions (whether under UK Law or EU if applicable).
- In the case of below-threshold contracts only, any of the above or where:**
- f) The contract is a Personalised Contract, or
 - g) The nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is such that a departure from the requirements of the Contract Rules is justifiable; or
 - h) There are other circumstances which are genuinely exceptional.
- 35.6. The responsible officer and the chief officer must consider if the justification in the report offers the grounds to support the waiver, evidence should be recorded and kept as a record alongside the waiver document as this will be relevant in the case of an Audit or FOI request.
- 35.7. No waiver shall be granted by a Chief Officer or by Cabinet/HWB which purports to or has the effect of waiving the requirements of UK Law or any principles of transparency, equality and non-discrimination.
- 35.8. Where the Contract Value of a contract is or exceeds £500,000, approval to waive any of the Rules in this Section D must be obtained from the Cabinet/HWB except in an Emergency, in which case the Chief Executive can issue the waiver pursuant to Rule 35.9.

- 35.9. In an Emergency, the Chief Executive can, on the advice of the Chief Legal Officer and the Chief Financial Officer, issue a waiver from compliance with any of the provisions contained in this Section D for a contract with a Contract Value which exceeds £500,000, provided the requirements of the Urgent Action procedure set out in paragraph 4, Chapter 16, Part 2 of the Constitution are complied with and subject to the Regulations. Any such waiver must be reported to the next available meeting of the Cabinet/HWB.
- 35.10. The Chief Officer must keep a written record of all waiver approvals for his/her department and work with Corporate Procurement to avoid seeking exemptions in future. Copies of this record must be produced to the Procurement Board, and when required by the Monitoring Officer or Audit.
- 35.11. The details of a waiver must be added to the Contracts Register and an award notice placed in Contracts Finder for all spend over £25,000.00. The contracts register contains a waiver section that must be completed.

Impact of Waivers if not used correctly

- 35.12. A waiver essentially removes the requirement to conduct a competitive process, this will remove the Council's ability to:
- Negotiate and demonstrate value for money (VfM);
 - Inhibits financial forecasting and budget monitoring and impacts savings methodologies;
 - Disaggregation of spend which would disengage strategic direction;
 - Potentially agree to terms and conditions that do not align with Council requirements such as Social Value, local impact etc.;
 - Limit the market moving forward;
 - Increases the risk of dependency on the supplier, making it very difficult to move away;
 - May inhibit innovation in the market/Council.
- 35.13. All waivers in the Gold Threshold must contain comments from Corporate Procurement and Legal Services prior to approval by the delegated officer or Board.
- 35.14. All waivers should be kept on a central register as the detail will be required and subject to Audit and Scrutiny.
- 35.15. In the event that a waiver is required, you will need to complete the Waiver template. Please note you will be required to fully justify the reason(s) why the process should not be conducted in line with the contract Rules. This process must only be used for Bronze and Silver Categories.
- 35.16. Waivers that exceed the Gold Category will need to be reviewed and approved by Legal Services and then by Procurement Board, and in the event they are a key decision and above £500,000 they will require approval from Cabinet/HWB.

SECTION E

PROCUREMENT KEY ELEMENTS – SUMMARY

36. Notice Types (when and where to use them)

- 36.1. Officers must ensure that any Prior Information Notices (PINs) or Contract Notice, by the Regulations are placed in the Find a Tender Service (FTS) and Contracts Finder if relevant based on value. The Notices are to be used as part of the Silver and Gold Categories and should be completed and published by the Corporate Procurement Team or the Category Manager.
- 36.2. PINs may be used by the Council:
- a) to make known their intention of planned procurements through the publication of a prior information notice, or
 - b) as a call for competition.
- 36.3. In each such case the provisions of [Regulation 48](#) of the Public Contracts Regulations 2015 shall be complied with.
- 36.4. The PIN Notice can be used as a tool to see how buoyant a market is, which may enable you to shape your procurement strategy and route to market options appraisal.
- 36.5. Where officers wish to use this method, advice must be sought from Corporate Procurement and Legal Services.

37. E-procurement Tool

- 37.1. All tenders for procurements in the Silver and Gold Categories must be issued electronically via the Council's e-procurement tool.
(<https://lbbd.bravosolution.co.uk/web/login.shtml>)
- 37.2. If support or advice is required on how to use the e-portal please contact Corporate Procurement.

38. Procurement Documentation

- 38.1. There are a number of documents required dependent on the level of spend, these are as follows in points 38.2 and 38.3; the following link will allow access to the documents detailed below
<https://lbbd.sharepoint.com/sites/Intranet/SitePages/Contracts-and-Procurement-Team.aspx>
- 38.2. **Gold** - A formal Procurement Strategy report will need to be completed, which clearly sets out the strategy for the Procurement. The Procurement Strategy will require implications from a Finance Business Partner, a Senior Legal Officer and a Procurement Category Manager as a minimum, the template can be found on the intranet in the Legal Services site.
- 38.3. **Award Report including Regulation 84** - An award report is required for all Silver and Gold Category procurements. The report will show the process agreed in the strategy, how the process was conducted and the result of the process. This report

will need implications from a Finance Business Partner, a Senior Legal Officer and a Procurement Category Manager as a minimum, the template can be found on the intranet in the Legal Services site.

- 38.4. For all Gold threshold procurements, Appendix A of the contract award report containing the Regulation 84 requirements will need to be completed on every above-threshold procurement (except for call offs from sole supplier frameworks or where a call-off from a framework is made without further competition)

39. SQ and ITT

SQ (Selection Questionnaire)

- 39.1. Where in above threshold (Gold Category) procurements Officers decide to include a SQ stage they shall:
- a) use the Standardised SQ Questionnaire (or the PAS91 for works contracts);
 - b) verify that bids submitted comply with the rules and requirements applicable to the tender; and
 - c) check whether grounds for exclusion apply and selection criteria is satisfied.
- 39.2. The Council may with a view to determining the economic and financial standing of tenderers impose requirements that tenderers possess the necessary economic and financial capacity to perform the contract.
- 39.3. In determining the requirements of 39.1 the Council may require tenderers:
- a) to have a minimum yearly turnover, which should not, except in exceptional high-risk situations, exceed twice the estimated Contract Value;
 - b) provide information on their annual accounts showing the ratios, for example, between assets and liabilities; and
 - c) have an appropriate level of professional risk indemnity insurance.

