

SECTION 21 - CONTRACT PROCEDURE RULES

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Change History

<u>Version</u>	<u>Date</u>	<u>Author</u>	<u>Commentary</u>
<u>V2.00 draft</u>	<u>29/07/2021</u>	<u>Steve Kingston</u>	<u>Re-write of S21 due to in-housing Procurement functions and new Procurement Target Operating Model. Draft for Comment.</u>

1. Introduction

A contract is a legally binding agreement under which the Council receives the benefit of, or incurs liability for, a valuable commodity. This could include:

- Payment of money
- Performance of services
- Execution of work
- Supply of goods or materials

These Contract Procedure Rules ('Rules') ~~is therefore encapsulate~~ includes day to day matters such as the placing of orders and have a number of primary purposes ~~the following main purposes:~~

- To ensure that competition and propriety are present in the tendering and award of contracts for the procurement of all Works, Services and Supplies;
- To elicit best value from our sourcing projects;
- To ensure the effort undertaken to source requirements is proportional to the size, value and risk of the exercise;
- To ensure compliance with the laws, regulations and guidelines which govern:
 - sourcing, tendering and contracting
 - ~~To comply with the laws which govern the~~ Spending of public money
- To demonstrate good corporate governance;
- To protect the Council and its officers from allegations of wrong doing regarding specific procurement decisions.

2. Scope

These Rules are made under section 135 of the Local Government Act 1972 as amended. They include provision for competition, and regulate the manner in which procurement and tendering take place.

These Rules apply to ~~the purchase~~ by the Council of all ~~goods, services and w~~Works, Services and Supplies purchased by the Council.

These Rules apply to all officers involved in the letting of orders or contracts for Works, Services and Supplies necessary for the delivery of the Council's functions, whether funded from Revenue, Capital or Grant sources. They provide a basis for true and fair competition by providing transparent and auditable procedures, which, if followed, will give confidence that a fully accountable and unimpeachable procurement regime exists within the Council. These Rules also protect the legal position of the Council in respect of compliance with UK law and in its contractual dealings with external suppliers and contractors. They also protect the interests of Members, officers and the residents of the District.

These Rules do not apply to:

- Contracts of Employment, and
- ~~Contracts that relate solely to the purchase or acquisition of land and property where there is no other requirement specified by the Council as part of the land transaction.~~

The legislation and processes regarding the letting of contracts can be complex and the Council has appointed an officer, the Monitoring Officer/Section 151 Officer ('S151 Officer'), to oversee the process by which contracts are placed. The Monitoring Officer/S151 Officer is the reference point for all matters concerning contracts.

The Monitoring Officer shall be consulted where clarification of the current law and the Council's legal position is required; or in matters that are novel.

All officers involved in procurement activity are subject to the Financial Procedure Rules. No expenditure can be incurred unless the necessary Council or Cabinet authorisation has been given.

Where the Council has established specific democratic arrangements to control procurement such as PFI contracts or contracts arising from the application of the Local Government Act 1999 additional reporting and approval requirements will be necessary and will override the delegated powers given to ~~Group Managers~~Heads of Service.

3. Compliance with contract procedure rules

Following full departure from the EU, there is no obligation to follow EU Procurement Directives. However, the extensive provisions of UK legislation governing procurement often takes on board EU legislation where appropriate. Therefore, UK legislation is a moving feast and includes, but not limited to, the following:

- Public Services Act (Social Value) 2012
- Public Contracts Regulations 2015
- Public Procurement Policy 2015
- Local Government Act 1999
- Local Government Transparency Code 2015
- National Procurement Strategy 2018
- Procurement Policy Notes

Generally, this amalgamation of legislation applies to most of the contracts placed by the Council and must be complied with. UK legislation will always override the provisions of these Rules.

From time to time, Central Government will communicate Procurement Policy Notes. These can be proactive or reactive to situations, and further inform UK Public sourcing protocol. Often they give additional powers to those procuring, offering more flexibility to

a fairly strict regime.

The Council may, from time to time, approve a Procurement Code of Practice ('Code') to assist officers and Members in the proper compliance with these Rules. The Monitoring Officer/S151 Officer monitors the effectiveness of the Code and makes necessary amendments to ensure that the Code reflects best practice. However, should there be any inconsistency between these Rules and the Code then these Rules will take priority.

Legislation requires that contract values be aggregated. When tendering, the total estimated value of the contract must be used, including any potential extensions. Where the contract end date is indeterminate (there is no contract end date, or the expectation is that the contract is 'rolling'), then the total contract value should be 4 times the annual value or 48 times the monthly value, whichever is the greater. When estimating the total value of a contract over its term, including extensions, **all elements of cost** must be considered not just the invoice value to be paid for the Works, Services or Supplies. Contracts **must not** be disaggregated in order to avoid these Rules, legal requirements or internal sign-off protocol.

