

# Part 3F

## Contract Standing Orders

	<b>Page</b>
1 Introduction	2
2 Scope	4
3 Partnering	5
4 Steps prior to purchase	6
5 Long Term Arrangements	7
6 Transfer of Undertakings (Protection of Employment) Regulations 2006	8
7 Preliminary Market Engagement	8
8 Specification	10
9 Key Performance Indicators	10
10 Social Value	11
11 Award Criteria	11
12 Contracts, Documents, Signing and Sealing	12
13 Liquidated Damages, Bonds and Parent Company Guarantees	13
14 Procurement Process, Advertising Requirements and Procurement Notices	15
15 Receipt and Opening of Tenders/Quotations	22
16 Evaluations, Award and Debriefing Suppliers	23
17 Post Tender Negotiation	25
18 Records	25
19 Contract management	27
20 Extensions of existing contracts	31
21 Conflict of Interest	32
22 Gifts and Hospitality	33
23 Freedom of Information Act 2000 Exemptions	34
24 Exemptions	35

## **Section A – Introduction and Scope**

### **1. Introduction**

- 1.1. Contract Standing Orders (CSO's) are permitted in accordance with section 135 of the Local Government Act 1972, to make standing orders with respect to the making of contracts by them and on their behalf, for the supply of goods, services and/or for the execution of works.
- 1.2. As a public sector organisation that is funded and uses public resources, the Council must set and follow the highest standards of financial control and stewardship to ensure effective governance. Contract Standing Orders provide Officers and Members with procedures to follow to ensure that the required standards are met. The CSO's are consistent with procurement legislation designed to ensure that the Council achieves value for money and social value, that it complies with statutory requirements, that its affairs are prudently managed and properly controlled. Any permission to waive a Standing Order is outlined in standing Order 24, otherwise known as an Exemption.
- 1.3. The purpose of these Standing Orders is to:-
  - a) Ensure that the Council promotes the probity and integrity of the procurement process;
  - b) Provide employees involved in the procurement process a framework within which to work;
  - c) Ensure fairness in allocating contracts and protect employees from allegations of corruption and/or collusion from suppliers and contractors;
  - d) Promote public accountability;
  - e) Ensure transparency;
  - f) Ensure compliance with all legal requirements;
  - g) Achieve value for money on behalf of the Council; and
  - h) Support and deliver the Council's corporate aims and objectives.
- 1.4. CSO's must be complied with strictly. They are minimum requirements and any instances of non-compliance may result in disciplinary action being taken as a breach of legislation, statute and the Constitution. From an operational perspective, failure to comply with the procurement legislation will result:
  - a) in the contract being deemed ineffective (terminated);
  - b) in the contract term being shorted;
  - c) in a financial penalty for the Council.
- 1.5. Any consultant, agent, project manager or contractor acting on behalf of the Council who undertakes a procurement which results in the Council appointing a supplier, must also comply with these Standing Orders and this must be a condition of their employment.

- 1.6. Contracts let on behalf of a consortium, association or similar body of which the Council is a member should comply with the rules of the body or lead authority.
- 1.7. The amounts £A to £D in these Standing Orders have the initial values given to them as follows:-
  - £A = £7,500
  - £B = £25,000
  - £C = £125,000
  - £D = £3,500,000
- 1.8. All monetary values included in these Standing Orders relate to the total value of the contract or framework agreement (Lifetime Contract Value) including extension options and shall be deemed to exclude any Value Added Tax applicable unless otherwise stated.
- 1.9. The Chief Officer for Finance and Performance is designated as the responsible officer in accordance with [Section 151 of the Local Government Act 1972](#) (for the proper administration of the Council's financial affairs) and the designated officer in accordance with [Section 114 of the Local Government Finance Act 1988](#) (incurring of unlawful expenditure) and is referred to in these Standing Orders as the Chief Financial Officer.
- 1.10. The Chief Financial Officer shall review all monetary limits annually and any amendments, if appropriate having regard to inflation and other relevant factors, shall be reported to the Leadership Team then the Constitution Review Working Party for consideration before seeking Full Council approval.
- 1.11. References to the Chief Financial Officer shall include other employees authorised to undertake duties on behalf of the Chief Financial Officer such as the Deputy Chief Financial Officer (Finance Manager).
- 1.12. References to the Monitoring Officer shall include other employees authorised to undertake duties on behalf of the Monitoring Officer such as the Deputy Monitoring Officer (Legal Services Manager).
- 1.13. References to the Chief Executive shall include other employees authorised to undertake duties on behalf of the Chief Executive such as the Deputy Chief Executive.
- 1.14. Questions of interpretation of these Contract Standing Orders should be referred to the Chief Financial Officer, Monitoring Officer and/or Team Leader Accounts Payable & Procurement. If required, the Procurement Team via the Procurement Shared Service may also be contacted to provide support and advice.

## 2. Scope

2.1. These Contract Standing Orders relate to any arrangement made by, or on behalf of, the Council for the execution of work or for the provision of goods and/or services. These include but are not limited to arrangements for:-

- a) The supply or disposal of goods;
- b) Hire, rental or lease of goods or equipment;
- c) Execution of works such as new build, construction works, demolition and/or refurbishment works;
- d) The delivery of services including those relating to the recruitment of temporary staff, professional and consultancy services; and
- e) Service Concessions and Work Concessions as defined by [Part 1 Key Definitions of the Procurement Act 2023](#).

2.2. These Contract Standing Orders do not apply to:-

- a) The employment of permanent staff;
- b) Land and building agreements, broadcasting agreements, electronic communication services, alternative dispute resolution services, legal representation services and financial lending as defined in Schedule 2 Exempted Contracts [Part 2 of the Procurement Act 2023](#);
- c) Grants\* from the Council (except where they are to buy services); and
- d) Any other requirements that fall in scope of Schedule 2 Exempted Contracts [Part 2 of the Procurement Act 2023](#) with the exception of Vertical and Horizontal arrangements.

*\*grants issued by the Council are subject to the Financial Standing Orders.*

2.3. The use of e-procurement technology and Purchasing Cards does not negate the requirement to comply with all elements of these Contract Standing Orders.

2.4. Officers and the Procurement Team must note these CSO's are intended to go live in February 2025 which is when the new Procurement Act will officially go live (24<sup>th</sup> February 2025). The fundamental principle is that procurements that commence (the date a tender is launched) after the entry into force of the Act (24<sup>th</sup> February 2025) must be conducted by reference to the Act only, whilst those that were commenced under the previous legislation (the Public Contracts Regulations 2015 (PCR), the Utilities Contracts Regulations 2016 (UCR), the Concession Regulations 2016 (CCR) and the Defence and Security Public Contracts Regulations 2011 (DSPCR)) must continue to be procured and managed under that legislation.

2.5. Any contracts awarded under the previous legislation will continue to be managed under that legislation until such a time as the contract, or commercial tool ceases to exist. This means that in respect of modifications, for example, contracting authorities can only modify

contracts awarded under the previous legislation using provisions set out at regulation 72 of the PCR, regulation 88 of the UCR and regulation 43 of the CCR as appropriate. In addition, contracts awarded via a Framework Agreement that was procured under the previous regime will result in that call off contract being awarded present to the previous legislation not the new Procurement Act. As a result, for the next two (2) financial years at least, it is highly likely that the procurement process will be a hybrid of both the old legislation and the new legislation effective 24<sup>th</sup> February 2025. These CSO's are heavily bias towards the new Procurement Act rather than the previous legislation to ensure compliance. The Procurement Team have been trained and are aware of the procedures to mitigate risk of non-compliance with the relevant procurement legislation.

### **3. Partnering**

- 3.1. A partnership is an agreement between the Council and one or more independent legal bodies, organisations or entities to work collectively to achieve a common purpose with specified aims and objectives. These are more commonly known as Public-Private Partnerships (PPPs). PPPs are common in almost every aspect of public infrastructure in England and Wales, including:
  - a) roads, schools, university student accommodation, prisons, defence, healthcare and hospitals;
  - b) waste to energy and waste management;
  - c) public security and border control;
  - d) waste water transportation;
  - e) certain natural resources developments; and
  - f) street lighting, energy transmission and other energy projects, including solar.
- 3.2. For the avoidance of any doubt, partnering arrangements which involve a joint venture or contractual arrangement with a private sector body are subject to the provisions of these Standing Orders.

