



Crawley Borough Council

Procurement Code

Amended January 2024

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1. Introduction

- 1.1. The purpose of the Procurement Code is to establish clear rules for the procurement of all the council's goods, works and services as required by the Local Government Act 1972. The Procurement Code ensures a system of openness, integrity and accountability and incorporates the legal requirements of the Procurement Act 2023 and any associated legislation to which we must comply, along with supporting Procurement Policy Notes (PPNs) and the National Procurement Policy Statements (NPPS) which are issued by the Cabinet Office.
- 1.2. In the event of any conflict between this Procurement Code and the Procurement Act 2023, the Procurement Act 2023 takes precedence.
- 1.3. Procurement decisions are important because the money involved is public money and the council has a duty to ensure efficient use of resources in order to ensure continuous improvement and maximise public benefit providing quality and value for money services. The council's reputation is equally important and should be safeguarded from any accusation of dishonesty or corruption. For these reasons all employees have a duty to report breaches of the Procurement Code to an appropriate senior manager as soon as they become aware of it.
- 1.4. The Procurement Code is supported by the *procurement strategy* which outlines the future direction and deliverables of strategic procurement. For practical and more detailed advice about how to undertake a procurement exercise, please contact the Procurement team.
- 1.5. Any officer unfamiliar with undertaking a procurement exercise should seek advice from their head of service and the Procurement team. It is also a requirement of the Procurement Code that any officer undertaking a procurement exercise with an aggregated value (see 3.2) of £50,000 or above for goods and services and £100,000 or above for works, inform the Procurement and Legal teams and their head of service in good time prior to the commencement of the procurement.
- 1.6. The Procurement Code applies to all purchases by the council of goods, works and services, apart from the list stated below (at 1.7) It applies to all council employees and elected members. The Head of Corporate Finance shall maintain, update and issue the Procurement Code.
- 1.7. The Procurement Code does not apply to the following:
 - Certain types of legal advice such as relating to judicial proceedings and / or dispute resolution
 - certain types of financial advice such as funding or financing arrangements and investment services
 - Employment contracts

- Purchases made at public auction or of goods sold due to insolvency
- Land contracts (including leases, licences and transfers)
- Grants of money since these cannot be contracts as there is no consideration and they are not services required to be delivered by the council
- Vertical arrangements - the council exercises a parent or similar control or joint control with other councils on the entity as much as it does with its own departments, and the entity carries out more than 80% of its activities for the controlling council and there is no private sector money in the entity
- Horizontal arrangements (council to council / public body co-operation) - to achieve objectives which the bodies have in common through an arrangement that is solely for the public interest and that the parties perform less than 20% of the services covered by the arrangement on the open market
- Any other goods/services/works falling under the definition of an “exempted contract” in the Procurement Act 2023

1.8. Procurement is a complex area and as the Procurement Code sets out legislation and the rules that need to be followed it can seem daunting because it covers all potential procurements. Whilst the Procurement Code covers the key aspects of procurement legislation it would not be practical for it to cover all eventualities. If you want advice or further information, you can contact any of the following officers:

- Carolin Martlew, Head of Corporate Finance
- Siraj Choudhury, Head of Governance, People and Performance
- Becca Williams, Procurement Manager

2. Roles and responsibilities

2.1. Any officer undertaking a procurement process must:

- ensure that there is an adequate approved budget to cover the full cost of the goods, services or works to be procured
- ensure that, where required, member approval for specific projects is obtained prior to committing expenditure, as per the council’s scheme of delegation. This can be found on the intranet and forms part of the constitution
- ensure that agents, consultants and any contractual partners acting on our behalf also comply with these requirements
- comply with the rules set out in the Procurement Code, the council’s Financial Regulations, the Procurement Act 2023, the Employee Code of Conduct, and with all UK legislation, any Government Procurement Policy Notes (PPNs) and the National Procurement Policy Statement (NPPS).
- where applicable, comply with the requirements of the Equalities Act 2010, the Public Services (Social Value) Act 2012, the Localism Act 2011, the Bribery Act 2010, the Modern Slavery Act 2015, General Data Protection Regulation 2018, TUPE 2006, Freedom of Information Act 2000, and Transparency Code 2015.

- seek and take due account of all necessary legal, financial and procurement professional advice as early as possible at the beginning of any procurement project
- declare any personal interest in a contract and keep and maintain a conflict of interest assessment throughout any procurement process
- keep records and documents of all procurement processes (see section 11 for details of how long records need to be kept)
- not enter into any leasing agreements or other forms of borrowing, including the set-up of store or credit cards other than those arranged or approved by the Head of Corporate Finance
- keep the relevant head of service updated on all the relevant stages of the procurement process
- ensure that when a Framework is being used, checks have been undertaken to ensure the council has been clearly identified in the contract advert and that the framework is being accessed as per the conditions set out in the Framework (see 5)
- comply with the council's Transparency Code obligations by promptly submitting information about any procurement or commissioned activity over £5,000 immediately after it has taken place using the eform on the intranet and ensuring that all contracts are recorded on the Council's Contracts Register
- issue an order using the council's financial management system, where appropriate
- ensure appropriate contract management is undertaken (see section 12, 13 and 14)
- ensure that all procurements above the value of £50,000 are completed in consultation with the procurement team

2.2 Heads of service (additional responsibilities)

2.2.1. The head of service has responsibility for all contracts tendered and let by their division. The head of service is accountable to the Cabinet for the performance of their duties in relation to contracts tendered and the management of contracts, which are to:

- ensure that all relevant staff are familiar with the provisions of the Procurement Code and that they have access to appropriate training
- ensure compliance with any guidelines issued in respect of the Procurement Code
- take immediate action in the event of a breach of the Procurement Code within their area
- ensure that the portfolio holder is kept up to date with the progress of relevant procurements
- ensure that the council's contract register (see 16) is updated with the details of any new contracts or extension to an existing contract or agreement

2.3 Head of Corporate Finance

2.3.1 The Head of Corporate Finance will ensure that:

- the Procurement Code and associated procurement guidance are kept up to date and easily accessible
- training is available to officers and members

3. Determining the contract value

3.1 Prior to commencing a procurement process, it is the responsibility of the lead officer to estimate the total value of the contract or project. This will indicate which procurement route must be followed in order to comply with the Procurement Act 2023.