Heads of Service are required to produce realistic programmes for the letting of contracts and the resource implications need to be built into Service Plans. These plans should be shared openly with the Procurement team in order that adequate Procurement team resource can be mapped to the Service team requirements. Adequate time must be allowed for statutory time periods and to fully prepare the Tender and contract documentation. It should be noted that neither a lack of planning time allowance, or a lack of planning, will be accepted as a reason for applying an Exemption to the process.

Adequate records must be maintained by Heads of Service to prove compliance with the provisions of these Rules and current legislation.

Where a sub-contractor or supplier is to be named, nominated and/or named/authorised by a Head of Service to a main contractor, then the provisions of these Rules shall apply as if the nominated or named sub-contractor was a main contractor.

For all contracts or agreements relating to land and building acquisitions or disposals officers must comply with the Scheme of Delegation in Section 19 of the Constitution and the Council's Asset Management Plan from time to time in force.

The Council's scheme of delegation delegates to Heads of Service the ability to invite and award contracts through the use of approved procedures incorporated within these Rules and in the Code. Whilst responsibility to comply with approved procedures remains at all times with Heads of Service the Monitoring Officer/S151 Officer with support from South West Audit Partnership shall, on an ad hoc basis, inspect the operation of the procedures by each Group/Team and shall report to the Head of Service concerned advising on the compliance or non-compliance.

In the absence of a legislative requirement, the Council would be in breach of a fiduciary

duty if it were to proceed without competition unless there were cogent reasons for doing so. In that event, the Council would at least have to be able to demonstrate that the price under the contract was not in excess of the market price and that it obtained best value for money.

4. Prevention of corruption

Where a Member or an officer of the Council has a financial or other interest in a contract or proposed contract, and is also involved in the process of letting or managing that contract, the Member or officer must comply with the relevant Code of Conduct as set out in Appendices B and E respectively of the Constitution.

Where any person acting on behalf of the contractor:

- a. Offers, gives or agrees to give, any Member or officer of the Council consideration of any kind as an inducement or reward with respect to the contract, or
- b. Commits any offence under the Bribery Act 2010.

The contract must be cancelled and any loss recovered.

An appropriately worded declaration, as to the above, must be included in all forms used for inviting Tenders and Quotations for contracts.

Attention is also drawn to the Protocol for Member/Officer Relations set out in Appendix F of the Constitution.

5. Procurement Standards

Duties of Heads of Service

Heads of Service must:-

- Ensure that procurement within their Groups complies with these Rules and all applicable UK legislation;
- Observe the responsibilities placed upon them by Financial Procedure Rules and any financial administrative instructions;
- Ensure that sourcing projects are shared and discussed with the Procurement Team at the earliest opportunity;
- Ensure, prior to tendering, that best use is made of other sourcing options:
 - Internal capability;
 - Existing contracts (with or without a required variation);
 - Third party framework agreements.

Heads of Service may delegate, in accordance with Section 19 of the Constitution, their

procurement duties by appointing any other officer to act as Authorised Officer for the purposes of a particular contract. Heads of Service must ensure that any officer to whom such authority is delegated has undertaken appropriate training prior to exercising their delegation.

Duties of Officers

All officers with delegated responsibilities above:

- Must keep up to date on the Council's procedural requirements for procurement contained with these Rules, Financial Procedure Rules and the Code;
- Must ensure that procurements are transparent and fair to all prospective bidders;
- Must seek appropriate advice, operate appropriate procurement systems and maintain records of authorisations and decisions taken;
- Shall ensure that the form and contents of the order or contract is correct, and in the case of the contract, has been correctly authorised, is legally enforceable by reference to the S151 Officer and the Monitoring Officer.

6. Selection of procurement route

The procurement route to be taken is dependent upon the estimated value of the ~~Works, Sservices, works~~ or ~~good~~Supplies to be provided and the perceived associated risks with the project. Full details of the processes and related information are given in the Code associated with these contract regulations. The Procurement Rules Matrixtable (below) summarises these.

The value of the contract is the total value of the contract over its full duration including any extensions.

Environmental, Social and Enterprise value are extremely important considerations for the Council. In selecting the correct procurement route, these values should all be considered.

In order to gauge the potential breadth of interest in the project requirements, an 'Expression of Interest' (EOI) can be published on the Council website, SW Portal, Contracts Finder or Find A Tender System (FTS). Responses can be used for information or as a pre-qualification for the formal RFP, RFQ or ITT.