An SQ template will be available on the Council's e-portal, if any additional detail/questions are required, please consult with Corporate Procurement before continuing.

Invitation to Tender (ITT)

- 39.4. An Invitation to Tender details how the procurement process will be conducted, on what basis it will be evaluated and will detail the requirements that the Bidders will need prior to deciding whether to bid.
- 39.5. There are two templates available on the Council's e-portal, covering differing financial modelling:
- A template that uses the ratio methodology as set out in Rule 25.5, this will be used for all High risk (Red rated) contracts
 - A template for lower risk above threshold procurements will be covered by the turnover requirements in addition to a Credit Reference rating, the rating must be agreed with Corporate Procurement and Finance prior to publication.

39.6. In the event that clarification is required to which template to use or need assistance in its completion, please contact Corporate Procurement.

40. Using internal and external frameworks

- 40.1. Officers may access and call-off goods, services or works from a Framework Agreement if the Council is either specifically named or described or referred to in acceptable geographic terms (e.g. “all London Boroughs” or “all UK local authorities” etc) in the Framework Agreement and the scope of the Council’s requirements are specified in the Framework.
- 40.2. Officers must get confirmation from Corporate Procurement that the Council is signed up to or otherwise has access to a specific Framework Agreement before procuring from that Framework Agreement.
- 40.3. Where the terms of a Framework Agreement allow for direct call-offs without competition and the terms of such call-off are sufficiently precise, Officers may, after consultation with Corporate Procurement and Legal Services, call-off under the Framework Agreement without competition.
- 40.4. Where it is proposed to award a specific contract based on a Framework Agreement in which all the terms of the proposed contract are not laid down or where the terms of the Framework Agreement so specify, a mini-competition shall be held in accordance with the terms of the Framework Agreement. Unless otherwise provided, tenders shall be invited from all members of the relevant category of the Framework Agreement which are capable of carrying out or delivering the requirements of the specific contract.
- 40.5. Procurement Strategy Reports must be prepared for all procurements with a Contract Value over UK threshold or more intended to be made from framework agreements except where the subject-matter of the procurement has been included within the scope and calculations of a previously approved Procurement Strategy Report covering the procurement of works, goods or services of the nature proposed from the framework agreement.
- 40.6. Details of all contracts awarded under Framework Agreements must be provided to Corporate Procurement who shall publish such details on Contracts Finder.
- 40.7. Frameworks can be used to procure in the Silver and Gold Categories.

41. Setting up a Framework

- 41.1. It is assumed that all requirements to set up an internal framework would be conducted under the Gold Category process of approval.
- 41.2. Officers must prepare a Procurement Strategy Report before they procure any Framework Agreement. Such procurement report must be approved by the Chief Officer or Cabinet/HWB, as the case may be, in accordance with the approval process set out in Rule 10.2 and ascertained on the basis of the aggregate Contract Value of the Contracts to be let under the Framework Agreement.
- 41.3. The term of any Framework Agreement must not exceed four years (UK requirement) except in exceptional circumstances relating to the subject of the Framework Agreement. Officers must seek advice and approval from Legal

Services in the event that a Framework Agreement for more than four years is required.

- 41.4. The default for creating a call-off mechanism when creating a Framework Agreement should be a mini-competition. Proposals to resort to direct call-offs should be set out in the Procurement Strategy Report and approved by the Procurement Board or in the case of Personalised Contracts, by the relevant Chief Officer.
- 41.5. Officers must consider the impact of potentially closing the market in any sector to new suppliers during the period of the Framework Agreement and ensure that the benefits and length of the Framework Agreement are justified.
- 41.6. Officers should also explore potential income generation from opening the framework to be used by other Public Bodies, this should be discussed with Corporate Procurement and the Legal Team to ensure terms and conditions align to this situation.

42. Using internal or external DPS (Dynamic Purchasing System)

- 42.1. Officers may access and call-off goods, services or works from a Dynamic Purchasing System (DPS) if the Council is either specifically named or described or referred to in acceptable geographic terms (e.g. “all London Boroughs” or “all UK local authorities” etc) in the originating Notice.
- 42.2. Officers must get confirmation from Corporate Procurement that the Council is able to access or has already signed up to use the DPS before procuring from it.
- 42.3. The Officers must prepare a specification or scope of works that will be issued to all interested parties registered on the DPS.
- 42.4. The closing date for your request must be a minimum of 10 days to conform with UK legislation, and you must evaluate all returns.
- 42.5. Details of all contracts awarded under a DPS in the Silver and Gold Categories must be provided to Corporate Procurement who shall publish such details on Contracts Finder.

43. Site Visits / Presentations

- 43.1. Save where the Competitive Procedure with Negotiation or Competitive Dialogue Procedures are used to conduct procurement, careful consideration should be given to the use of presentations and/or site visits within the tender process. There should be a clear understanding of the reason for the use of the presentation or visit and how it will contribute to the evaluation process. The documentation must clearly state what relevance and weighting presentations/site visits carry as part of the award criteria. If in doubt, officers should seek advice from Corporate Procurement and Legal Services.
- 43.2. The default position should be not to conduct site visits except where any of the location, activity undertaken, state of repair and suitability of the site will be important factors in the delivery of the service. In such cases Officers need to consider whether such criteria should be applied at the short-listing stage. If a site visit is required, this must be declared as part of the evaluation criteria in the tender

documentation. The ITT should state clearly what issues will be evaluated, the criteria against which they will be evaluated and the scores and weighting to be applied. Alternatively, site visits may be used as a verification exercise to verify criteria set out in the ITT.

- 43.3. Where a service is to be provided from Council premises and it is considered important that potential providers view the premises, all bidders must be invited to be present or be included in every site visit initialised by the Council.