## Section B – Plan

Pre-procurement process including the development of strategy and plan in line with business objectives and commercial policy outcomes, have clear and transparent commercial pipelines and a good understanding of the market.

### 4. Steps Prior To Purchase

4.1. Before beginning a purchase the employee responsible for it must appraise the purchase, in a manner commensurate with its complexity and value, by:-

- a) Appraising the need for the expenditure and its priority;
- b) Defining the purpose and objectives and intended outcomes of the purchase;
- c) Confirming that approval has been given for the expenditure and that an appropriate budget exists;
- d) Allocating resources to ensure capacity and capability throughout all stages;
- e) Defining requirements and success criteria that are relevant, specific and proportionate;
- f) Ensuring the Business Case has been approved where applicable;
- g) Referring to the Procurement Toolkit on SharePoint or contacting the Procurement Team;
- h) Completing the Procurement Checklist located with the Procurement Toolkit on SharePoint;
- i) Consider how the contract might improve the economic, social and environmental wellbeing of the borough and consider if external consultation is required ([Public Services \(Social Value\) Act 2012](#));
- j) Checking to ensure that the Procurement Team do not already have a preferred supplier agreement for the product/service or if a local agreement would be suitable;
- k) Assessing the risks associated with the purchase and determine how to adequately manage them;
- l) Considering what procurement method is most likely to achieve the objectives, including internal or external sourcing, partnering, and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium;
- m) Consulting users as appropriate about the proposed procurement method, contract standards and methods of performance and user satisfaction monitoring;
- n) Selecting the terms and conditions that are to apply to the proposed contract in consultation with the Procurement Team and Legal Services Team;
- o) Decide if the contract can be awarded in separate Lots to obtain better value and additional benefits (encourage SME's or more local suppliers);
- p) Ensuring that the correct governance and decision making process is in place including if necessary inclusion in the Forward Plan and

recognition that for significant procurements there may need to be multiple decision points.

- 4.2. Officers must not enter into separate contracts or select a method of calculating the total value in order to minimise the application of these Contract Standing Orders or Procurement Regulations.
- 4.3. The splitting of contracts to avoid the procurement regulations applying is prohibited. However, the Council may decide to award one procurement in separate Lots as per Part 3 Award of public contracts and procedures section 18 ([Duty to consider lots](#)). Contact the Procurement Team for advice.
- 4.4. Wherever possible, consideration should be given to contract mergers and aggregation with existing preferred contracts to encourage value for money or collaboration with other public sector bodies. It is essential that if a contract already exists for the supply of the same goods, services or works, the existing contract must be used in the first instance, but only if the scope is similar and any contract modification requirements are adhered to. Please contact the Procurement Team for advice and guidance. Further information is contained in Standing Order 19.2.
- 4.5. The calculation of the Lifetime Contract Value must be calculating by the Council. It must estimate the value of a contract as the maximum amount it could expect to pay under the contract including, where applicable, amounts already paid. The amount the Council could expect to pay includes the following—
  - (a) the value of any goods, services or works provided by the contracting authority under the contract other than for payment;
  - (b) amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised;
  - (c) amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised;
  - (d) amounts representing premiums, fees, commissions or interest that could be payable under the contract (including indexation);
  - (e) amounts representing prizes or payments that could be payable to participants in the procurement.

*Please note the term in the Glossary for the purposes of calculating a Concession Contract value.*

## **5. Long Term Arrangements**

- 5.1. Better value for money and improved quality of service delivery can be achieved by entering into long-term agreements with the supply chain. Therefore, Officers must package contracts in such a way that they reduce the number of times that the Council needs to seek competitive tenders due to the administrative burden associated with a procurement process but also to ensure it is proportionate for the supply chain. This can be achieved by amalgamating similar types of supplies and services

into single contracts and then seeking competitive tenders but this must be balanced with the duty to consider Lots. Officers must also consider the term of the contract when considering the plan stage of the procurement process. For instance, it would not be proportionate or prudent to procure a refuse collection service contract for six (6)/ twelve (12) months given the plant and equipment that would be required to fulfil the service, but also the staffing required. It would in this scenario be more proportionate and prudent to offer a contract period of at least five (5) years.

## **6. Transfer of Undertakings (Protection Of Employment) Regulations 2006**

- 6.1. All procurements where applicable must indicate how the Council intends to deal with [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#) (TUPE). This is a critical element of the procurement process and the lead service area must consider this, liaising with Human Resources (HR) and the current supplier. This will relate to employees transferring from a Council service to an external provider (outsourcing), or vice versa (in-sourcing) or where employees transfer from an external provider to another external provider following a procurement process. If the latter, the involvement from HR will be light touch as the Council facilitates the process and transfer of TUPE information.
- 6.2. When the Council considers there to be a TUPE transfer from the Council, the advice of the Human Resources Manager and Chief Officer – Legal and Governance must be obtained.
- 6.3. All contracts shall require a successful tenderer to undertake to comply with its obligations under TUPE.

## **7. Preliminary Market Engagement**

- 7.1. The Council may conduct preliminary market engagement prior to the publication of a tender and competitive procurement process, for the purpose of:
  - a) developing the Council requirements and approach to the procurement;
  - b) designing a procedure, conditions of participation or award criteria;
  - c) preparing the tender notice and associated tender documents (for instance Lots, procurement route to market, timescales associated to the tender stage, whether site visits would be beneficial);
  - d) identifying suppliers that may be able to supply the goods, services or works required;
  - e) identifying likely contractual terms;
  - f) building capacity among suppliers in relation to the contract being awarded.



- 7.2. In carrying out preliminary market engagement, a contracting authority must take steps to ensure that:
- a) suppliers participating in the preliminary market engagement are not put at an unfair advantage, and
  - b) competition in relation to the award of the public contract is not otherwise distorted.
- 7.3. The Procurement Team must be involved and where it is likely that the requirement is above threshold, the Procurement Team will need to publish a Preliminary Market Engagement Notice as set out in Contract Standing Order 14. The Procurement Team have templates available for officers to undertake a preliminary market engagement exercise and will facilitate this via the tendering portal for efficiency and audit purposes. Alternatively, preliminary market engagement could be undertaken via a framework with suppliers under the relevant scope/lot.

## Section C – Define

Identify options and determine relevant procurement requirements that encourage broad participation and are open and accessible to all.

### 8. Specification

- 8.1. A Specification is a statement of requirements which must be produced by the Officers in the service as the expert within their field with support/advice from the Procurement Team. It provides a detailed description of the goods, services and/or works a supplier is expected to supply during the lifetime of the contract. It is also a record against which suppliers can be measured and is legally binding.
- 8.2. It should encourage fair and open competition within the marketplace and help suppliers make informed decisions on whether to bid.
- 8.3. The Specification is a core document for the procurement and subsequent contract. A supplier shouldn't need to make assumptions as a good specification must include all the right information to enable the supplier to cost up goods, services and/or works accurately so a Council can evaluate bids on a like for like basis. The specification mustn't mislead suppliers or give them false expectations.
- 8.4. Officers must ascertain the relevant British or equivalent International Industry standard that applies to the contract and these must be used to properly describe the required quality. Clarification can be sought from the Procurement Team where applicable.
- 8.5. For guidance on how to write a specification, Officers may use the standard template available and review guidance available such as the Procurement Essentials guidance created by Crown Commercial Services - [How to write a specification – Procurement Essentials - CCS](#).

### 9. Key Performance Indicators

- 9.1. A Key Performance Indicator (KPI) is a quantifiable measure against which a supplier's performance of a contract can be assessed during the life-cycle of the contract. This ensures the Council has a way to hold the supplier to account regarding performance and helps evidence good or poor performance.
- 9.2. The Procurement Team will assist the Officer with the production of the KPI's but it is the Officers responsibility to finalise and decide the KPI for inclusion in the specification and contract. The KPI's need to be measurable and relevant to the requirement and contract. It is also the Principal Contract Officer's responsibility during contract management to monitor performance against the KPI's agreed.
- 9.3. Where the value of the public contract is estimated more than £5 million, the Council must set at least three KPI's in respect of the Contract. The

obligation to set at least three KPIs does not apply if the contracting authority considers that the supplier's performance could not appropriately be assessed by reference to KPIs. This might include, for example, where the contract is for a one-off delivery of or off-the-shelf goods.