All ~~Tender~~ notices seeking expressions of interest must contain as a minimum:

- Scope
- Brief specification

- Source of Ts&Cs e.g. Industry standard contract, The Council's standard Ts&Cs, the Council's bespoke Ts&Cs, the Council will be open to the tenderers Ts&Cs etc.
- Potential award criteria
- EOI Tender submission instructions, closing date and time

Appendix 1

Procurement rules matrix

Procurement Type – Works, Service or Supply	Procurement Value (estimated total contract cost)	Procurement Method	Procurement Lead Team	Details	Evaluation (by the Tender Evaluation Panel (TEP))	Contract signature
All types	Up to £5,000	Request for Proposal / Request for Quotation	<u>The Service Team are accountable for this process and will take the lead on most activity</u>	A minimum of two written quotations are required for consideration	Minimum one person <u>from</u> - Procurement/Tendering Officer <u>and/or</u> procuring Officer	Signature by one officer or by delegation
All types	£5,001 to £25,000	Request for Proposal / Request for Quotation	<u>The Service Team are accountable for this process and will share the lead with the Procurement Team on activities</u>	A minimum of two written quotations are required for consideration	Minimum two persons <u>from</u> – Procurement/Tendering Officer and procuring officer and Head of Service	Signature by two officers or by delegation
Services and Supply	£25,001 to EU Threshold	Request for Proposal / Request for Quotation	<u>The Service Team are accountable for this process and will share the lead with the Procurement Team on activities</u>	A minimum of three written quotations are required for consideration	Minimum two persons <u>from</u> – Procurement/Tendering Officer and procuring officer and Head of Service	Signature by two officers, one senior
Works	£25,001 to £200,000	Request for Quotation	<u>The Service Team are accountable for this process and will share the lead with the Procurement Team on activities</u>	A minimum of three written quotations are required for consideration	Minimum two persons <u>from</u> – Procurement/Tendering Officer and procuring officer and Head of Service	Signature by two officers, one senior
Works	£200,001 to EU Threshold	Invitation to Tender	<u>The Procurement Team are accountable for this process and will take the lead on most activity</u>	A minimum of three written quotations are required for consideration	Minimum three persons <u>from</u> – Procurement/Tendering Officer and procuring officer and Head of Service and SME <u>and portfolio holder</u>	Signature by two officers, one senior Contract sealing by Legal
All types	Above EU Threshold	Request for Proposal / Invitation to Tender	<u>The Procurement Team are accountable for this process and will take the lead on most activity</u>	Public Contract Regulations stipulate the relevant processes and must be complied with	Minimum three persons <u>from</u> – Procurement/Tendering Officer and procuring officer and Head of Service and SME <u>and portfolio holder</u>	Signature by two officers, one senior Contract sealing by Legal

NB

- The EU threshold (non-central government) for Works, Services and Supplies is periodically re-assessed. If in doubt, request Procurement guidance.
- If the minimum quotations have not been received, consult with the Procurement Team and consider the Exemption route.

Appendix 1

Procurement authorisation matrixstages

Procurement Type – Works, Service or Supply	Procurement Value (estimated total contract cost)	Strategy (pre-tender) Approval	Additional Revenue Financial Release (as part of pre-tender approval strategy)	TEP Report (post-tender evaluation award) Approval
All types	Up to £5,000	<u>Budget Holder</u>	N/A	Head of Service
All types	£5,001 to £25,000	<u>HoS</u>	N/A	Head of Service
Services and Supply	£25,001 to EU Threshold	<u>In budget – HoS</u> <u>New funding virement (within service budget or earmarked reserves) –</u> <u>New funding allocation (£25,001 to £135,000) –</u> <u>Strategy/Business Case submitted to Cabinet</u> <u>New funding allocation £135,001 to EU threshold)</u> <u>– Strategy/Business Case submitted to Cabinet</u> <u>and added to Forward Plan as a ‘Key Decision’</u> <u>(S151 to manage this process)</u>	<u>An authorised business case is required for the allocation of funds (over £100k needs to be submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ – S151 to manage this process)</u>	<u>Head of Service</u> <u>P-Board</u>
Works	£25,001 to £200,000	<u>In budget – HoS</u> <u>New funding virement (within service budget or earmarked reserves) –</u> <u>New funding allocation (£25,001 to £135,000) –</u> <u>Strategy/Business Case submitted to Cabinet</u> <u>New funding allocation £135,001 to £200,000) –</u> <u>Strategy/Business Case submitted to Cabinet and</u> <u>added to Forward Plan as a ‘Key Decision’ (S151</u> <u>to manage this process)</u>	<u>An authorised business case is required for the allocation of funds (over £100k needs to be submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ – S151 to manage this process)</u>	<u>Head of Service</u> <u>P-Board</u>
Works	£200,001 to EU Threshold	<u>In budget – HoS</u> <u>New funding allocation – Strategy/Business Case</u> <u>submitted to Cabinet and added to Forward Plan</u> <u>as a ‘Key Decision’ (S151 to manage this</u> <u>process)</u>	<u>An authorised business case is required for the allocation of funds (to be submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ – S151 to manage this process)</u>	P-Board, Cabinet and Scrutiny

Appendix 1

All types	Above EU Threshold	<u>In budget – HoS</u> <u>New funding allocation – Strategy/Business Case submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ (S151 to manage this process)</u>	An authorised business case is required for the allocation of funds (to be submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ – S151 to manage this process)	P-Board, Cabinet and Scrutiny
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NB

- The Key Decision financial threshold is periodically re-assessed. If in doubt, request Procurement or S151 guidance.