44. Business Continuity Plans and Disaster Recovery Plans

- 44.1. To ensure the Council has appropriate resilience in its services and supply chain, All Gold Category procurements require that the tender process includes the requirement for the bidders to provide a Business Continuity Plan (BCP) and/or a Disaster Recovery Plan (DRP).
- 44.2. This should form part of the ITT and can be either a scored or non-scored element.
- 44.3. In the event that a bidder cannot provide the BCP at point of tender, and they are successful in their bid, there is a requirement that they submit the BCP/DRP no longer than three months after 'go live' and this should be monitored as part of the contract management framework or during implementation (depending on the contract being procured)
- 44.4. The BCP/DRP should be tested as a minimum on an annual basis, this can take the form of a desktop exercise with the process and notes being completed including any improvement actions that must be completed by the Supplier and a new BCP/DRP issued to be held by the Council.
- 44.5. Where the risk is deemed very high (Red status) the testing program may be six-monthly until risks are mitigated and then annual reviews can be maintained.
- 44.6. The BCP/DRP requirements will also form part of the Council's Terms and Conditions as standard, in the event that you are seeking to use alternative terms and conditions such as a framework, you will need to discuss with Corporate Procurement and the Legal Team on how this can be addressed within the scope of the contract terms.

SECTION F

PROCUREMENT CONSIDERATIONS DURING THE PROCESS

45. SQ Standard template or Additional requirements

45.1. In the event that additional questions are to be inserted into the SQ template, this should only be conducted after review by Corporate Procurement and the Legal Team to ensure the additions do not expose the Council to risk of challenge or inhibits potential response in the ITT (please refer to Rule 39 for the SQ outline requirements).

46. ITT Methodology

46.1. The ITT is the document that sets out what the requirements are, how they shall be delivered and how bidders are evaluated. It is important to ensure that the process conducted mirrors the detail set out in the ITT. The main elements needed are:

- Any definitions being used in the document, written clearly and concisely;
- Introduction setting out expected start date, term and expiry and any extension options, and any potential periods, and a brief outline of the requirements;
- The procedure used eg Open Process;
- An indicative timetable, when it will be issued clarification period and response deadline;
- How the process will be run including how late or rejected tenders shall be managed;
- Any exclusion criteria and any pass/fail questions;
- Evaluation split across quality, price and Social Value, showing the percentage attributed to each element and also any further sub weightings. The Council's Social Value Policy requires all contracts over £100,000 to have a minimum of 10% weighting for Social Value;
- If an e-auction forms part of the process;
- Information governance and FOI requirements;
- Sets out the method questions for the quality aspect and how the financials and Social Value will be scored in more detail and will include elements such as Ratio's and/or Credit Reference agency use and any templates that need completing as part of the bid.

46.2. For templates, advice and guidance on any elements of the ITT, please contact Corporate Procurement and the Legal Team.

47. GDPR

47.1. The Council must comply with all Data Protection legislation.

47.2. The confidential data during the bidding process and during the contract lifecycle should be outlined. It should also be stated that the information maybe subject to disclosure under legislation.

47.3. The data could be issued by the Council as an example under TUPE requirements or issued by the supplier as part of their bid response.

47.4. The Council also needs to consider if any information that would be covered by the Act would be owned by the Council but used by the supplier as part of its service

delivery, such as names and addresses for marketing material mailing services.

47.5. Advice should be sought from the Information Officer as part of the strategy development to ensure compliance and guidance can be given prior to publication.

48. Fraud Prevention

48.1. Every contract shall contain a condition permitting the Council to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation, should the contractor, his servant or agent:

- a) offer, give or agree to give to anyone, any inducement or reward in respect of the relevant or any other Council contract (even if the contractor does not know what has been done); or
- b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
- c) commit any fraud in connection with any Council contract, whether alone or in conjunction with Council members, Officers, contractors or employees.

48.2. The Council shall exclude a bidder from participation where a bidder has, or where the Council becomes aware, committed a criminal offence relating to fraud, corruption, terrorism, tax evasion, money laundering or such other offences as are prescribed in [Regulation 57 \(1\) – \(5\)](#).

48.3. The Council may exclude a bidder from participation where the bidder is found to be, or the Council becomes aware of the bidder becoming, bankrupt, guilty of professional misconduct, colluded with other bidders with a view to distorting competition and has shown significant deficiencies in the performance or a prior public contract or such other provisions as may be prescribed by [Regulation 57 \(8\)](#).

48.4. For full detail of the circumstances under which a bidder shall or may be excluded the Officer must obtain advice from Corporate Procurement.

48.5. These provisions will apply unless the bidder produces evidence that they have self-cleaned within the provisions of [Regulation 57 \(13\)](#).

49. Tender Process Deadlines/Milestones including E-procurement tool

49.1. **Open Process** - The normal period from publication of the contract notice on the Find a Tender Service to the receipt of tenders is 35 days. There are generally two sets of circumstances when it is possible to shorten the 35-day period, which are outlined below (a third is in a state of urgency subject to certain provisions):

- **PIN notice published** - A PIN notice has been published at least 35 days and not more than 12 months before the dispatch of the actual contract notice on the Find a Tender Service. The timescale of 35 days may be reduced to 15 days.
- **Use of electronic submission of tenders (e-procurement system)** - Where the Council permits the submission of tenders electronically, the minimum time limit for receipt of tenders can be 30 days. The tools and devices used for electronic receipt of tenders must (amongst other things) ensure that no one can have access to the data transmitted before the deadline for receipt of tenders.

A contract notice must also be published on Contracts Finder . This notice

should not be published before it has been published on Find a Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.

- **Standstill Period** - After informing all participants of the outcome of the award decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.
- **Contract Award Notice** - A contract award notice must be published on Find a Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.2. **Restricted Process** - The Restricted procedure is a two-stage process. It is possible to shorten the number of days as outlined below.

- **Expressions of interest** - Call for competition to enable potential tenderers to express their interest in participating. The normal period from publication of the contract notice on the Find a Tender Service for suppliers to express an interest in taking part in the tender is 30 days.

A contract notice must also be published on Contracts Finder . This notice should not be published before it has been published on Find a Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.