- 9.4. Where more than three (3) KPIs are set, the Council will be required to publish all KPIs. Please refer to Standing Order 19 for more information related to the management, monitoring and publication of KPI's once the contract has been awarded. Please see Standing Order 14 and 19.

## **10. Social Value**

- 10.1. The Council must consider how its requirement, procurement and contract will support the delivery and achievement of wider benefits including but not limited to social, economic and environmental sustainability benefits.
- 10.2. As a minimum, between 5% and 10% of the evaluation criteria must be earmarked for social value purposes in the following Quotations and/or Tenders:
- a) Where the value of the proposed contract for goods and/or services is above the UK Public Procurement [threshold](#); or
  - b) Where the value of the proposed contract for the execution and undertaking of works exceeds £500,000 (Net).

## **11. Award Criteria**

- 11.1. Award criteria means criteria set which Tenders or Quotations will be assessed for the purpose of awarding a public contract. In all tenders and quotes, the award criteria must be clearly defined and transparently communicated in the procurement documents to bidders. When setting award criteria, Officers must ensure that all award criteria relates to the subject-matter of the contract, is sufficiently clear, measurable and specific, do not break the rules on technical specifications and remain proportionate, having regard to the nature, complexity and cost of the contract.
- 11.2. The Procurement Team will assist the Officer with the production and finalisation of the award criteria but it is the Officers responsibility to finalise and decide the award criteria noting advice from the Procurement Team. Please also note, it is not the Procurement Team responsibility to evaluate the award criteria, that is a responsibility for the Officers.
- 11.3. Examples of award criteria themes including but are not limited to:
- a) Level of service;
  - b) Quality of goods;
  - c) Cost effectiveness;

- d) Delivery requirements;
- e) Environmental considerations;
- f) Functional characteristics, such as security, safety and control features;
- g) After sales service;
- h) Experience/Case Study;
- i) Communication and expectation management;
- j) Health and Safety;
- k) Technical assistance;
- l) Social value (please note Contract Standing Order 10).

## **12. Contract Documents, Signing and Sealing**

12.1. High level detail for all contracts valued at £C (£125k) or above (or £B £25k if open advert at the point of award), must be published on the Council's [Transparency Pages](#) and Contracts Finder in accordance with The Local Government Transparency Code 2015.

12.2. All contracts shall clearly specify:-

- a) The work to be done or the goods, materials or services to be supplied;
- b) That all goods supplies and services used or supplied are to comply with any relevant standards specification or code of practice in force at the date of the tender (British or International equivalent);
- c) The price to be paid with a statement of any discounts or deductions (amount and timing);
- d) Any insurance requirements;
- e) Any health and safety requirements;
- f) Safeguarding vulnerable people requirements (if appropriate);
- g) The terms of the Bribery Act 2010 or any other legislation that deals with Bribery and Corruption in force at the time the contract is let (see Contract Standing Order 22);
- h) Compliance with the Equality Act 2010;
- i) The time within which the contract is to be performed;
- j) The provisions for the Council to terminate the contract; and
- k) A mechanism for agreeing price escalation and or cost reduction requirements;
- l) That both parties will comply with Data Protection provisions and regulations including clarifying the data controller and processor responsibilities;
- m) That the supplier may not assign or sub-contract without prior written approval;
- n) Any insurance requirements;
- o) Health and Safety requirements;
- p) Sustainability requirements;
- q) Confidentiality;
- r) A right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant;
- s) Key Performance Indicators; and

- t) That the Freedom of Information Act 2000, Environmental Information Regulations 2004 and The Local Government Transparency Code 2015 may require the Council to release information provided by the suppliers.

12.3. The formal advice of the Procurement Team must be sought for the following contracts:-

- a) Where the total value exceeds £B (£25k);
- b) Those involving leasing arrangements;
- c) Where it is proposed to use a supplier's own terms (which should be the exception for exceptional reasons rather than the rule); and
- d) Those which are complex or high risk in any other way.

12.4. All contracts over £C (£125k) must be concluded formally in writing and signed by an authorised signatory and formally sealed by the Legal Services Team before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written authority is provided by the Chief Financial Officer or the Monitoring Officer. An award letter is insufficient.

12.5. All contracts should be given a unique number allocated by the Procurement Team who should also be supplied with a copy of the contract.

12.6. The Principal Contract Officer from the service area must ensure all appropriate approvals and authority is in place prior to the award and signing of the Contract.

12.7. A contract must be sealed by the Council if:-

- a) The Council may wish to enforce the contract more than six (6) years after its end;
- b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- c) There is any doubt about the authority of the person signing for the other contracting party; or
- d) The total value of the contract exceeds £C (£125k).

### **13. Liquidated Damages, Bonds And Parent Company Guarantees**

13.1. A risk assessment and financial check of every contract for the purposes of determining the level of security needed, if any, must be made by the appropriate Chief Officer or Service Manager in consultation with the Procurement Team. Typically, this would be discussed at the pre-procurement planning stage when considering the criteria for the procurement as is considered in the Procurement Checklist.

13.2. For every contract where it is considered that the Council would suffer loss if the contract works, supplies or services are not provided in the

time specified, the contract shall provide for the payment of liquidated damages by the contractor to reflect the anticipated loss to the Council.

13.3. Employees must consult with the Chief Financial Officer to establish whether a parent company guarantee is necessary when a supplier is a subsidiary company and:-

- a) The award is based on an evaluation of the parent company; or
- b) There is some concern about the financial stability of the supplier.

13.4. Employees must consult with the Chief Financial Officer to establish whether a bond is needed where:-

- a) It is proposed to make stage payments during the life of the contract and there is some concern about the financial stability of the supplier; or
- b) There will be a cost to maintain service delivery if the supplier goes into liquidation; or
- c) Where a parent company guarantee cannot be provided (i.e. due to the company not having a parent company).

## Section D – Procure

Prepare procurement documentation and publish, select suitable suppliers, evaluate bids, award and mobilise the contract.

### 14. Procurement Process, Advertising Requirements and Procurement Notices

14.1. Further to 1.4 above, the penalties for non-compliance with procurement regulations are severe and failure to comply could expose the Council to legal action by suppliers, resulting in setting aside the contract, fines, re-tendering costs and compensation.

14.2. The Procurement Team must be notified and involved in all procurements above £B (£25k) as a minimum to ensure the process undertaken is compliant. This also ensures all awarded procurements are recorded on the Central Procurement Database.

14.3. The only exception to 14.2 is where a procurement is due to be awarded via a Framework Agreement or falls in scope of the Vertical or Horizontal arrangement regardless of the value (if below £b (£25k)). The Procurement Team must always be consulted and involved in the process to ensure a compliant award.

#### 14.4. Quotations and Tenders

14.4.1. For the purposes of Quotations and Tenders (excluding Framework Agreement call-offs, Vertical and/or Horizontal Arrangements), please find below the matrix outlining the process to be followed.

Estimated Value of the Whole Contract*	Minimum Number of Suppliers to be Invited	Minimum Advertising Requirements	Procurement Method	Process Records Required	Form of Contract Required
Less than £A (£7.5k)	No minimum numbers, but must demonstrate value for money	Not Mandatory - Supplier selection based on Officer knowledge	Written Quote	Written record documenting the process (Including Written Quote submitted – if applicable)	Purchase Order (PO) and Invoice. Contract may be required depending on the risk and nature of the award.

£A to £B (£7.5k to £25k)	3 written Quotations	Not Mandatory - Supplier selection based on Officer Knowledge	Written Quotation (E-Mail or Purchasing system are also acceptable)	Quotations obtained and record documenting the process and reasoning as to the selection of the successful supplier	Purchase Order (PO) and Invoice.  Formally signed contract may be required depending on the risk and nature of the award.
£B to £C or D if Works (£25k to £125k or £3.5M if Works)	<b>Must be via the Procurement Team</b>  If open, sealed Tenders and no minimum amount need to be invited as it's an openly advertised opportunity.  If however it is deemed to be closed, a minimum of five (5) must be invited to obtain at least three (3) Quotations.	Advertisement on the authorised eTendering Portal and Find a Tender (if open advert).  Option to undertake closed Quotation process but must be justified and approved by Chief Financial Officer (or the Procurement Team).  At least five (5) suppliers invited.	Invitation to Quote if closed (Consult the Procurement Team) or Invitation to Tender if open (Consult the Procurement Team)	Procurement Documents, Clarification Register, Submission Documents, Contract	Signed contract/agree ment, PO and Invoice (Record on Central Contracts Database)
More than £C (£125k) to <a href="#">threshold</a> or more than D (£3.5M) if Works	<b>Must be via the Procurement Team</b>  Open sealed Tender.	Advertisement on the authorised eTendering Portal and Find a Tender.  No option for it to be closed.	Invitation to Tender - Sealed Tenders (Consult the Procurement Team)  No option for it to be closed.	Procurement Documents, Clarification Register, Submission Documents, Contract	Formal Sealed Contract (Record on Central Contract Database)
Above <a href="#">threshold</a>	<b>Must be via the Procurement Team</b>  Open sealed Tender.	Advertising on Find a Tender and Contracts Finder.  No option for it to be closed.	Follow Regulations (Consult the Procurement Team).  No option for it to be closed.	Complete Log of entire procedure	Formal Sealed Contract (Record on Central Contract Database)

\* Including extension options and shall be deemed to exclude any Value Added Tax applicable to the contract/framework agreement.

