

SECTION 21 - CONTRACT PROCEDURE RULES

Contents

Change History	2
1. Introduction	3
2. Scope	4
3. Compliance with contract procedure rules	6
4. Prevention of corruption	8
5. Procurement Standards	9
Duties of Heads of Service	9
Duties of Officers	9
6. Selection of procurement route.....	10
7. Procurement systems	14
8. Procurement processes	15
Sourcing/tendering	15
Advertising	17
Receiving and opening paper quotations.....	17
9. The contract – terms and conditions and execution	18
10. Receiving and opening quotations and tenders.....	19
11. Evaluation	20
12. Awarding contracts and audit trails	21
13. Extensions and amendments to contracts or Framework Agreements	22
Extensions.....	22
Amendments and variations	23
14. Exemptions to these contract regulations	24
Exemption (low value)	24
Exemption (high value).....	25
15. Prompt Payment of Invoices.....	26
16. Glossary of Terms.....	27

Change History

Version	Date	Author	Commentary
Draft v0.4	14/09/2021	Steve Kingston	Re-write of S21 due to in-housing Procurement functions, new Procurement Target Operating Model, and alignment with new legislation. Reviewed by Contracts Scrutiny Group and Shape Legal. Draft for submission to Council.

1. Introduction

A contract is a legally binding agreement under which the Council either receives the benefit of, or incurs liability for, a valuable commodity, or agrees a commodity provision on behalf of residents to be delivered to residents (Service Concession Contracts), or for which a payment of money is made. The commodity in question could include:

- Performance of services
- Execution of work
- Supply of goods or materials
- Provision of design work

These Contract Procedure Rules ('Rules') encapsulate day to day matters such as inviting tenders and quotes, evaluating submissions, contracting and the placing of orders, and have a number of primary 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 that will importantly encompass value-add for the local area and wider geography with environmental, social and enterprise considerations;
- 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; and
 - 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 purchase by the Council of all Works, Services and Supplies.

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, howsoever funded. 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 provide reassurance to members and residents.

These Rules do not apply to:

- Contracts of Employment;
- Funding/grant agreements (the agreement for the funding itself, not the spending of those funds);
- Planning obligations (s106 agreements);
- Partnership or collaboration agreements;
- 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 Section 151 (S151) Officer, to oversee the process by which contracts are placed. The 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.

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 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.

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.

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 Heads of Service.

3. Compliance with contract procedure rules

Following full departure from the EU, there is no obligation to follow EU Procurement Directives, except where retained in accordance with the EU-UK Withdrawal Agreement 2020 or as otherwise agreed through further agreements between the UK and the EU. However, the extensive provisions of UK legislation governing procurement often takes on board EU legislation where appropriate. Therefore, UK Legislation is regularly updated and currently includes, but not limited to, the following:

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

Generally, this amalgamation of legislation applies to 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 UK legislation.

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 authorised to a main contractor, by a Head of Service, then the provisions of the Rules shall apply as if the named sub-contractor was a main contractor.

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 (where adopted).

Whilst responsibility to comply with approved procedures remains at all times with Heads of Service, the 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 may be 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. This may result in the member/officer removing themselves from the relevant process in line with that particular Code.

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 subject to the applicable legal and contractual restrictions (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 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, and is legally enforceable by reference to the S151 Officer, the Monitoring Officer or the Shape Legal team.

6. Selection of procurement route

The procurement route to be taken is dependent upon the estimated value of the Works, Services or 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 rules. The Procurement Rules Matrix (below) summarises these.

The value of the contract is the total value of the contract over its full duration including any extensions, whether exercised or not.

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

Appendix 2

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 / Purchase Order	The Service Team are accountable for this process and will take the lead on most activity	A minimum of two written quotations are required for consideration	Minimum one person from - Procurement/Tendering Officer and procuring Officer	Signature by one Authorised Officer
All types	£5,001 to £25,000	Request for Proposal / Request for Quotation	The Service Team are accountable for this process and will share the lead with the Procurement Team on activities	A minimum of two written quotations are required for consideration	Minimum two persons from – Procurement/Tendering Officer and procuring officer and Head of Service	Signature by one Authorised Officer
Services and Supply	£25,001 to EU Threshold	Request for Proposal / Request for Quotation	The Service Team are accountable for this process and will share the lead with the Procurement Team on activities	A minimum of three written quotations are required for consideration	Minimum two persons from – Procurement/Tendering Officer and procuring officer and Head of Service	Signature by one Authorised Officer
Works	£25,001 to £200,000	Request for Quotation	The Service Team are accountable for this process and will share the lead with the Procurement Team on activities	A minimum of three written quotations are required for consideration	Minimum two persons from – Procurement/Tendering Officer and procuring officer and Head of Service	Signature by one Authorised Officer
Works	£200,001 to EU Threshold	Invitation to Tender	The Procurement Team are accountable for this process and will take the lead on most activity	A minimum of three written quotations are required for consideration	Minimum three persons from – Procurement/Tendering Officer and procuring officer and Head of Service and SME	Contract to be sealed (Legal team) and witnessed
All types	Above EU Threshold	Request for Proposal / Invitation to Tender	The Procurement Team are accountable for this process and will take the lead on most activity	Public Contract Regulations stipulate the relevant processes and must be complied with	Minimum three persons from – Procurement/Tendering Officer and procuring officer and Head of Service and SME	Contract to be sealed (Legal team) and witnessed

NB

- The EU threshold (non-central government) for Works, Services and Supplies is periodically re-assessed, and published on the Procurement intranet (SharePoint) site. If in doubt, request Procurement guidance.
- If the minimum number of quotations have not been received, consult with the Procurement Team.