- **Invitations to tender** - After the initial assessment of the requests to participate, tenderers shall have a minimum of 30 days from the date of issue of the invitation to tender documentation to submit documentation.
- **Use of electronic submission of tenders** - Where the Council permits the submission of tenders electronically, the minimum time limit for receipt of tenders can be 25 days. The tools and devices used for electronic receipt of tenders must (amongst other things) ensure that no one can have access to the data transmitted before the deadline for receipt of tenders.
- **PIN notice** - Where a PIN notice has been published at least 35 days and not more than 12 months prior to the publication of the actual contract notice on the Find a Tender Service and which is not itself used as a means of calling for competition, the 30 days may be reduced to 10 days.

The Council can set the minimum time limit for tenders by agreement with tenderers. In the absence of agreement, the minimum time limit is 10 days.

- **Standstill Period** - After informing all participants of the outcome of the award

decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.

- **Contract Award Notice** - A contract award notice must be published on Find a Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.3. **Competitive procedure with negotiation timescale** - The competitive procedure with negotiation is a two-stage process. It is possible to shorten the number of days as outlined below.

- **Expressions of interest** - Call for competition to enable potential tenderers to express their interest in participating. The normal period from publication of the contract notice on Find a Tender Service for suppliers to express an interest in taking part in the tender is 30 days.

A contract notice must also be published on Contracts Finder . This notice should not be published before it has been published on Find a Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.

- **Invitations to tender** - After the initial assessment of the requests to participate, candidates shall have a minimum of 30 days from the date of issue of the invitation to tender documentation to submit initial tenders.
- **Use of electronic submission of tenders** - Where the Council permits the submission of tenders electronically, the minimum time limit for receipt of initial tenders can be 25 days. The tools and devices used for electronic receipt of tenders must (amongst other things) ensure that no one can have access to the data transmitted before the deadline for receipt of tenders.
- **PIN notice** - Where a PIN notice has been published at least 35 days and not more than 12 months prior to the publication of the actual contract notice on Find a Tender Service and which is not itself used as a means of calling for competition, the 30 days may be reduced to 10 days.

The Council can set the minimum time limit for tenders by agreement with tenderers. In the absence of agreement minimum time limit is 10 days.

- **Standstill Period** - After informing all participants of the outcome of the award decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.
- **Contract Award Notice** - A contract award notice must be published on Find a

Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.4. **Competitive Dialogue** - The Competitive Dialogue procedure is a two-stage process. It is not possible to shorten the number of days.

- **Expressions of interest** - Call for competition to enable potential tenderers to express their interest in participating. The period from publication of the contract notice on Find A Tender Service for suppliers to express an interest in taking part in the tender is 30 days.
- A contract notice must also be published on Contracts Finder . This notice should not be published before it has been published on Find A Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.
- **Submission of tenders** - Tenders are submitted after a period of dialogue with the participating suppliers during which different solutions may be developed. When the time comes for the formal submission of tenders, there is no minimum period stipulated however, it must be reasonable and should reflect the complexity of the exercise.
- **Standstill Period** - After informing all participants of the outcome of the award decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.
- **Contract Award Notice** - A contract award notice must be published on Find a Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.5. **Innovation Partnership** - The Innovation Partnership procedure is a two-stage process. It is not possible to shorten the number of days.

- **Expressions of interest** - Call for competition to enable potential tenderers to express their interest in participating. The period from publication of the contract notice on Find a Tender Service for suppliers to express an interest in taking part in the tender is 30 days.

A PIN cannot be used as a call for competition.

A contract notice must also be published on Contracts Finder . This notice should not be published before it has been published on Find a Tender Service or at least 48 hours have elapsed from the receipt of the confirmation of the

notice from Find a Tender Service. The contract notice on Contracts Finder must be published within 24 hours of when it is entitled to be published as detailed above.

- **Submission of tenders** - Tenders are negotiated with the participating suppliers to improve their content. When the time comes for the final submission of tenders, there is no minimum period stipulated however, it must be reasonable and should reflect the complexity of the exercise.
- **Standstill Period** - After informing all participants of the outcome of the award decision, a period of 10 days must elapse before entering into the contract (15 days if the notice is not sent electronically). The 10 days commence on the date the notice is sent to all participants and ends at midnight at the end of the 10th day after the relevant sending date.
- **Contract Award Notice** - A contract award notice must be published on Find a Tender Service within 30 days of the contract award, this can only be conducted after the 10-day standstill period has lapsed. A contract award notice must also be published on Contracts Finder within 90 calendar days of the contract award date but not before publication of the Find a Tender Service contract award notice.

49.6. **Negotiated procedure without a call for competition** - The Negotiated procedure without a call for competition has no minimum timescales.

- **Contract Award Notice** - A contract award notice should be published within 30 days of the contract award.

50. Late Submissions

- 50.1. Where a tender has been received which is after the electronic cut off point as managed by the e-procurement system, the responsible officer/Corporate Procurement shall prior to opening any of the tenders report this to his/her Chief Officer giving details surrounding the circumstances of the late tender. The Chief Officer/Head of Procurement, with the prior approval of the Chief Legal Officer, may accept the late tender if they determine that:
- a) the delay was caused by exceptional circumstances for which the bidder was not primarily responsible; and
 - b) the bidder has gained no unfair advantage from it being late and the tender process has not been compromised as a result.
- 50.2. If there is any doubt, Corporate Procurement and Legal Services must be consulted.
- 50.3. The Chief Officer shall record in writing the reasons why each late tender has been accepted or rejected and sign and date the record.
- 50.4. All tender related documentation must be stored and available for inspection in a secure location and must not be moved without the permission of Officers responsible for the procurement.

51. Erroneous Tenders

- 51.1. The appropriate Chief Officer, with the prior approval of the Chief Legal Officer, may permit a bidder to correct an identified arithmetic or clerical error or omission that, in the opinion of the Chief Officer, is an obvious one and if they determine that the bidder has gained no unfair advantage from correcting the error. Any such corrections will be recorded on the tender file.
- 51.2. The Chief Officer of a procuring department may treat as irregular and may invalidate and reject a bid:
- a) where it appears that the tenderer is in breach of the Regulations and/or these Rules;
 - b) where a bid is subject to any qualification, amendment or alteration which has been prohibited by the Council as part of the procurement exercise;
 - c) any amendment to the tender price is received after the tenders have been opened; and
 - d) any tender from which the tender price has for some reason either been omitted or is otherwise not ascertainable.
- 51.3. The Chief Officer shall record in writing the reasons why each irregular tender has been accepted or rejected and sign and date the record.
- 51.4. All tender related documentation must be stored and available for inspection in a secure location and must not be moved without the permission of officers responsible for the procurement.