14.4.2. Invitation to Quotes may be undertaken on a closed basis (£B to £C or D if Works (£25k to £125k or £3.5M if Works). This is where the contracting authority invites quotes from a closed group of pre-selected suppliers via the e-tendering portal provided it does not advertise the



procurement in any other way (for example in a newspaper or on a local website or openly on the portal). The reasoning for the selection of suppliers must be justified (for instance all SME's, they are local in the Borough or County) and at least five (5) suppliers must be invited. The same five (5) suppliers cannot keep being reinvited to similar invitations to quote due to risk of service delivery in the event of supplier failure but to also ensure suitable competition. If the intention is to undertake a closed invitation to quote process, approval must always be given by the Chief Financial Officer and in their absence the Procurement Team. Where a closed invitation to quote procedure is not being undertaken (and this excludes a framework agreement award, vertical and horizontal awards), the process will be deemed a below threshold tender and must therefore comply where relevant to the Procurement Act.

- 14.4.3. Timescales for above threshold and below threshold Tenders are outlined in the Procurement Act. For the purposes of Invitation to Quote processes, this must be out to the market for at least 30 days unless justified and approved by the Chief Financial Officer and in their absence the Procurement Team.
- 14.4.4. For Tenders which exceed £C (£125k) or £D (£3.5M) if Works, consideration should be given to re-tendering where two or fewer tenders are received, and where prices are high and VFM cannot be demonstrated. But this needs to be balanced with other factors such as programme, priority, risk and whether the opportunity was limited or restricted in some form.
- 14.4.5. Standstill Period is compulsory on all procurements above £C (£125k) including Works above £C (£125k) unless waived following approval with the Chief Financial Officer. A Standstill period must always apply to an above threshold Tender as per the Regulations. It is optional for a competition via a Framework Agreement and would be deemed best practice if time permits, unless the Framework Agreement mandates a Standstill Period. Where a Standstill Period is not mandatory as per the Regulations, it will be called a Voluntary Standstill Period.
- 14.4.6. Concession contracts have the same [threshold](#) as 'works' contracts. In simple terms, a contract is a 'concession' when the economic operator is compensated by the ability to exploit the requirement on behalf of the authority (i.e. Leisure Centre Operator). However, concession contracts vary from standard service and works contracts in that, the operator must take the risk that no income is generated and a loss could be incurred. A full definition of what is meant by a 'concession contract' can be found in the [Glossary of Terms](#). If you believe your requirement could be a concession contract, please contact the Procurement Team for advice.

#### 14.5. Framework Agreements ([CHAPTER 4 Award under frameworks](#))

- 14.5.1. A Framework Agreement means an agreement between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers. A contract can be awarded via a Framework Agreement but it must be done so in accordance with the Framework Agreement terms and conditions. All purchases made via a Local Authority consortium or public sector Framework Agreement, such as CSW, ESPO, CCS, PFH or PAGABO, are deemed to comply with these Contract Standing Orders and an exemption is not required.
- 14.5.2. Framework Agreements, due to their nature, may be comprised of several suppliers, and a robust selection process should be undertaken to ensure value for money is achieved. The Council must comply with the Framework Agreement call-off process to ensure compliance with the Regulations to result in a compliant award. Call-off Contracts may be awarded with or without competition between suppliers on the framework. Advice must always be sought from the Procurement Team who will facilitate and manage the process for Officers.
- 14.5.3. Access to Framework Agreements will be defined by the Framework Agreement owner.
- 14.5.4. The Procurement Team must vet the Framework Agreement to ensure it is a compliant Framework Agreement to use. Even though the Council may not be the Framework Agreement owner, any procurement process via a Framework Agreement to award a Call-off Contract will be the sole liability of the Council. Therefore, should the Framework Agreement be deemed non-compliant and/or the call-off process was non-compliant, the contract awarded will still be liable for the consequences set out in 1.4. This is why due diligence of the framework agreement is still required.
- 14.5.5. Where the Council may use a new Framework Agreement that requires the completion of an Access Agreement, approval must be granted by the Chief Financial Officer, Monitoring Officer, Team Leader Accounts Payable & Procurement.

#### **14.6. Collaborative Procurements**

- 14.6.1. Typically, most procurements and contracts awarded will be in the form of a Tender or Quotation process as outlined above. However, there are alternative routes to market such as accessing a public sector compliant Framework Agreement or a collaborative Tender/Quote process led by another public sector body in order to secure better value for money. The Procurement Team must be consulted where a purchase is to be made using collaborative purchasing arrangements with another public sector body (including central government), statutory undertaker or public service purchasing consortium. Where the Council is acting as the lead authority in a consortium for the procurement of goods, works or services, these Contract Standing Orders will be applicable. Where the Council is a participating

buyer/customer to a wider collaborative procurement (such as a regional procurement exercise led by another borough/district or county council or, part of a national aggregated procurement exercise), the lead authority will comply with the regulations and their Contract Standing Orders (or equivalent). However, Officers are informed that this relates only to the competitive part of the procurement process. The Principal Contract Officer at the Council will still be required to comply with internal process, governance, sign off and approval.

#### **14.7. Vertical Arrangements**

14.7.1. For the purposes of the Regulations, the Vertical Arrangement exemption applies only to contracting authorities that are public authorities and it does not apply to public undertakings or private utilities. The exemption is available where a contracting authority (or two or more contracting authorities acting together) contracts with 'controlled person' over which the contracting authority owner has the form of control set out in the Act. One example of a controlled person is a local authority trading company that the contracting authority owner has set up, either on its own or with other contracting authorities, to provide services.

14.7.2. Schedule 2 Exempted Contracts, paragraph 2(2) of sets out the criteria that determine whether the person is 'controlled', all of which must be met in order for the exemption to apply. These are:

- a) The Council is a parent undertaking, as defined in paragraph 2(4) (which refers to the definition in Section 1162 Companies Act 2006);
- b) No other person exercises (directly or indirectly) a decisive influence over the activities of the controlled person; and
- c) The controlled person carries out more than 80% of its activities for, or on behalf of, the contracting authority owner (the Council), or for or on behalf of other persons controlled by the contracting authority owner; and
- d) Where there is joint control by more than one contracting authority owner, each contracting authority owner is represented on the controlled person's board or equivalent decision-making body, and the controlled person does not carry out activities which are contrary to the interests of one or more of the contracting authority owners.

14.7.3. This exemption (not to be confused with Standing Order 24 of the CPR's) applies to contracts awarded by the contracting authority owner (the Council) to the controlled person and to contracts awarded by the controlled person to its contracting authority owner. There still remains a requirement to publish notices, obtain and demonstrate value for money and undertake contract management duties. The exemption removes the need to undertake a competitive procurement process only. Therefore pre-procurement stages and contract management stages still apply.

## **14.8. Horizontal Arrangements**

14.8.1. For the purposes of the regulations, the Horizontal Arrangement exemption applies only to contracts between contracting authorities and only where both of the co-operating contracting authorities are public authorities - it does not apply to public undertakings or private utilities.

14.8.2. A Horizontal Arrangement exists between co-operating contracting authorities when:

- a) the arrangement is intended to achieve common goals in connection with the exercise of their public functions; and
- b) the arrangement is solely in the public interest; and
- c) no more than 20% of the activities envisaged by the arrangement are intended to be carried out for reasons other than for the purposes of their public functions.