Appendix 2

Procurement authorisation matrix

Procurement Type – Works, Service or Supply	Procurement Value (estimated total contract cost)	Strategy (pre-tender) Approval	TEP Report (post-tender evaluation award) Approval
All types	Up to £5,000	Budget Holder	Head of Service
All types	£5,001 to £25,000	Head of Service	Head of Service
Services and Supply	£25,001 to EU Threshold	In budget – HoS New funding virement within service budget or earmarked reserves New funding allocation (below Key Decision) – Strategy/Business Case submitted to Cabinet New funding allocation (above Key Decision) – Strategy/Business Case submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ (S151 to manage this process)	Head of Service
Works	£25,001 to £200,000	In budget – HoS New funding virement within service budget or earmarked reserves New funding allocation (below Key Decision) – Strategy/Business Case submitted to Cabinet New funding allocation (above Key Decision) – Strategy/Business Case submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ (S151 to manage this process)	Head of Service
Works	£200,001 to EU Threshold	In budget – HoS New funding allocation – Strategy/Business Case submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ (S151 to manage this process)	Procurement Board
All types	Above EU Threshold	In budget – HoS New funding allocation – Strategy/Business Case submitted to Cabinet and added to Forward Plan as a ‘Key Decision’ (S151 to manage this process)	Procurement Board

NB

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

Aggregation/Disaggregation

The overall value of a project will be the aggregation of the estimated value of separate contracts for meeting a single requirement.

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, or to speed up the sourcing process.

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 (P-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 have responsibility for issuing the contract on its own Terms and Conditions (Ts&Cs), and the contract is in electronic form, the contract shall be signed using a digital signature unless considered not appropriate by officers, in consultation with Shape Legal Services.

8. Procurement processes

The following process rules must be adhered to. Full details of the procurement processes are given in the Code.

Sourcing/tendering

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

The Request for Quotation (RFQ) (Light) 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 RFQ (Light) form should 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 RFQ or RFQ (Light) form should be used to secure quotes for contract value up to £100,000. The 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 RFQ form or RFQ (Light) form should be used to secure quotes for contract value up to £100,000. The 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.

The Invitation to Tender (ITT) form must 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 the thresholds periodically change) the relevant regulations and legislation must be complied with. Advice must be sought from the Procurement team and Shape Legal team prior to commencement of the procurement exercise.

All tenders

A date must be set for the submission of quotations or tenders. 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' quote/tender greater than £500 should be advertised.

If utilising ProContract to manage the tendering process, then the relevant advertising options within ProContract ('South West Portal' (SW Portal) and/or 'Contracts Finder' and/or 'Find a Tender System' (FTS)) must be used.

If not utilising ProContract, then the opportunity must be advertised:

- on the MDC website (>£500)
- on Contracts Finder (>£10,000)

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 Terms & Conditions:

- The Council's standard Terms & Conditions with suitable additions, or amendments as deemed appropriate in consultation with legal advice (this should always be the default route of choice);
- An appropriate model form of contract approved by the Procurement team (with or without additional safety clauses provided by the Council's Legal team);
- Contractor Terms & Conditions (either directly or via a Third Party Framework) in consultation with legal advice.

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.^[KS1]

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

All contracts need to be signed by the Authorised Officer pursuant to Section 19 of the Council's Constitution. For all procurements the Legal Team must be consulted to produce a suitable set of conditions of contract **before inviting quotations or 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 - £200,000
- Services and Supply – EU threshold

the contract must be executed under seal which is carried out by the Shape Legal team.

10. Receiving and opening quotations and tenders

Paper submissions should be addressed to the officer requesting the quotation (the Procuring Officer). 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) must 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) must be managed by the Procurement Team via ProContract.

Late quotations/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 P-Board and they are satisfied that:

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

11. Evaluation

The officer running the procurement exercise will need to establish a Tender Evaluation Panel (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 relevant HoS or P-Board.

The TEP will include staff experienced in the Works, Service or Supplies 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 Subject Matter Expert (SME) Consultant to assist the TEP.

The TEP shall consist of the following, 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

Should a member of the TEP resign or become ineligible for any reason, then the evaluation can only continue when the full complement of TEP, in line with the requirements above, are met.