52. Abnormally Low Tenders

- 52.1. Officers shall require a bidder to explain prices and costs in their tender which appear to be abnormally low in relation to the works, supplies or services.
- 52.2. The Council shall assess the information provided by consulting with the tenderer.
- 52.3. Officers may only reject a tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed. Officers need to seek advice from Corporate Procurement as to specific explanations and evidence that may be considered.
- 52.4. The Council shall reject the tender where it has established that the tender is abnormally low because it does not comply with the environmental, social and labour law obligations.

53. Clarification Questions

Pre-Tender Clarification

- 53.1. Officers may answer questions or provide information in response to requests from prospective bidders in relation to an ITT or ITQ. However, the selection process must be demonstrably fair to all participants. Accordingly, no bidder should be given information from which they may gain an unfair advantage over rival bidders who do not have access to that information.
- 53.2. A formal procedure for recording questions posed and responses sent must be in place and be used.

- 53.3. Questions of a complex technical or procedural nature must be notified to Corporate Procurement who may, if they deem it necessary, refer the issue to Legal Services.
- 53.4. Officers responsible for the procurement must set the date by which the bidders must submit questions and following which no further queries will be accepted after such time. This must be clearly stated in the ITT.
- 53.5. Where questions are asked, the questions and answers / responses received must be provided to all bidders at least six days before the final date for submission of tenders. If the information is not provided within this timeframe, the time limit for receipt of tenders must be extended for a reasonable period.

Post Tender Clarification

- 53.6. Seeking post-tender clarification of a tender whether in writing or by way of a meeting is permitted only with the approval of Corporate Procurement and on the advice of Legal Services.
- 53.7. Post tender clarifications should not be used as opportunities to conduct post-tender negotiations. Post-tender negotiation means negotiations with any bidder after submission of a tender and before the award of the contract with a view to obtaining an adjustment in price, delivery or content. Such negotiations are prohibited under UK law.
- 53.8. Officers shall take into account the requirements of the Regulations and these Rules and consult Corporate Procurement before conducting any clarifications or refinements to any tender and related documentation.
- 53.9. Any post-tender clarifications must be conducted in line with the relevant UK (and if applicable EU Procedure) and must not distort competition particularly with regard to price. They should be used only to clarify any aspect of a tender that is not clear.
- 53.10. Any clarification or discussions must be conducted by or in the presence of at least two Officers, one of whom must be from Corporate Procurement, on Council premises if permitted or through virtual means, and a detailed contemporaneous written record kept.
- 53.11. Where post-tender clarifications may result in a significant change to the specification (or contract terms) the contract must not be awarded but be re-tendered. Officers should consult Corporate Procurement and Legal Services in cases of uncertainty.

54. Standstill Period (if required)

- 54.1. In the case of contracts subject to the full scope of the UK Regulations, which shall also include contracts subject to the Light Touch Regime, Officers must notify all bidders of the intended award of the contract and must allow a mandatory minimum standstill period of 10 calendar days (otherwise 15 days for non-electronic tenders) between notification of a proposed award and entering into a contractually binding agreement (Standstill Period).
- 54.2. Officers may not make an award of contract, nor make any commitment to award a contract, until the standstill period has expired. The standstill period must not commence until all internal approvals have been finalised.

- 54.3. Officers must notify all tenderers that submitted a bid of its decision in relation to the award of the contract. This must be done in writing by the quickest means of communication available as soon as possible after the award decision has been made.
- 54.4. The notice referred to above must include:
- a) details of the award criteria;
 - b) the reason for the decision, including characteristics and (in the case of bidders only) the relative advantages of the winning bidder;
 - c) the score obtained by the unsuccessful bidder;
 - d) the score obtained by the successful bidder;
 - e) the name of the bidder to be awarded the contract; and
 - f) the date on which the standstill period ends or before which the Council will not enter into the contract with the successful bidder.
- 54.5. A notice of the nature and containing the detail referred to in Rule 54.4 above must also be sent to all candidates i.e. those who applied to be invited to bid but who were not so invited. Such notice must also inform the candidates of the reason why they were unsuccessful but does not need to detail the relative advantages of the winning bid.
- 54.6. It is most important that any communication with the preferred bidder(s) does not lead such bidders to believe it constitutes a contract award or a conditional award. Corporate Procurement and Legal Services can advise on this.
- 54.7. The mandatory standstill period does not apply to below threshold procurements.
- 54.8. The mandatory standstill period applies for framework agreements only at the stage at which the framework agreement itself is awarded, but not during subsequent call-offs or mini-competitions within framework agreements. However, Officers should always consider applying a standstill for mini competitions for Gold Category Contracts on a voluntary basis.
- 54.9. In the event a challenge is made to the award of the contract, Legal Services and Corporate Procurement must be notified immediately and advice obtained.

55. Unsuccessful De-brief process

- 55.1. The Procuring Officer shall, if requested in writing and provided a notice under Rule 54.4 has not already been provided, within 15 days of receipt of such request, debrief in writing all those bidders who submitted a tender about the characteristics and relative advantages of the successful bidder.
- 55.2. This should normally include:
- a) the criteria for the award of the contract (e.g. the scoring and assessment mechanisms);
 - b) the reasons for the decision, including the characteristics and relative advantages of the successful tender;
 - c) the name of the successful tenderer;
 - d) the successful tenderer's score;
 - e) the tenderer's own score;
 - f) if relevant, an explanation as to why the tenderer did not meet the technical

specifications of the procurement;

g) what the tenderer could have done to improve their scores.

55.3. The standard debrief template is held on the Legal Service intranet site, and any questions or advice needed should be sought from Corporate Procurement and Legal Services prior to issue.