## **14.9. Advertising Requirements including Procurement Notices**

14.9.1. For the purposes of Above Threshold and all Invitation to Quotes or Tenders undertaken on an open basis, please find below the advertising and notice requirements throughout the lifetime of the procurement cycle.

### **a) Preparation Stage**

- i. Pipeline Notice (Mandatory if applicable): if a contracting authority considers they will pay >£100 million for contracts for goods and services in the upcoming financial year, then the publication of a pipeline notice 56 days prior to commencement of the financial year (being the 1st of April) setting out information about public contracts with an estimated value of over £2million each is mandatory.
- ii. Planned Procurement Notice (Optional): this is an optional notice intending to show that a public body intends to publish a tender notice in the future.
- iii. Preliminary Market Engagement Notice (Mandatory if applicable): contracting authorities are not obliged to perform Prior Market Engagement but where they do, they will be required to publish a Prior Market Engagement Notice or provide reasons for conducting Prior Market Engagement in the tender notice. This is a change from the current Public Contracts Regulations 2015 which does not require (but allows) the publication of such notice.

### **b) Procurement stage**

- i. Tender Notice (Mandatory if applicable): where a contracting authority is planning to award a public contract via a competitive procedure, then tender notice will be mandatory and commences the procedure. This is the equivalent to the current contract notice.

- iv. Transparency Notice (Mandatory if applicable): this is mandatory if there is a direct award made by a public body and replaces the current voluntary transparency notice.
- v. Below Threshold Tender Notice (Mandatory if applicable): this is mandatory where the contracting authority intend to advertise for the purpose of inviting tenders for a below threshold procurement (being a contract with estimated value of not less than £12,000 (inc. VAT) for central government authorities and not less than £30,000 (inc. VAT) for all other contracting authorities) and must be published prior to advertising a notifiable below threshold contract.
- vi. Procurement Termination Notice (Mandatory if applicable): these do not extend to private utilities or contracts awarded under section 41 as specified in paragraph 15 of Schedule 5, however, they are mandatory for public contracts where after publishing a tender or transparency notice the contracting authority decides not to award the contract.

### **c) Contract award**

- i. Contract Award Notice (Mandatory if applicable): this is published at conclusion of procurement and before entering into the contract and sets out the intention to enter into a public contract – this is mandatory. It should be noted that contracting authorities will be required to give an assessment summary (the equivalent to the current standstill letters, albeit with different requirements) to each supplier that submitted a tender before publishing the contract award notice.
- ii. Contract Details Notice (Mandatory if applicable): this shows that a contract has been entered into and is mandatory. In addition
  - a. Publication of contract (Mandatory if applicable): contracting authorities who enter into a public contract with a value of more than £5m will have to publish a copy of the contract within 90 days of entering into the contract (or 180 days if the contract is light touch). However, Welsh contracting authorities are required to publish contracts only if the contract was awarded as part of a procurement under a reserved procurement arrangement (i.e a framework or Dynamic Market awarded by an English / non-devolved contracting authority) and the value of the call off is over £5m.
- iii. Procurement Termination Notice (Mandatory if applicable): this is a new requirement where a contracting authority is now required to publish a notice where it decides to abandon a procurement. Such a notice must be published as soon as reasonably practicable after making the decision.
- iv. Below-Threshold Contract Details Notice (Mandatory if applicable): where a contracting authority enters into a notifiable below-threshold contract (being a contract with estimated value of not less than £12,000 (inc. VAT) for central government authorities and not less than £30,000 (inc. VAT) for all other contracting authorities) then the contracting authority must publish a contract details notice as soon as reasonably practicable after entering into the contract.

#### **d) Contract performance management**

- i. Contract Change Notice (Mandatory if applicable): mandatory where an above-threshold modification is made to the contract. This is a wider requirement compared to the Public Contracts Regulations 2015 which only require contract modification notices in limited circumstances. No contract change notice is required to be published where the modification do not increase or decrease the value of the contract (a) in the case of supply of goods and services contracts, by 10% or less or (b) in the case of works contracts, 15% or less.
- ii. Contract Termination Notice (Mandatory if applicable): this is mandatory and must be published within 30 days of contract termination date, (whether termination is due to expiry or otherwise). This is a new requirement.
- iii. Payments Compliance Notes (Mandatory if applicable): this is mandatory and must show the contracting authorities compliance with 30-day payment terms. Such notices must be published within 30 days of the last reporting period (being each 6 month period on either the 31 March or 30 September)
- iv. Contract Performance Notice (Mandatory if applicable): with the exception of private utilities, (where no contract performance notice will be required), where a contracting authority has included KPIs in the contract and the contract has a value of over £5million then the contracting authority must at least once every year assess the suppliers performance against those KPIs and publish information about the suppliers performance. In addition, contracting authorities will be required to share information about breaches of contract or poor performance (including those which result in termination, payment of damages or a settlement agreement) by the supplier within 30 days of the breach or poor performance.

#### **e) Relevant at more than one part of the procurement process**

- i. Dynamic Market Notices (Mandatory if applicable): this notice is mandatory where a dynamic market will be publicised, established, awarded or where it will be terminated. A Dynamic Market Notice will get updated as it passes each stage. No Dynamic Market Notice is required to be provided for a termination if the dynamic market is established by a private utility.

### **15. Receipt And Opening Of Tenders/Quotations**

- 15.1. All sealed Quote and Tenders must be via a procurement portal. Where utilising the Council e-tendering portal (rather than a framework provider portal or lead authority (such as another public sector body)), at least two officers from the Procurement Team must receipt and undertake the opening ceremony. Any faxed, post and/or email submissions must be rejected.
- 15.2. A summary of the tender or quote opening information as detailed below shall be produced and retained with the contract documents:

- a) Title of the Contract
- b) Names of all tenderers
- c) The amount of each tender
- d) Date and time of opening
- e) Name of those present at opening
- f) Verification that all documents are present

15.3. The Procurement Team will download the tender or quote responses and make them available to relevant Officers as required for record/audit/evaluation. This will result in an initial anonymised tender opening record and pricing documents will not be shared until the pass/fail and quality assessment has been undertaken to mitigate any potential bias during the evaluation process.

## **16. Evaluation, Award and Debriefing Suppliers**

16.1. With the exception of debriefing required or permitted by these Standing Orders, the confidentiality of quotations, tenders and the identity of suppliers must be preserved at all times and the information about a bid response must not be given to any other supplier or external party unless for a justifiable reason (insurance advisors, externally appointed project manager/consultant). Freedom of Information Act 2000 [Sections 43](#) and [44](#) refer to exemptions for confidential and commercially sensitive information.

16.2. The Procurement Team must ensure all contracts awarded above £25k (or below if involved or appointed via a Framework Agreement Call-off) have a contract record created in the Central Contract Database and where applicable, a Contract Notice published.

### **16.3. Evaluation**

16.3.1. Bids must be evaluated and awarded in accordance with the evaluation and award criteria defined in the procurement documents by a minimum of two officers who have the technical ability to evaluate the submission. The Procurement Team are able to advise on the process but shall not undertake the award criteria (quality) assessment unless there is a justifiable reason approved by the Chief Financial Officer, Monitoring Officer, Team Leader Accounts Payable & Procurement. The Procurement Team will however review the pass/fail criteria, conditions of participation and pricing documentation. During this process, officers shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily. If any particularly low bids are received or if there are large discrepancies between the bids received, it is advised to undertake an abnormally low price clarification process. Where a bid is considered to be abnormally low the Procurement Team will follow the process outlined in the regulations.