For tenders greater than £25,000, once the tender evaluation process is complete, the TEP shall be responsible for producing a tender report to be submitted to the relevant HoS/P-Board for review and authorisation.

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 involved in the quote/tender. They will remove themselves from the TEP and will be replaced.

12. Awarding contracts and audit trails

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

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

For all tenders above those values, the P-Board will review the recommendation and sanction, or not, the award of the contract.

Any Officer undertaking a procurement exercise, undertaking a quote or tender, or awarding a contract must ensure that the necessary authority to enter into the contract has been obtained (in accordance with the Financial Regulations and the Scheme of Delegation) 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 (physical or digital, signed wet or electronically) must be forwarded to the Shape Legal team to be registered on their legal database, sealed as necessary, and stored locally or offsite.

13. Extensions and amendments to contracts or Framework Agreements

Extensions

Any Contract, Framework Agreement or Framework Agreement call-off Contract may be extended provided that its terms and conditions allow for an extension.

The procuring officer must demonstrate that the extension will achieve best value for money and is reasonable in all the relevant circumstances. The following issues should always be considered:

- 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 (business case) 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 a variation to the contract during its term is required, the Shape Legal team must be consulted. Substantial changes could trigger the need for a new procurement exercise.

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

- 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 “significant” 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 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:

- 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 UK Procurement legislation. 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.

No exemptions are allowed for any tenders valued at above the EU thresholds.

Exemption (low value)

Predicted tender value

- up to £200,000 (Works)

- 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.

Exemption (high value)

Predicted tender value:

- above £200,000 up to EU Threshold (Works)

A request to apply an exemption must be submitted to the S151 Officer, and authorised by the S151 Officer or the Monitoring Officer, and the Deputy Chief Executive in consultation with the relative Portfolio Holders.

All Exemption Requests

If in any doubt of the validity of a potential Exemption Request, prior advice should be sought from the Procurement team or the Shape Legal team.

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

Exemption Requests received will be registered and either:

- a. Approved, or
- b. Held pending a request for further information, or
- c. Rejected, stating the reasons why,

Upon receipt of an Exemption Request, advice from the Shape Legal 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. A copy of the exemption will be retained by Democratic Services.

15. Prompt Payment of Invoices

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

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.

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) in Section 1 of the Constitution. This glossary supplements para 1.9 by defining only any *additional* terms which are used in these Contract Procedure Rules.

TERM / ACRONYM	DESCRIPTION
Authorised Officer	Any one of: <ul style="list-style-type: none"> • Chief Executive • Deputy Chief Executive • Assistant Chief Executive • Monitoring Officer • Section 151 Officer
Contract Procedure Rules ('Rules')	The Council Rules governing how sourcing and tendering is undertaken.
Contracts Finder	The opportunity advertisement route for all quotes/tenders greater than £10,000
Contracts Register	A Register of all Council Contracts.
Disaggregation	The splitting of a procurement sourcing project into smaller tendering components.
EU Threshold	Published values for Works, Services and Supply contracts over which the full application of public procurement rules apply.
Financial Procedure Rules	Rules governing Council financial procedures – Constitution Section 20.
Find A Tender System (FTS)	The opportunity advertisement route for all quotes/tenders greater than EU threshold
Framework Agreement	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.
Invitation to Tender (ITT)	The formal tendering process for higher value Works, Services and Supply requirements.

Order	A formal notification to the Supplier to call off Works, Services or Supplies, using a Contract Order Form or Purchase Order.
Procurement Board (P-Board)	A board whose purpose is to check, challenge and approve procurements. The P-Board will act as an “approval gateway” prior to higher value contract award to ensure that Procurements are (i) robust in approach, (ii) legally compliant, (iii) strategically sound and (iv) competitively sourced.
Procurement Code of Practice	A Procurement Code of Practice approved and amended from time to time in accordance with delegated authority.
Request for Quote (RFQ)	The formal tendering process for lower value Works, Services and Supply requirements.
Quotation	A price obtained either verbally or in writing for a Works, Services or Supplies requirement.
Services	A category of procurement which delivers intangible benefits.
South West Audit Partnership	A partnership of South West Councils audit departments.
South West Portal (SW Portal)	An association of Councils within the ProContract electronic tendering system, allowing for a wide advertisement base for our quote/tendering opportunities.
Supplies	A category of procurement which delivers discernable and tangible items.
Tender	A written bid for a Capital or Revenue contract obtained following a formal process.
Tender Evaluation Panel (TEP)	A panel, comprising between one and three members, created to evaluate tender responses and recommend an outcome.
Tender Evaluation Procedure	The S151 Officer 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 (and other) criteria determined at the time of preparing the specification for the procurement.

<p>Tender Procedure</p>	<p>The S151 Officer will set down Tender Procedures, which will be contained in the <i>Procurement Code of Practice</i>.</p>
<p>Works</p>	<p>A category of procurement that refers to construction, repair, rehabilitation, demolition, restoration, maintenance of civil work structures, and related services such as transportation, installation, commissioning, and training.</p>