56. Challenge Process

56.1. In the event that there is any type of challenge the responsible officer must contact Corporate Procurement and Legal Services immediately, so all appropriate action can be taken.

SECTION G

AWARDING A CONTRACT PROCESS

57. Post Tender Clarifications / Requests to Change

- 57.1. The Council's standard approach is that, once the terms and conditions have been issued as part of the tender process and unless agreed during the tender initial clarification window, they should not be amended or agreed. In the event that this scenario occurs, advice must be sought from Corporate Procurement and the Legal Team prior to entering into a contract.
- 57.2. In order to assess any change, the general rule is that if it impacts the way the process was conducted or material changes the requirements or scope of the service, then the standard response is that we cannot change as it may impact how other bidders could have submitted and may have had a different outcome. If advice is needed, officers should consult with Corporate Procurement and Legal Services.

58. Award Report (including Regulation 84 Report)

- 58.1. No contract, Framework or DPS shall be entered into before a Contract Award Report has been completed and approved by Cabinet/HWB or an Officer duly authorized under the Scheme of Delegation, as appropriate for spend conducted in the Silver or Gold threshold.
- 58.2. The Contract Award Report shall set out the details of the procurement, including details of the subject matter and value of the contract or Framework, details of the tender(s), the criteria and weighting applied, the evaluation process followed, a recommendation as to the successful tenderer(s) to whom the Council proposes to award the contract or Framework and reasons why it/they were successful. In the case of UK procured contracts or Frameworks, all the requirements of [Regulation 84 \(1\)](#) must be complied with.
- 58.3. In the case of tenders above the UK thresholds, bidders must be notified in writing of the award in accordance with this Rule 54.3 and 54.4. Guidance may be sought from Corporate Procurement.
- 58.4. In the case of procurements where a standstill period is required to be observed, a letter "(Letter of Intention to Award)" must be written to the successful bidder advising them that following the evaluation of bids, the Council intends, subject to the standstill period elapsing without challenge, to award the contract to the bidder.
- 58.5. The Letter of Intention to Award must set out the main terms of the contract that will bind the parties including the duration, price, contract conditions, and other significant contract terms and documentation such as the specification and tender response documents.
- 58.6. The Letter of Intention to Award must make it clear that the issuing of the Letter of Intention to Award is merely a statement of intention and does not equate to a firm offer to contract with the successful bidder as the Council still reserves the right not to award the contract.
- 58.7. Corporate Procurement must be notified immediately of any challenge to a

procurement process in order that appropriate and conforming action may be taken.

58.8. Officers responsible for the procurement must submit a report and obtain the further approval of Cabinet/HWB/the Chief Officer prior to award when:

- a) The contract which is the most economically advantageous solution, in accordance with the established tender evaluation criteria, is not being recommended for acceptance;
- b) Cabinet/HWB has chosen in advance to become involved in awarding the contract.

58.9. An Award report template can be found on the Legal Teams Intranet site. For guidance on how to complete the report and any questions on the requirements of Regulation 84, please ask Corporate Procurement and Legal Services.

59. Sealing and Signing Process for Contracts

59.1. Chief Officers must ensure that a signed or sealed contract is in place and all pre-conditions have been complied with (such as provision of insurance certificates and DBS checks) before the goods are ordered or works or services begin. Where for matters of urgency it is necessary for the Contractor to commence work without a signed contract being in place, the procuring Officer shall ensure that a Letter of Acceptance of the contract has been signed and returned by the successful bidder before the goods are ordered or works or services begin. Legal Services should be consulted before officers agree that the Contractor can commence work without a formal contract in place.

59.2. A contract must be sealed by Legal Services where:

- a) The Contract has with a value of £250,000 (including VAT) or more; or
- b) the Council wishes to enforce a contract for a period longer than 6 years; or
- c) the value of the consideration paid or received under the Contract is a nominal value that does not reflect the value of the supplies or services.

59.3. The fixing of the Council's Seal must be witnessed by the Chief Legal Officer or such other authorised Officer as s/he shall nominate. The seal must not be affixed without evidence of governance approval being in place.

59.4. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

59.5. In order for Legal Services to seal a contract, Officers responsible for the procurement must provide:

- a) A sealing request form;
- b) The Minute evidencing Cabinet/HWB approval; and/or
- c) A signed Contract Award Report or Delegated Authority Report.

59.6. All contracts must be recorded on the Council's Contracts Register immediately after award. Officers are required to provide Corporate Procurement with an electronic copy of the signed contract and complete the Contract Register Form.

59.7. Records of all procurement activity must be retained in accordance with the Council's Document Retention Policy in either electronic or hard-copy format as appropriate.

- 59.8. The Council's original copy of the sealed contract must be registered with and retained by Legal Services. Council Officers are required to retain a photocopy and/or scanned version for their own records and to ensure appropriate monitoring of the obligations placed upon the contractor.
- 59.9. Chief Officers must keep a register of contracts completed by signature (rather than by the Council's seal) and arrange their safekeeping on Council premises.

60. Award Notice(s)

- 60.1. A Contract Award Notice must be placed by Corporate Procurement or the procuring officer in the FTS (for all Gold Category procurements that are above threshold) following the award of a contract procured under the Regulations within 48 days of such award.
- 60.2. Within a reasonable time of publishing a Contract Award Notice in FTS Officers (but no later than 90 calendar days from award of the contract) shall ensure that a notice is also published on Contract Finder for all spend over £25,000.00 which contains at least the following information:
- a) The name of the Contractor;
 - b) The date on which the contract was entered into; and
 - c) The value of the contract.
- 60.3. The requirements of Rule 60.1 above shall also apply where a contract is awarded based on a framework agreement, i.e following a direct call-off or a mini-competition from or within a framework agreement.