### **16.4. Award**

- 16.5. Where required by the regulations, before entering into a public contract (awarding), the Council must publish a contract award notice setting out that the Council intends to enter into a contract and observe a Standstill Period. But before publishing a contract award notice, the Council must provide an assessment summary to each supplier that submitted an assessed tender which contains information about the Council's assessment of the tender, and if different, the most advantageous tender submitted in respect of the contract.
- 16.6. The Contract must be signed by an authorised officer of the Council's Legal Team as per the approved signatory and delegations list, and a copy of the contract must be forwarded to the Procurement Team to update the Central Contract Database. The Legal Team will require the relevant approval and authority in accordance with the Council Constitution in order to sign the Contract for the provision of goods, services and works.
- 16.7. Standstill Period**
- 16.7.1. The Council must not enter into a public contract before the end of the mandatory standstill period, or if later, the end of another standstill period provided for in the contract award notice.
- 16.7.2. The Council will need to observe the mandatory Standstill Period which is the period of eight working days beginning with the day on which a contract award notice is published in respect of the contract.
- 16.7.3. Where there is no requirement to observe a mandatory Standstill Period, the Council will (unless approved by the Chief Financial Officer, Monitoring Officer, Team Leader Accounts Payable & Procurement) hold a Voluntary Standstill Period. Like the mandatory Standstill Period, the voluntary Standstill Period must be at least eight working days. A voluntary Standstill Period is not required for tenders or quotes below £125k.
- 16.7.4. If the award decision is challenged by an unsuccessful tenderer then the contract will not be awarded, the standstill is likely to be extended subject to the reason for the challenge, and advice must be obtained from the Monitoring Officer, Team Leader Accounts Payable & Procurement and if required, the Procurement Team via the Procurement Shared Service.
- 16.7.5. If a supplier requests in writing the reasons for a decision, they must be given the reasons in writing prior to completion of the standstill period or within five (5) working days from receipt of the request if no standstill is being followed. If requested, tenderers who were deselected in any pre-selection stage be given the outcome of the procurement for transparency purposes.



## **17. Post Tender Negotiation**

- 17.1. Seeking clarification of an invitation to tender is permitted but must be undertaken via the electronic tender portal. However, if it is in fact deemed negotiation rather than clarification, it must be undertaken in a controlled environment with a clear agenda and minutes of meetings/discussions with at least one member of the Procurement Team in attendance.
- 17.2. Discussions with bidders after submission of a tender and before the award of a contract with a view to obtaining an adjustment to price, delivery or content must be the exception rather than the rule. It must not be conducted in procurements above the [threshold](#) where it might distort competition unless permitted by the regulations. The only exception to this is if the Competitive Flexible Procedure has been used which includes one or more stages of negotiation.
- 17.3. If post tender negotiations are necessary after a single stage tender or after the second stage of a two stage tender (for instance where prices are significantly higher than the available budget or where no suitable or bids are acceptable without modification), then such negotiations shall only be undertaken as part of the closure of the procurement stage and re-opening of a new stage to ensure all bidders are treated fairly and equally to reduce challenge. A record of the minutes of negotiation meetings shall be kept on file and the changes communicated transparently.
- 17.4. The Chief Financial Officer and Chief Officer – Legal and Governance must be formally consulted wherever it is proposed to enter into post tender negotiation. Negotiations must be conducted by a team of at least two employees, one of whom must be from the Legal Services Team or Procurement Team.

## **18. Records**

- 18.1. The Council and officers must retain documentation and communication as required by the regulations. This includes:
  - a) all and any records as the Council considers sufficient to explain a material decision made for the purpose of awarding or entering into a public contract;
  - b) records of any communication between the Council and a supplier that is made in relation to the award or entry into of a public contract, and before the contract is entered into.
- 18.2. All procurements awarded need to be added to the Central Procurement Database.
- 18.3. In the event of a legal challenge all communications including e mails, may be requested by a Court as evidence. Therefore, it is essential that

all documentation is stored securely and all communications/notes are undertaken in a professional manner.

- 18.4. All records must be kept for at least three (3) years after the final settlement of the contract, twelve (12) years if the contract is under seal. However, tender documents, which relate to unsuccessful contractors, need only to be kept for a period of 12 months from award of the contract, provided there is no dispute about the award. In some cases it may be desirable to retain documents for a longer period by scanning or using some other suitable method. Where the cost of the contract is to be met in part or in whole, by sources of external funding, the written records shall be retained in accordance with any additional directions of the external funder but these provisions must be as a minimum be followed.

## **Section E – Manage**

Establish a contract management plan to monitor performance and ensure successful delivery of contractual obligations, exit and contract closure.

### **19. Contract Management**

#### **19.1. Responsibility of the Principal Contract Officer**

19.1.1. A Principal Contract Officer must be nominated for all contracts over £B (£25k). The nominated person will be responsible for the planning, coordination, monitoring and controlling of the contract, and ensuring completion on time, within cost and to the required quality standards. This cannot be a member of the Procurement Team unless the contract is for the Procurement Team (such as the company credit rating solution or e-tendering portal).

19.1.2. The Principal Contract Officer should:-

- a) Maintain a risk register during the contract period;
- b) Undertake appropriate risk assessments;
- c) For each risk identified, ensure that contingency measures are in place;
- d) Confirm the financial stability and insurance cover of the contractor at least annually; and
- e) Be proactive to ensure the contract is reviewed at least annually (if longer than twelve (12) months) to effectively and efficiently plan for any extension period (if permitted by the contract) and/or begin planning for any new procurement if the contract is an ongoing requirement rather than a one off purchase.

19.1.3. During the life of the contract the following issues must be monitored:-

- a) Performance;
- b) Compliance with specification and contract;
- c) Budget, cost, variations, quality and value for money;
- d) User satisfaction and risk management; and
- e) Customer complaints.

19.1.4. Principal Contract Officers are advised to hold regular contract meetings with their contracted suppliers at least once a quarter and to hold documentation as evidence of meetings (minutes) as appropriate. These meetings should be used to discuss updates, performance, invoicing, provisionally discuss changes (personnel or contract variations) before formally agreeing and end of contract arrangements (TUPE, providing back to the Council any documentation, keys, equipment etc). These meetings will ensure consistent communication between the parties.

## 19.2. Contract Variations

19.2.1. Following the award of any contract, changes may need to be made for certain reasons such as changes in procedure, legislation, pricing, the terms of the contract and/or specification. A contract may be modified in accordance with this procedure rule and the procurement regulations, but certain criteria must be met to modify a contract. If the proposed variation is not compliant with the criteria, the variation is not permissible.

19.2.2. It is the Principal Contract Officer's responsibility to manage the contract and ensure any variation to a contract is checked prior to agreeing with the supplier, ensuring liaison with the Procurement and Legal Services Team. Any change to a contract must be documented appropriately via a contract variation schedule and signed off by the parties.

19.2.3. A contract can be modified based on the below criteria:

- a) Non-substantial
- b) Below threshold
- c) Provided for in the contract
- d) Urgency and the protection of life
- e) Genuine unforeseeable circumstances
- f) Materialisation of a known risk
- g) Additional goods, services or works
- h) Transfer on corporate restructuring

a)	Non-substantial	<p>Modification is permitted on this ground if it is not a 'substantial modification as defined in section 74(3), i.e. if it does not:</p> <ul style="list-style-type: none"><li>• increase or decrease the term of the contract by more than 10% of the maximum term provided for on award; or</li><li>• materially change the scope of the contract; or</li><li>• materially change the economic balance of the contract in favour of the supplier.</li></ul>
b)	Below threshold	<p>Modification is permitted on this ground if it:</p> <ul style="list-style-type: none"><li>• does not increase or decrease the estimated value of a goods or services contract by more than 10%, or a works contract by more than 15%; and</li><li>• does not materially change the scope of the contract.</li><li>• cannot be made on the grounds at Schedule 8 or is not a substantial modification (as set out in section 74(3))</li></ul>
c)	Provided for in the contract	<p>Modification is permitted on this ground if the possibility of the modification is unambiguously provided in:</p> <ul style="list-style-type: none"><li>• the contract as awarded; and</li></ul>

		<ul style="list-style-type: none"> <li>the tender or transparency notice for the award of that contract; and</li> <li>the modification would not change the overall nature of the contract.</li> </ul>
d)	Urgency and the protection of life	<p>Modification is permitted on this ground if its purpose:</p> <ul style="list-style-type: none"> <li>could, alternatively, be achieved by directly awarding a contract under section 41 (Direct award in special cases); and</li> <li>such direct award could be made by reference to either extreme and unavoidable urgency (under Schedule 5, paragraph 13) or regulations made under section 42 (Direct award to protect life, etc).</li> </ul>
e)	Genuine unforeseeable circumstances	<p>Modification is permitted on this ground if:</p> <ul style="list-style-type: none"> <li>the circumstances giving rise to the modification could not reasonably have been foreseen by the contracting authority before the award of the contract; and</li> <li>it does not change the overall nature of the contract; and</li> <li>it does not increase the estimated value of the contract by more than 50%. This 50% threshold does not apply if the contract is a utilities contract</li> </ul>
f)	Materialisation of a known risk	<p>Modification is permitted on this ground if:</p> <ul style="list-style-type: none"> <li>a 'known risk' (as defined in Schedule 8, paragraph 6) has materialised which was not caused by any act or omission of the contracting authority or supplier, and as a result the contract cannot be delivered to the contracting authority's satisfaction; and</li> <li>it is in the public interest in the circumstances to amend the contract rather than award a new contract; and</li> <li>it does not increase the estimated value of the contract by more than 50% (unless it is an utilities contract, in which case the 50% cap does not apply); and</li> <li>it was set out in the tender notice or transparency notice for award of the contract that the contract may require amendment due to the identified risk; and</li> <li>goes no further than necessary to address the known risk.</li> </ul> <p>When considering the public interest in relation to this type of modification, the contracting authority:</p> <ul style="list-style-type: none"> <li>must consider whether a new contract (rather than a modification) could provide more value for money; and</li> <li>may consider technical and operational matters.</li> </ul>
g)	Additional goods, services or works	<p>Modification is permitted on this ground if:</p>