Aggregation

Where a single procurement for Works involves more than one contract, the value of all the contracts must be aggregated to decide whether a threshold has been reached.

For Services and Supplies the threshold value will be the aggregation of the estimated value of separate contracts for meeting a single requirement and where a series of contracts or a renewable contract is entered into for services/supplies of the same type during a twelve month period.

Novel, Contentious or Repercussive Contracts

Contracts of the above nature should be referred to the S151 Officer and the Monitoring Officer, in all cases, who will decide whether they should be dealt with by the Council's Procurement Board.

A proposal which is **novel or repercussive** could involve:

- A type of activity which the Council has not been involved in at all before i.e. it is wholly new and/or inconsistent with the Council's previous aims and objectives;
- An activity that has a significant impact on individuals, local communities, business and regulators and which has potential for significant media interest;
- A type of activity which the Council has been involved in previously, but where the proposal being put forward is a variant in some way e.g. the funding mechanism proposed may be significantly different to that which is normally employed, or the Council could pay costs that it would not normally expect to pay;
- An activity involving an issue which is not adequately covered by relevant guidance and which is not covered by delegated powers.

And a proposal which is **contentious** could involve a degree of novelty, but the focus will be on one or more of the following:

- Whether it is a proposal/project which the Council ought legitimately to be doing and whether support of the proposal either by direct funding or in some other way could be justified from a regularity, propriety, and value for money standpoint;
- Whether the mechanisms put in place to achieve the necessary outcomes are in conflict with existing rules/guidelines etc;
- Where the expenditure is difficult to forecast or cap;
- Where there is a high degree of financial risk, for whatever reason;
- Where there might be contention of a political or policy nature for the Council.

7. Procurement systems

All Services and Supplies (value > EU threshold) tenders **will** be managed by the Procurement Team and tendered via the Procurement tendering tool, ProContract, within the South West Portal.

All Works (value > £200,000) tenders **will** be managed by the Procurement Team and tendered via the Procurement tendering tool, ProContract, within the South West Portal.

Any Services and Supplies (value £25,001 up to EU threshold) tenders **may** be managed by the Procurement Team and tendered via the Procurement tendering tool, ProContract, within the South West Portal.

Any Works (value £25,001 up to £200,000) tenders **may** be managed by the Procurement Team and tendered via the Procurement tendering tool, ProContract, within the South West Portal.

Where MDC control the contract signing process, and the contract is in electronic form, the contract shall be signed using a digital signature.

8. Procurement processes

The following high level process requirements must be adhered to. Full details of the procurement processes are given in the Code (Constitution Appendix T).

Sourcing/tendering

Works, services or supplies to be procured, up to £5,000

The low value RFQ form may be used to secure quotes.

The tendering process should be managed via a secure e-mail account.

A minimum of two written (not verbal) quotations are required.

The quotations must be from suitable suppliers, and received electronically or in writing.

At the very least, the quotations must specify:

- The Works, Services or Goods/Materials to be supplied.
- When they are to be supplied
- The value of the transaction
- Evaluation criteria
- Terms and conditions of contract
- Terms of payment

Works, services or supplies to be procured, greater than £5,000 up to £25,000

The low value RFQ form may be used to secure quotes.

The tendering process should be managed via a secure e-mail account or ProContract.

A minimum of two written (not verbal) quotations are required. The quotations must be from suitable suppliers, and received electronically or in writing. At the very least, the quotations must specify:

- The Works, Services or Goods/Materials to be supplied.
- When they are to be supplied
- The value of the transaction
- Evaluation criteria
- Terms and conditions of contract
- Terms of payment

Services or supplies to be procured, greater than £25,000 up to EU threshold

The low value RFQ form or high value RFQ form may be used to secure quotes for contract value up to £100,000. The high value RFQ must be used for contract values above £100,000.

The tendering process should be managed via a secure e-mail account or ProContract. A minimum of three written (not verbal) quotations are required. The quotations must be from suitable suppliers, and received electronically. At the very least, the quotations must specify:

- The Works, Services or Goods/Materials to be supplied.
- When they are to be supplied
- The value of the transaction
- Evaluation criteria
- Terms and conditions of contract
- Terms of payment

Works to be procured, greater than £25,000 up to £200,000

The low value RFQ or high value RFQ may be used to secure quotes for contract value up to £100,000. The high value RFQ must be used for contract values above £100,000. The tendering process should be managed via a secure e-mail account or ProContract. A minimum of three written (not verbal) quotations are required. The quotations must be from suitable suppliers, and received electronically. At the very least, the quotations must specify:

- The Works, Services or Goods/Materials to be supplied.
- When they are to be supplied
- The value of the transaction
- Evaluation criteria
- Terms and conditions of contract
- Terms of payment

Works to be procured, greater than £200,000 up to EU threshold

In practice the Council carries out very little Works procurement activity above this threshold. Advice should be sought from the Procurement team prior to commencement of the procurement exercise.