61. Contracts Register Inclusion Process

- 61.1. To ensure the Council complies with its obligations under the Transparency Agenda and also to comply with PPN 05/21- National Procurement Policy Statement which came into force in April 2022.
- 61.2. The requirement for the Council is to ensure it holds a central contracts register that will be used to:
- a) support the Cabinet Forward Plan;
 - b) support the Procurement Board forward plan;
 - c) meet its obligations under the transparency agenda;
 - d) offer a central view and oversight to use the data to make informed decisions on when to reprocure etc.
- 61.3. The Contracts Register template will be required to be completed for all contracts that exceed £25,000 in value. The template will be listed on the Legal Team's intranet site and can be accessed here: [Contracts Register Online Form Template.xlsx \(sharepoint.com\)](#)
- 61.4. The Contract Register template must be completed by the Commissioner for Bronze and Silver Categories, and by Corporate Procurement for Gold Category, within 14 days from contract award and issued to Corporate Procurement for central collation and publication.

62. No Contract = No Service

- 62.1. After awarding the procurement the responsible officer must ensure that contracts are entered into (sealed or signed) by both parties prior to the service commencing.
- 62.2. This requirement protects the Council as there will be agreed terms and conditions that govern the interaction and expectations of both parties, including performance and quality expectations and firm costs (fixed or schedule of rates).
- 62.3. If this process cannot be adhered to, the Risk and Assurance team, Corporate Procurement and the Legal Team must be advised so an assessment can take place to mitigate financial, physical or reputational risk to the Council.

SECTION H

CONTRACT MANAGEMENT

63. Contract Management

- 63.1. An essential part of the procurement and planning process is to ensure there is an appropriate and proportionate contract management framework implemented relative to the size, value and risks associated with the delivery of the contract/services.
- 63.2. An effective contract management framework is a key tool to manage risks within the delivery of the contract and are a necessary part of the commissioning, contract and procurement lifecycle. Key risks include, but are not limited to risks such as:
- a) The existing contract will expire before a new contract has been agreed;
 - b) Prices may increase due to being out of contract;
 - c) Not having agreed terms and conditions to govern the service.
- 63.3. All contracts must have a designated contract manager for the full term of the contract (including any extended periods). Their name and job title must be recorded on the Council's Contracts Register.
- 63.4. All Silver and Gold Category contracts are subject to formal reviews between the Council's Contract Manager and the contractor.
- 63.5. During the life of the contract the designated Contract Manager must monitor as a minimum:
- a) Performance;
 - b) Compliance with specification and contract;
 - c) Spend against Contract Price and lifecycle value;
 - d) Continuous improvement initiatives to drive value;
 - e) User satisfaction
 - f) Risk management
- 63.6. Importantly, good/best value is not just about cost. Contract Managers should regularly engage with service users and discuss feedback/concerns with the supplier as part of Contract Management meetings.
- 63.7. Contract Managers should work collaboratively with the contractor throughout the contract lifecycle on securing continuous improvements in quality, cost and innovation in service provision.
- 63.8. The Contract Manager must ensure there is clarity over what is needed from the Contract, at what level of quality and periodically compare the Contract Price against what can be achieved in the wider market.
- 63.9. Contract Management training is available on I Learn
<https://lbbd.learningpool.com/login/index.php>
- 63.10. Further information and guidance documents on how to contract manage effectively are available on the intranet at
<https://lbbd.sharepoint.com/sites/Intranet/SitePages/Commercial-and-contracts-management.aspx>

63.11. For further support with specific contract management, or contract related queries please contact the Council's Commercial Services team on, CommercialServices@lbbd.gov.uk

64. Risk Management

- 64.1. Contract managers are required to consider if there are any significant risks to key contracts which might adversely impact on contract cost or delivery. The assessment of operational delivery risks should be set out within the risk assessment undertaken at procurement stage (see paragraph 16 for more information). This should be periodically reviewed throughout the life of the contract.
- 64.2. Once identified, such risks should be recorded on team/service/department risk registers as necessary and should indicate how the risks are being, or are proposed to be, mitigated or managed to bring the risk to a level acceptable to the Council. This approach will make any key contracting risks visible and ensure they are managed in accordance with Risk Management policy.
- 64.3. Officers should seek advice and guidance on risk management from Corporate Procurement or the Council's Risk team.
- 64.4. The Council's Insurance team should be informed of the commencement of the contract and, if applicable, be provided with copies of a contractor's policy documents.

65. Contract Milestones

- 65.1. In contracts there will be some key milestones that need to be understood, monitored, managed and actioned at the required points, this can be for:
- Price increases (RPI/CPI or annual agreed increase), or a period where the supplier can seek to increase pricing providing the support the claim;
 - Notice periods, some contracts detail how far in advance the supplier should be notified if the Council wishes to extend (if extension periods exist) or for the contract to end at the agree date;
 - Break clauses/No Fault termination periods;
 - General termination periods.
- 65.2. A key contract milestone requires advance planning so they can be delivered successfully and on time. Contract Managers should ensure there is clarity over:
- Which initiatives require further approval and the associated governance process;
 - Time required to re-procure or tender the requirements;
 - Implementation timescales;
 - TUPE consultation and timescale (if applicable);
 - Requirements to add to the Contracts Register prior to Contract commencement or extensions.

66. Variations / Changes to Contracts including Extensions

- 66.1. Once a contract has commenced, the terms should not be varied unless provided for within the contract and on the basis that both parties shall have agreed the

variation.

66.2. Modifications to existing contracts are permitted without commencing a new procurement in the following circumstances ;

- a) Where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options.
- b) For additional works, services or supplies by the original contractor, irrespective of their value, that have become necessary and were not included in the initial procurement where a change of Contractor:
 - (i) cannot be made for economic or technical reasons; or
 - (ii) would cause significant service disruption or substantial duplication of costs for the Council.
 - (iii) provided that any increase in price does not exceed 50% of the value of the original contract.
- c) Where all of the following conditions are fulfilled:
 - (i) the need for modification has been brought about by circumstances which the Council acting diligently could not foresee;
 - (ii) the modification does not alter the overall nature of the contract; and
 - (iii) any increase in price is not higher than 50% of the value of the original contract or framework agreement.