		<ul style="list-style-type: none"> <li>• it is for goods, service or works that are additional to (which would include a repetition of) goods, services or works already provided for in the contract; and</li> <li>• using a different supplier would result in the supply of goods, services or works that are different from, or incompatible with, those already provided for in the contract; and</li> <li>• the contracting authority considers that the difference or incompatibility would result in: <ul style="list-style-type: none"> <li>○ disproportionate technical differences in operation or maintenance or other significant inconvenience; and</li> <li>○ substantial duplication of costs for the authority; and</li> </ul> </li> <li>• the modification would not increase the estimated value of the contract by more than 50%. This limit of 50% does not apply if the contract being modified is an utilities contract.</li> </ul>
h)	Transfer on corporate restructuring	<p>The novation or assignment of a public contract to another supplier (which would include another contracting authority) is a permitted modification if it is required following a corporate restructuring or similar circumstance.</p> <p>Section 74(9) prohibits a contracting authority from modifying a contract to change a supplier except where this ground applies.</p> <p>The new supplier must not be an excluded supplier.</p>

19.2.4. Where the total cost of any contract is expected to exceed the contract sum and/or budget, this will be escalated in accordance with the virement limits procedure within the Financial Standing Orders, in consultation with the Chief Officer for Finance and Performance. The limits are:

- a) £20,000 relevant Chief Officer
- b) £75,000 Cabinet following consulting with the Chief Officer for Finance and Performance;
- c) In excess of £75,000 will require Full Council following consulting with the Chief Officer for Finance and Performance.

### 19.3. Supplier Performance Monitoring

19.3.1. Further to Standing Order 9, the Principal Contract Officer must monitor and measure the suppliers performance against the agreed KPI's.

19.3.2. If the Contract is in scope of the Procurement Regulations and has an estimated value of more than £5 million, the Council will be required to set at least three KPIs in respect of the contract and the three (3) KPI's (unless more than three (3) are set), must be published at least once

every twelve (12) months. The intention is to update In-Tend to amend the contract record form so Procurement Team can identify if there are any KPI's in excess of £5m and if so, record when the data will need to be published. As part of quarterly transparency reports, the procurement team will see which contracts (if any) require KPI's to be published and via that report, a request will be issued to the service area to obtain the information to be published by the Procurement Team in accordance with the Procurement Regulations for contracts that exceed £5 million. As per Standing Order 9, The obligation to set and publish at least three KPIs does not apply in relation to certain types of public contracts:

- a) a framework (although it does apply to call off contracts under frameworks where these are over £5m);
- b) an utilities contract awarded by a private utility;
- c) a concession contract; or
- d) a light touch contract.

## **20. Extensions of Existing Contracts**

20.1. Subject to compliance with the regulations, contract extensions can be awarded when:

- a) Value for money can be demonstrated for the Council;
- b) The option to extend was written into the original contract;
- c) The extension period is less than the original contract term; and
- d) For Contracts subject to Regulations, the Notice and Award Notice included the option to extend.

20.2. Short term extensions may be permitted if compliant with the criteria included in Standing Order 17 (Contract Variations). This must however be the exception rather than the rule. Principal Contract Officers need to be proactive and plan their reviews accordingly to ensure contracts that need to be re-procured are doing so in sufficient time to mitigate risk of a gap in provision.

20.3. The extension must be approved in advance by the Principal; Contract Officer in consultation with the Chief Officer responsible for the service area. The Chief Officer should also liaise with the Chief Financial Officer and then update the Procurement Team to facilitate the extension. Before approval is given it must be satisfied that:-

- a) The total contract value including the extension is less than the [threshold](#) or it will be subject to Regulations unless the extension was permitted in the tender or quote and contract;
- b) The Council is satisfied the supplier is performing against the contract and delivering the expected outcomes to be achieved when the contract was awarded;
- c) That the likely benefit of new competition for a new contract would be outweighed by the administrative cost and/or delay involved; and

- d) That the interests of the Council will not be compromised by the negotiation.

## **Section F – General**

Standing Orders outlined below are not specific to a stage of the Procurement Pathway (Plan, Define, Procure and/or Manage) so have been included in Section E – General as they apply throughout the entire procurement and contract lifecycle.

### **21. Conflict of Interest**

- 21.1. Officers and Elected Members must comply with the Code of Conduct and wider legislation surrounding the declaration of any conflict of interest that may be directly or indirectly be linked with a procurement process. Under the Procurement Act, the Council will be required to demonstrate throughout the lifecycle the ongoing assessment and review of potential conflict of interests and where identified, mitigate risk. A conflict of interest arises in a procurement context where there is a conflict between the interests of a person acting in relation to a procurement and those of the procurement itself (this includes any decision maker, whether a senior Officer or Elected Member such as a member of Cabinet or the relevant Portfolio Holder). Therefore, Officers participating in the procurement process will be asked to declare throughout the procurement process any conflict of interest that may impact the procurement process.
- 21.2. Conflicts of interest need to be managed effectively to ensure that the public can trust contracting authorities to carry out public procurement responsibly and impartially. It also helps to encourage suppliers to participate in procurements, providing confidence that they will be treated fairly and that there will be genuine competition.
- 21.3. The Procurement Officer will be required to create and maintain a conflicts assessment for each procurement process and to publicly confirm that this has been done and that it has been reviewed and revised as necessary.
- 21.4. Mitigations will include but not be limited to reassigning staff and/or decision makers, require a suppliers bid team to change and/or in exceptional circumstances where there is no way to remove any conflict of interest, exclude the supplier from the procurement process. Advice must always be sought from the Chief Financial Officer, Monitoring Officer and/or the Accounts Payable and Procurement Team Leader. If required, the Procurement Team via the Procurement Shared Service may also be contacted to provide support regarding mitigations for the purposes of any conflict of interest identified during a procurement process.



- 21.5. Further information is contained in Chapter 6 (General provision about award and procedures), Part 5 of the Procurement Act ([Conflicts of Interest](#)).
- 21.6. Officers and Elected Members are reminded that the identification of a conflict of interest in connection the procurement process does not negate the requirement to declare the conflict as a Declaration of Interest as specified in the Constitution. If it comes to the attention of a member or employee of the Council that a contract, in which he or she has a financial or non-financial interest, has been or is proposed to be entered into by the Council, he or she must record it in the Interests Register maintained by the Monitoring Officer for the purposes of Members and for the purposes of Officers, maintained by the Human Resources Team. Where necessary the Monitoring Officer and/or Human Resources Team will report such declarations to the relevant Officers and Members. Such written notice is required irrespective of whether the interest is direct or indirect. An indirect interest is distinct from a direct interest in as much as it is not a contract to which the member or employee is directly a party.
- 21.7. The Monitoring Officer shall ensure that the attention of all members is drawn to the adopted Member Code of Conduct and that all employees are aware of the Employee Code of Conduct.

## **22. Gifts and Hospitality (Corruption and Bribery)**

- 22.1. In accordance with the Council's policy on Gifts and Hospitality, no Officer or Elected Member must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the employee to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a criminal offence under the Bribery Act 2010.
- 22.2. All formal written contracts must include a provision that permits the Council to terminate a contract and to recover loses if the supplier (including its employees, agents or third parties) including anyone acting on behalf of the supplier:
- a) Offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the supplier does not know what has been done); or
  - b) Commit an offence under the Bribery Act 2010 or any other legislation that deals with Bribery and Corruption in force at the time the contract is let; or
  - c) Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

## **23. Freedom of Information Act 2000 Exemptions**

Within the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 the public has the right to request information held by the Council or potentially contractors working on behalf of the Council. There are a number of potential exemptions to disclosure particularly where there are commercially sensitive or confidential data involved.