An ITT form should be utilised.

The tendering process should be managed by the Procurement team via ProContract.

A minimum of three written (not verbal) quotations are required. The quotations must be from suitable suppliers, and received electronically.

Works, services or supplies to be procured, greater than EU threshold

In practice the Council carries out very little procurement activity above these thresholds. For procurement above the EU thresholds (which must be checked as they change every two years) the relevant regulations and legislation must be complied with. Advice must be sought from the S151 Officer or the Monitoring Officer prior to commencement of the procurement exercise.

All tenders

A date must be set for the submission of quotations. This date must allow sufficient time relevant to the complexity of the request for suppliers to respond.

The criteria for award must ensure that best value is achieved, whether using 'Price only', 'Price/Quality weighting' or 'Most Economically Advantageous Tender' (MEAT).-
NB MEAT should include all Environment, Social and Enterprise values relevant to the project.

Advertising

Any 'open' tender greater than £500 should be advertised.

If utilising ProContract to manage the tendering process, then the relevant advertising options within ProContract ('SW Portal', 'Contracts Finder' and 'FTS') must be used.-on the MDC website.

If not utilising ProContract, then the opportunity must be advertised on the MDC website.

Receiving and opening paper quotations

Paper submissions should be addressed to the officer requesting the quotation. No quotation should be opened until after the closing date/time specified in the RFQ documentation.

9. The contract – terms and conditions and execution

All procurements must use one of the following sets of the Council's Terms & Conditions:

- The Council's standard Terms & Conditions;
- The Council's bespoke Terms & Conditions;
- An appropriate model form of contract approved by the ~~Monitoring Officer~~ Procurement team (with or without additional safety clauses provided by the Council's Legal team);
- Contractor Terms & Conditions.

If a standalone purchase Order is used for sub-£5,000 Works, Services or Supplies, the PO should be accompanied by the Council's standard Terms & Conditions.

For most ~~medium value~~ purchases greater than between £5,000 up to £50,000, the Council's Standard Terms &and Conditions will be applicable as set out in Financial Regulations.

Should a contract need to be entered into, this should be a Formal Contract signed by the Authorised Officer pursuant to Section 19 of the Council's Constitution.

For all procurements with an estimated total value of £100,000 and above the Legal Team ~~Monitoring Officer~~ must be consulted to produce a suitable set of conditions of contract **before inviting tenders.**

Where a contract is considered to be of a strategically important or politically sensitive nature, where the contract contains Deeds and/or a Parent Company Guarantee, where the extended limitation period would be of value or where the total value of the contract exceeds the following thresholds:

- Works - £20~~50~~,000
- Services and Supply – EU threshold

the contract must be executed under seal by the Council's Legal team.

10. Receiving and opening quotations and tenders

Paper submissions should be addressed to the officer requesting the quotation. No quotation should be opened until after the closing date/time specified in the RFQ documentation.

All tenders of value from £5,001 up to £200,000 (Works) and from £5,001 up to EU Threshold (Services and Supply) may be tendered via e-mail or ProContract (decision in consultation between the relevant Service and Procurement teams).

All tenders greater than £200,000 (Works) and greater than EU Threshold (Services and Supply)
All tenders over £25,000 have to be submitted via the Council's web-based procurement system managed by the Procurement Team via ProContract.

Paper tenders may be submitted by suppliers provided the supplier can demonstrate that the supplier market is immature and does not have electronic capability. Such paper tenders must be sent in a sealed envelope to the officer ~~who is~~ running the tender exercise.

Paper tenders shall be opened ~~by~~ at the prescribed time and date ~~prescribed~~ for their opening by either the Tendering Officer, the Procurement Officer or the Procuring Officer running the procurement exercise, ~~in the presence of the GMCS.~~

If a paper tender is received for a tender value of greater than £25,000 (due to supplier market immaturity), it must be submitted to, and opened by, the Procurement Officer.

Late tenders received after the closing date and time shall be recorded but excluded from any subsequent assessment/evaluation unless there are exceptional circumstances agreed by the Procurement Board and they are satisfied that:

- There is evidence of dispatch by tender by the due date and time;
- ~~Other tenders have not been opened or there is no evidence~~ of that undue advantage being gained or the process is fettered

~~No unfair advantage is obtained from the absence of compliance.~~

11. Evaluation

Where the anticipated contract value will be greater than £50,000, ~~or above~~ the officer running the procurement exercise will need to establish a Tender Evaluation Panel ~~to~~ (TEP) to evaluate tenders in accordance with the Council's advertised criteria stipulated in the tender documents and, where necessary, to make an award recommendation to the Procurement Board.

The TEP will include staff experienced in the Works, Service or Supplies ~~goods, services or works~~ to be provided and have the technical and administrative capacities necessary to give an informed opinion on tenders received by the Council. Where the TEP members do not have the necessary expertise to carry out the evaluation on their own, the Council may engage a competent and independent Consultant to assist the TEP.