(*Note: the Council must publish a [Regulation 51](#) notice in the FTS when a contract has been modified under these headings.), this is for Gold Category procurements that exceed threshold.
- d) Where a new contractor replaces the one which had initially been awarded the contract as a consequence of either:
 - (i) an unequivocal review clause or option which is clear, precise and unequivocal (referred to above); or
 - (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of the Regulations.
- e) Where the modifications, irrespective of their value, are not substantial. A modification is considered to be substantial where one or more of the following conditions is met:
 - (i) the modification renders the contract or the framework agreement materially different in character from the one initially concluded.
 - (ii) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional

participants in the procurement procedure.

- (iii) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement.
- (iv) the modification extends the scope of the contract or framework agreement considerably; and/or
- (v) where a new contractor replaces the one to which the Council had initially awarded the contract in other cases than those envisaged above.

f) Where the value of the modification (on a cumulative basis) is below both of the following values:

- (i) the relevant UK procurement thresholds; and
- (ii) 10% of the initial contract value for service and supply contracts and below 15% of the initial contract value for works contracts. Where a modification falls outside of the above circumstances, a new procurement process is required.

- 66.3. Price changes, which were not anticipated in the original contract, could amount to breach of the principles of equal treatment and transparency.
- 66.4. Annual price reviews (such as increasing by RPI/CPI) are usually covered within the contract and do not need a separate variation agreement. If it is unclear whether this is the case in respect of any particular contract, the Legal Team must be consulted.
- 66.5. Officers must seek advice from the Legal Team and Corporate Procurement before varying any contract. The Legal Team will advise whether the change can be made and draft all documentation in relation to the same.
- 66.6. No contract shall be varied without the approval of the Procurement Board on the advice of the Chief Legal Officer and the Chief Financial Officer, where the effect of the variation would be over the values detailed under a Gold Category or would increase the original contract to over the Gold Category.
- 66.7. Contract variations shall only be made by Cabinet/HWB or Officers with the requisite delegated authority to award the original contract (as the case may be) in accordance with the Scheme of Delegation.
- 66.8. Every decision to vary a contract must be in writing by a Cabinet/HWB minute or a Delegated Authority Decision Sheet signed by the Officer authorised under the Scheme of Delegation (as the case may be) and agreed by the Chief Legal Officer and the Chief Financial Officer their nominated delegates.
- 66.9. All contract variations must be registered and included with the original contract in the Council's Contract Register.

67. Novation, Assignment and Sub-Contracting

- 67.1. No contract with a Contract Value of £100,000 or more shall be novated, assigned or sub-contracted without the express approval of the Chief Legal Officer and the Chief Financial Officer.
- 67.2. Officers must seek advice from Legal Services and Corporate Procurement before

novating, assigning or sub-contracting any contract. Legal Services will advise whether the transfer can be made and draft all documentation in relation to the same.

67.3. All requests regarding the change of parties to the contract must be referred to Legal Services.

68. Contracts Register and Forward Plan Upkeep

68.1. Officers are required to issue an amendment to the Contracts Register in the event that:

- A contract term is amended (extension, termination etc);
- The total value of the Contract has been amended (if changes have been made that impact such as Modification or service changes through variation);
- The scope of Contract changes in terms of the service being delivered except where Rule 66.2 applies.

68.2. If advice or assistance is required on amending the Contracts Register, please contact Corporate Procurement.

68.3. In the event the Procurement Board Forward Plan requires amendment, please contact Corporate Procurement.

69. Change in Law Assessment and Impact Management and Reporting

69.1. All contracts with a duration longer than three years should make provision to address how changes in the law that affect the contract will be addressed. If the law changes mid-way through the contract and it significantly affects the contract, the Legal Team and Corporate Procurement must be consulted immediately.

69.2. Any changes in law that impact the Council and its Contract Rules, policies or procedures, should be communicated through Procurement Board and wider Communications platforms, and should include:

- What statute is changing?
- What is the impact?
- How does it affect our service delivery?
- What do we need to do to comply with the changes in the legislation?
- Are there any costs associated with the changes?
- When do the changes come into force?

69.3. In the event that the changes will impact the Contracts Register or Forward Plan, officers should contact Corporate Procurement for assistance and advice.

70. Document Retention Policy, Period and Removal

70.1. All Officers must follow the Council's Corporate Retention Guidelines.

70.2. All signed contracts must be retained for a period of six years from the execution date. Sealed contracts must be retained for a period of 12 years.

70.3. A Contractor that has been delivering a contract that requires the contractor to keep records for the Council shall be required, in respect of the information which they hold, to either:

- a) Keep the records themselves, and allowing the Council to have access upon request; or
- b) Return the records to the Council.

70.4. Once the contract has been awarded, Officers:

- a) Must keep the successful bidder's documents for at least six years after the end of the contract for contracts signed under hand and at least 12 years after the end of the contract for contracts under seal (Deed);
- b) Must keep the unsuccessful bidder's documents for at least 12 months from the date of contract award; and
- c) Must keep all documents, evaluation scores and notes from the tender process (including any records from market testing), for at least 36 months from the date of contract award.

71. Planning for re-procurement of the service(s)/Requirements

71.1. The officer responsible for the contract/services being provided must ensure that all appropriate steps, approvals and time is given to plan the re-procurement of the services, this will include:

- Service enhancements that have been identified through the contract management of the existing service;
- Consider if the model needs to be changed to reflect innovations within the marketplace;
- Review the budget envelope to ensure sufficient funds are available to conduct the service;
- Ensure all approval routes are detailed and milestones are noted to ensure the re-procurement commences as the current service expires.

SECTION I

MAKING CHANGES TO THE CONTRACT RULES

72. Process to change

72.1. In accordance with Part 7 of the Constitution, the Council's Monitoring Officer may, having consulted with relevant officers, including the Chief Financial Officer on any finance-related issues, make such necessary or incidental amendments to these Rules to effect or implement any changes in law (whether due to legislation, case law or UK Directive), or to correct any inconsistency in, or clarify any interpretation of, these Rules.

72.2. If there is any change to the law which affects these Rules, that change must be observed until these Rules are revised. If these Rules conflict in any way with the law, the law takes precedence.

72.3. In accordance with the Council's Constitution, the Monitoring Officer has ultimate responsibility for the interpretation of these Rules after taking appropriate advice.