- 23.1. In considering exemptions, it is both the impact on the Council and the Contractor which is considered. However the exemptions are subject to a public interest test. The assessment is made at the time the request is made so particularly for market sensitivity, this will usually decrease over time meaning historical information is more likely to be disclosed.

More information and advice can be obtained from the Communication, Consultation and Information Manager and/or the Monitoring Officer.

## Section G – Exemptions

The Standing Order outlined below is not specific to a stage of the Procurement Pathway (Plan, Define, Procure and/or Manage) but could be required throughout the procurement and contract lifecycle.

### 24. Exemptions

- 24.1. Only under exceptional an/or unavoidable circumstances shall authority be given to waive the Contract Standing Order. Generally, an exemption will only be approved if it is because of an unforeseeable emergency involving immediate risk to persons or property, disruption to council services or in the best interest of the service and only where it is not in breach of the Procurement Regulations.
- 24.2. An Exemption may be permitted to waiver a requirement of the CSO's and advice should always be sought from the Procurement Team and it must be cross checked against the Regulations.
- 24.3. Examples of a justifiable reason for an exemption include:
  - a) Direct award to a single supplier below the Procurement Regulation Threshold due to an unforeseen health and safety risk;
  - b) A waiver to obtain 3 sealed quotes and instead obtain 3 written quotes for a value at £45,000 on the basis value for money can be achieved and the process followed to obtain 3 quotes demonstrates value for money.
- 24.4. All exemptions must be requested using the Exemption Request Form in SharePoint. Exemptions granted shall be recorded on the Contract Database and must therefore include Procurement Team. Requests for all exemptions and the reasons for accepting or rejecting the request must be in writing (includes e-mail).
- 24.5. An exemption to these Contract Standing Orders may only be made:-
  - a) By the Chief Financial Officer and the Monitoring Officer in consultation with the Team Leader Accounts Payable for contracts estimated to be valued up to £C (£125k) or up to the [threshold](#).
  - b) If the Chief Financial Officer is applying for an exemption (or the Team Leader Accounts Payable & Procurement) then he/she must consult with the Chief Executive and Monitoring Officer to ensure scrutiny and governance.
- 24.6. Exemptions cannot be requested if the value of the contract exceeds the [threshold](#). That said, a Direct Award is possible for above threshold procurements if undertaken in accordance with the provisions set out in Part 3 Award of public contracts and procedures [Chapter 3 – Direct Award](#).

- 24.7. Under the principles of value for money (VFM) the Council should discourage requests for the Council to obtain only one quotation or tender unless there is only one suitable supplier available. Where there is only one suitably qualified supplier such as for education services and embedded software licence renewals, then all reasonable efforts to secure VFM must be made.

## Section G – Glossary

**‘Above Threshold’** a procurement process or contract award that would have a value in excess of the Threshold that applies for that type of contract.

**‘Business Case’** means a formal document that has been reviewed and agreed providing the justification for the undertaking of a project, programme or portfolio.

**‘Central Procurement Database’** means an electronic method of tendering and recording of contract data using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received via a e-tendering system.

**‘Chief Financial Officer’** means the individual as outlined in Standing Order 1.9.

**‘Competitive Flexible Procedure’** means a procurement procedure when above threshold allow the Council the freedom to design its own procedure. The Council may choose to incorporate numerous processes into the procedure, such as negotiation, dialogue or a demonstration stage.

**‘Concession’** means a contract where the supplier receives at least part of their remuneration from users of the works or services they are providing. As such, suppliers are exposed to a potential loss on their investment due to demand fluctuations.

**‘Constitution’** means the formal document in place at the Council which underpins all activity by setting out how the council conducts its business, including: who is responsible for making decisions and how decisions are made.

**‘Council’** means the local authority.

**‘Direct Award’** refers to the process of awarding a contract without competition.

**‘Dynamic Market’** means a list of qualified suppliers (i.e. suppliers who have met the ‘conditions for membership’ of the dynamic market) who are eligible to participate in future procurements.

**‘Economic operator’** or **‘supplier’** means any legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

**‘Exemption’** is where there is a need to seek a waiver to the Contract Standing Orders to disapply a particular rule.

**‘Forward Plan’** is a document that sets out information about 'key decisions' that the council will make at the next cabinet meeting or at other bodies/people that may make them.

**'Framework Agreement'** is an agreement or arrangement between one or more procurers and one or more suppliers that establishes the requirement and contract conditions that will apply to future orders or tasks (Call off contracts) that the procurer(s) may enter into during the period for which the framework agreement is established.

**'Framework Agreement Call Off'** is a contract awarded via a Framework Agreement.

**'Horizontal arrangement'** means the arrangement set out in 14.8.

**'Key Decision'** is a decision as defined in the Constitution.

**'Leadership Team'** refers to the senior team made up of the Chief Executive, Deputy Chief Executive and Chief Officers.

**'Legal Services Team'** refers to the in-house Council Legal Team.

**'Lifetime Contract Value'** means the value of your contract which must account for the full lifetime of your contract (including any possible extension periods), account for any inflationary increases, provisional sums and estimated amount of expenditure via the contract during its term.

In the case of a Concession contract, the Lifetime Contract Value shall account for payments made by the Council and the potential monetary value for the supplier to exploit the works or services during the contract period. Therefore, the value calculation for a concession contract must take into account the full range of potential consideration to be received by the supplier over the length of the contract, including any renewals or extensions.

**'Lots'** refers to the process of splitting a larger single procurement into smaller 'chunks' which are then procured under separate contracts with different suppliers (some suppliers may be successful in more than one lot and may be awarded more than one contract) via a single procurement process.

**'Members'** refers to a Council Councillor who has been chosen by election which can include members of Cabinet as well.

**'Monitoring Officer'** refers to one of the statutory roles of a council with a specific duty to ensure the council, its Officers, and its Members, maintain the highest standards in all they do. The role is set out in Council Constitution. The Monitoring Officers' legal basis is found in Section 5 of the Local Government and Housing Act 1989, as amended by Schedule 5 paragraph 24 of the Local Government Act 2000.

**'Officer(s)'** refers to the Council's paid employees who support the whole council, not just the cabinet.

**'Parent company guarantee'** refers to a form of guaranty whereby a parent, as guarantor, assumes the responsibility for the performance of an action or

obligation of its subsidiary by agreeing to compensate the beneficiary in the event of such non-performance.

**‘Principal Contract Officer’** refers to the lead officer responsible for the contract and procurement, who manages the contract once awarded.

**‘Procurement Act’** refers to the Procurement Act 2023 which officially commences 24<sup>th</sup> February 2025.

**‘Procurement Checklist’** refers to an internal pre-procurement document used by Officers and the Procurement Team to undertake procurement processes.

**‘Procurement Regulations’** or **‘regulations’** refers to the Procurement legislation in place at the time of the procurement process which is relevant. Further information is contained in 2.4 and 2.5.

**‘Procurement Team’** refers to the in-house Procurement Team and Shared Service arrangement with Nuneaton and Bedworth Borough Council.

**‘Purchasing Cards’** refers to corporate credit cards that businesses can use to simplify their procurement processes.

**‘Quotation’** means an invitation below a certain threshold (see 14.4) for economic operators to submit their bids, outlining how they can fulfil the required specifications, at a specified price or rate.

**‘SME / small-to-medium-enterprises’** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

**‘Social Value’** means the consideration by a public sector authority to look beyond the financial cost of a contract to consider how the services they commission and procure can improve the economic, social and environmental wellbeing of an area.

**‘Specification’** means a set of documented requirements to be satisfied by a material, design, product, or service.

**‘Standstill Period’** refers to a short pause between the point when the contract award decision is notified to bidders, and the final contract conclusion.

**‘Tender’** means an invitation above a certain threshold (see 14.4) for economic operators to submit their bids, outlining how they can fulfil the required specifications, at a specified price or rate.

**‘Value for money’** means the most advantageous combination of cost, quality and sustainability to meet requirements.

**‘Vertical arrangement’** means the arrangement set out in 14.7.