The TEP shall consist of the persons identified here; or an alternative consortium of persons as agreed by a Deputy Chief Executive:

- For Works, Services and Supplies up to £5,000, a minimum of one person from Procurement/Tendering Officer, Procuring Officer and Head of Service
- For Works, Services and Supplies £5,001 to £25,000, a minimum of two persons from Procurement/Tendering Officer, Procuring Officer and Head of Service

- For Services and Supply greater than £25,000 up to EU Threshold, a minimum of two persons from Procurement/Tendering Officer, Procuring Officer and Head of Service
- For Works greater than £25,000 up to £200,000, a minimum of two persons from Procurement/Tendering Officer, Procuring Officer and Head of Service
- For Works greater than £200,000 up to EU Threshold, a minimum of three persons from Procurement/Tendering Officer, Procuring Officer, Head of Service and SME
- For Works, Services and Supplies greater than EU Threshold, a minimum of three persons from Procurement/Tendering Officer, Procuring Officer, Head of Service and SME

~~9.4 — Where the award is a key decision (above £100K), the Shadow Portfolio Holder shall be appointed as a voting member of the TEP.~~

Wherever possible, members of the TEP should not be in direct reporting line to one another.

~~Should a member of the TEP resign or become ineligible for any reason, then the evaluation can only shall continue when the full compliment of TEP, in line with the requirements above, are met, without the member who has resigned or become ineligible. The only exception to this is if the TEP membership falls below three voting members, in which case the Chairperson shall appoint a replacement, which replacement shall meet the requirements set out here~~

~~For tenders greater than £25,000, Once the tender evaluation process is completed, for all contracts estimated to be over the OJEU limit the TEP shall be responsible for producing a tender report to be submitted to the relevant HoS/Procurement Board for its review and authorisation prior to Cabinet/Scrutiny approval of preferred supplier.~~

The TEP must maintain confidentiality during the tender process and restrict any contact with suppliers during the tendering process to essential official communication only.

Members of the TEP must declare any conflict of interest they may have due to a link with any supplier.

12. **Awarding contracts and audit trails**

The results of the tender evaluation process must be documented by the Officer responsible for leading the procurement exercise.

For Service/Supply tenders less than EU threshold and Works tenders less than £200,000, the relevant HoS will review the recommendation and sanction, or not, the award of the contract.

For all other tenders above those values, the Procurement Board will review the recommendation and sanction, or not, the award of the contract, taking the recommendation to Scrutiny or Cabinet as appropriate.

Any Officer awarding a contract must ensure that the necessary authority to enter into the contract has been obtained (in accordance with the Financial Regulations) and that the Council has the funds available to meet all of its financial obligations under the contract.

Officers responsible for leading the procurement exercise should ensure that records of their procurement activity are retained in electronic and where relevant, hard-copy format as described in the Code.

Where possible, electronic contracts should be signed digitally via Adobe Sign. This process is managed by the procurement team.

Heads of Service must ensure that all contracts are fully registered on the Contracts Register. The Contracts Register is overseen by the Procurement team and will be uploaded to the Council's website at relevant intervals in order to satisfy Transparency legislation.

A copy of the signed contract and electronic copies of such must be retained by the officer responsible for leading the procurement activity. The original signed contract must be forwarded to the Monitoring Officer to be registered on the legal database, sealed as necessary and ~~and stored in the Deed Safe.~~

13. Extensions and amendments to contracts or Framework Agreements

Extensions

Any ~~C~~contract, Framework Agreement or Framework Agreement call-off Contract may be extended provided its terms and conditions allow for an extension, ~~and no substantial changes form part of the extension.~~

The procuring officer or contract manager must demonstrate that the extension will achieve best value for money and is reasonable in all the relevant circumstances. That demonstration will be in the form of a report which must address the following issues:

- Reasons for the extension and confirmation as to why re-tendering may not be appropriate at that precise moment;
- Costs associated with any extension and comparable costs for any alternative options, if available, demonstrating how value for money is achieved;
- Rationale for the duration of the extension;

- Relevant market conditions;
- That the contract was initially won as a result of the competitive process;
- That the contractor is performing well;
- That there are no significant deficiencies in the way the requirements of the existing contract are being met.

Authorisation routes

- Where budget for the extension is secured, approval must be sought from the relevant HoS.
- Where the value of an extension is below the Key Decision threshold, and budget is not secured, the report should be addressed to the S151 Officer and will be considered by Cabinet
- Where the value of an extension exceeds the Key Decision threshold, and budget is not secured, the report should be addressed to the S151 Officer and will be considered by Cabinet and added to Forward Plan as a Key Decision.

An extension will only be granted if it can be demonstrated that this will achieve Best Value for the Council and will not contravene any legal requirement.

Cabinet approval must be obtained for any extension which;

- Exceeds an annual value of £1 million.
- The matter to which the contract being extended relates is commercially, politically or strategically sensitive.

The Corporate Contracts Register must be updated to reflect the new termination dates and contract values.

Amendments and variations

~~If the contract manager wants to make a change~~ a variation to the contract/agreement during its term is required, then ~~the~~ advice of the Monitoring Officer must be consulted. ~~sought~~. Substantial changes could trigger the need for a new procurement exercise.

The following changes will be categorised as “substantial changes”, requiring a new sourcing~~tender~~ process for a new contract/agreement:

- a change of contractor, other than following insolvency and corporate restructuring of the original contractor;
 - any change that, had it applied during the tender process, would have led to different contractors being selected to be invited to tender or a different contractor winning the tender;
 - a “considerable” extension of the scope of the contract to cover new supplies, services or works it does not currently cover;

- any change to the economic balance of the contract in favour of the contractor.

14. Exemptions to these contract regulations

These Rules apply to all Goods, Services and Supply contracts entered into Works purchased by the Council.- Exemptions to these Rules may be considered which are not subject to existing legislation. The reasons set out below may be considered an exemption to the Rules for not complying with the full Rules:

Procurements which have been registered as Partnerships or Grants.

Works orders placed with utility companies, e.g. for re-routing cables or pipe work. The term “utilities” does not include telecommunications.

Genuine emergencies – Critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from a hitherto unforeseen ‘catastrophic’ event or incident such as fire, bombing, flooding, major landslide, etc. Any contract entered into by the Council under this exemption must not be for a term of more than 6 months.

Urgent situations not of the Council’s own making. The urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation, urgently imposed statutory changes, etc.) and genuinely be a case of ‘time is of the essence’. However, urgency arising through problems of the Council’s own making (whatever the cause and regardless of whether it involved lack of planning foresight, previous delays or shortage of resources, etc.) shall not in itself justify exemption. Any contract entered into by the council under this exemption must not be for a term of more than 6 months.

Collaborative/Joint Purchasing (the Council acting in a minor procurement capacity) – Where another authority/public body is acting as ‘lead buyer’ and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Best Value and other applicable legislation including, where relevant, the EU Procurement Directives. This includes any recognised wider public sector agreements including, for example, Office of Government Commerce (OGC) contracts, etc.

Sole source of supply - Where suitable goods or service are genuinely only available from one supplier (e.g. if patent, copyright or other exclusive design rights exist). Similarly, for any highly specialised/niche services where, for all practical purposes, no realistic alternative source of supply exists.

Reasons of compatibility - If compatibility with existing goods, equipment or services is essential and where they cannot be sourced from another supplier (e.g. spare parts/components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics, etc.

~~Requests for exemption from these Rules should be submitted in writing, to the GMCS, and using the format detailed below.~~

~~**Minor Exemption** predicted contract value up to £200,000 (Works) and EU threshold (Services and Supply) for contract values less than £100k~~

~~No exemptions are allowed for any tenders covered by the Public procurement Rules.~~

~~**Minor Exemption**~~

~~Predicted tender value:~~

- ~~• up to £25k~~

~~A request to apply an exemption must be submitted to, and authorised by, either the S151 Officer or the Monitoring Officer.~~

~~**Medium Exemption**~~

~~Predicted tender value~~

- ~~• above £25k up to £200,000 (Works)~~
- ~~• above £25k and up to EU threshold (Services and Supply)~~

~~A request to apply an exemption must be submitted to, and authorised by, either the S151 Officer or the Monitoring Officer, authorised by, the Deputy Chief Executive, and thereafter approved by the Portfolio Holder.~~

~~**Major Exemption**~~

~~Predicted tender value:~~

- ~~• above £200,000 up to and less than EU Threshold (Works) for Contract values over £100k but less than the relevant EU threshold.~~

~~A request to apply an exemption must be submitted to the S151 Officer, and authorised by both the S151 Officer and the Deputy Chief Executive.~~

~~**All Exemption Requests**~~

~~**12.5** The Exemption will be considered by at least three of the following officers:~~

- ~~a. A Deputy Chief Executive~~

~~b. GMCS~~

~~c. Monitoring Officer~~

~~d. Section 151 Officer~~

~~e. A legally qualified member of Law and Governance Services~~

~~All Exemption Requests~~

If in any doubt of the validity of a potential Exemption Request, prior advice should be sought from the S151 Officer or Monitoring Officer.

The officer requesting the exemption will be responsible for ensuring that the information submitted is correct.

~~All Exemption Requests~~ received ~~by the GMCS~~ will be registered and either:

~~b.a. Approved, or and confirmed with the requesting officer~~

~~c.b. Held pending a request for further information, or~~

~~d.c. Rejected, stating the reasons why, or~~

~~e.d. Referred to the Portfolio Holder for Enterprise and Finance, governance and Corporate Services for determination, or Referred to Cabinet for determination, or~~

~~f.e. Rejected stating the reasons why.~~

Upon receipt of an Exemption Request, advice from a legally qualified member of the Law and Governance team may be sought.

The determination result of the request will be confirmed with the requestor.

The procurement may proceed only after the written notification of approval is received by the officer undertaking the procurement exercise.

All requests for exemption which would contravene English law or European law in force in England will be rejected.

If the exemption is approved, the application form will be endorsed and returned to the relevant officer, ~~who must enter the contract onto the Central Contracts Register, via the GMCS.~~ A copy of the exemption will be retained by the GMCS S151 Officer.

15. Prompt Payment of Invoices

It is essential that all undisputed invoices are paid within 30 days.

Part invoices???

~~The prompt payment of invoices is a published performance indicator for the Council, and delays~~Delays in payment may result in interest being charged by the supplier under the Late Payment of Commercial Debts (Interest) Act 1998. The Act allows small businesses (50 or less employees) the right to claim interest for late payment from other businesses and public sector organisations. ~~It is therefore essential that all undisputed invoices are paid within 30 days.~~

The prompt payment of invoices received by the Council is a published performance indicator.

16. Glossary of Terms

This glossary should be read in conjunction with para 1.9 (Explanation of Terms)⁴ in Section 1 of the Constitution – ~~Explanation of terms~~. This glossary supplements para 1.9⁴ by defining only any *additional* terms which are used in these Contract Procedure Rules

Approved Capital Programme	Schemes and related expenditure approved by the Council for projects such as improvements to existing properties, land purchases, and any additional expenditure on fixed assets.
Authorised Officer	Any one of: <ul style="list-style-type: none"> • Chief Executive • Deputy Chief Executive • Heads of Service • Monitoring Officer • Section 151 Officer
Contract Procedure Rules ('Rules')	<u>The Council Rules governing how sourcing and tendering is undertaken.</u>
<u>Contracts Register</u>	<u>A Register of all Council Contracts</u>
<u>Disaggregation</u>	The splitting of <u>a</u> procurement <u>sourcing project</u> into smaller <u>tendering</u> components.
<u>Expression of Interest</u>	<u>A pre-tendering process to gauge the potential breadth of interest in the project requirements.</u>
EU Thresholds	Published values for <u>W</u> orks, <u>S</u> ervices and <u>S</u> upply contracts over which the full application of public procurement rules apply.

<u>Financial Procedure Rules</u>	<u>Rules governing Council financial procedures – Constitution Section 20</u>
Framework Agreement	A Framework Agreement is a formal agreement which sets out terms and conditions under which specific purchases can be made by parties to the agreement throughout the term of the agreement from the successful bidder in unpredicted quantities at various times during the period that the agreement is in force. A Framework Agreement is an agreement between one or more contracting authorities, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
<u>Invitation to Tender (ITT)</u>	<u>The formal tendering process for higher value Works, Services and Supply requirements.</u>
Order	A formal notification to the Supplier to call off Works, Services or Supplies, using a Contract Order Form or Purchase Order procurement resulting from a Quotation using a Purchase Order.
Group Manager Corporate Services ('The GMCS')	The Officer appointed by the Council to oversee all contracts.
<u>Procurement Board</u>	<u>A board whose purpose is to check, challenge and approve procurements. The Procurement Board will act as an “approval gateway” prior to contract award to ensure that Procurements are (i) robust in approach, (ii) legally compliant, (iii) strategically sound and (iv) competitively sourced</u>
Procurement Code of Practice	A Procurement Code of Practice approved and amended from time to time in accordance with delegated authority given under C1.1 of Contract Procedure Rules (click here for the Code of Practice)
<u>Request for Quote (RFQ)</u>	<u>The formal tendering process for lower value Works, Services and Supply requirements.</u>
Quotation	A price obtained either verbally or in writing for a Works, Services or Supplies requirement contract, to be obtained using a Purchase Order.
Quotation Procedure	The will set down Quotation Procedures, which will be contained in the Procurement Code of Practice.

Services	<u>A category of procurement which delivers intangible benefits</u>
<u>South West Audit Partnership</u>	<u>A partnership of South West Councils audit departments.</u>
Supplies	<u>A category of procurement which delivers discernable and tangible items</u>
Tender	A written bid for a Capital or Revenue contract obtained following a formal process.
<u>Tender Evaluation Panel (TEP)</u>	<u>A panel, comprising between one and three members, created to evaluate tender responses and recommend an outcome.</u>
Tender Evaluation Procedure	The <u>GMCSS151 OFFICER</u> will set down Evaluation Procedures, which will be contained in the <i>Procurement Code of Practice</i> . These will include an assessment of the price/quality <u>(and other)</u> criteria determined at the time of preparing the specification for the procurement.
Tender Procedure	The <u>GMCSS151 OFFICER</u> will set down Tender Procedures, which will be contained in the <i>Procurement Code of Practice</i> .
<u>Works</u>	<u>A category of procurement that refers to construction, repair, rehabilitation, demolition, restoration, maintenance of civil work structures, and related services such as transportation, insurance, installation, commissioning, and training.</u>