3.2 The estimated total value means the maximum amount the council could expect to pay under the contract, inclusive of specified items such as Value Added Tax (VAT), the value of any goods, services or works provided, options to renew, interest, premiums and fees. This includes, but is not limited to installation, training, maintenance and disposal costs. This also includes the value of any modifications (e.g. additional goods, works or services), the value of any contract extensions or renewal of the contract term.

3.3 Where the council considers that two or more contracts could reasonably be supplied (e.g. providing the same goods, services or works) under a single contract it must aggregate the value of those contracts for the purposes of valuation. It is the responsibility of the lead officer to check expenditure in other service areas to see if there are similar requirements.

3.4 Where the council is unable to estimate the value of a contract, e.g. where the contract term is unknown or recurring, the council must assume that the contract is above the relevant financial threshold.

3.5 Where the council is collaborating or acting on behalf of other public bodies then the contract value shall be determined as the combined sum of all the individual public bodies requirements.

3.6 Where it is intended to package the contract into several different lots, for example based on geographical area or by particular types of requirements, then the contract value shall be the total value of all the combined lots.

3.7 In the case of concession contracts (such as where the service users, as opposed to the council, make payments to the contractor for use of the service) then the amount that a supplier might expect to receive as a result of the contract must be used to determine the contract value. Procurements for concessions contracts should be undertaken in accordance with paras 9.1.13 and 9.1.14.

3.8 Officers cannot split a requirement into separate or smaller packages, to avoid an above threshold or local tender threshold procurement process.

4. Determining the procurement route

3.9 All tender processes (any contract above £50,000 for goods and services and above £100,000 for works contracts)¹ should be notified to the relevant head of service and the Procurement team.

3.10 The majority of the council's procurement falls within the goods and services contract thresholds. The table below (4.13) identifies the procurement route required depending on the value of the contract. Works contracts are generally for construction related projects and therefore only used by a few divisions within the council. The works thresholds table can be found in section 22. Whether a contract is a works contract or not is determined by Common Procurement Vocabulary (CPV) codes contained within the Procurement Act 2023. Guidance should be sought from the Procurement Team before defining a contract to be a works contract.

3.11 Where the requirement covers a combination of goods, services or works then the element with the greater value will determine the procurement route followed. For example, the purchase of a piece of equipment (goods) for £10,000 together with building related works to fix it in situ costing £20,000 would be a works contract. These rules also apply in circumstances where there may be a mixture of services some of which may be subject to the light touch regime (see paragraphs 9.1.10 and 9.1.11).

3.12 In all instances, if there is a current corporate contract in place for the goods, works or services required then the corporate contract must be used and no further quotes or tenders are required. If there is a corporate framework or dynamic system in place, the rules associated with calling off from these must be followed.

3.13 The use of Frameworks is permitted for any value of procurement. Please see section 5 for further information on what a Framework is and how to access them.

3.14 The council does not allow the use of approved or preferred supplier lists in any of its procurement procedures that have not been competitively tendered.

3.15 The selection and engagement of architects, engineers and surveyors or other professional consultants shall be subject to this Procurement Code. Consultants shall be required to provide evidence of and maintain professional indemnity policies to the satisfaction of the relevant head of service for the periods specified in the contract.

3.16 Any procurement exercise triggered as a result of an Expression of Interest submitted under the community right to challenge shall be undertaken as per the

¹ A goods contract covers the procurement of products e.g. stationery, vehicles, equipment etc. Services contracts are the procurement of skills and expertise provided by an individual or other organisations e.g. grounds maintenance, facilities management, training etc. Works contracts cover the procurement of any building work, building repairs and maintenance, construction, civil engineering etc.

requirements of the Procurement Code. The Council’s Corporate Management Team (CMT) must be notified of any such expression.

3.17 With the exception of any employee-led mutual organisations, tenders or quotations will not be invited or considered from individual council employees, business partnerships in which a council employee is a partner, companies in which a council employee is a paid director or any business where a council employee has an interest which exceeds a nominal value of £25,000 or one hundredth of the total issued share capital.

3.18 Certain partnership arrangements with other organisations (usually other public bodies) to provide services on behalf of the council may fall outside of the scope of the Procurement Act 2023. The Head of Governance, People and Performance should be consulted if such a partnership is being considered.

4.12 Procurement thresholds and contract award procedure - goods and services contracts (see 22 for works contracts thresholds)

Total contract value	Procurement route	Short-listing or evaluation of suppliers	Receipt of quotes or tenders	Contract approval and award	Method of contract completion	Transparency Code obligations
Under £19,999	Evidence of value for money	Officer	Officer	Officer in consultation with the appropriate budget holder	Signature and or purchase order raised	Publish details of all contracts of £5,000 + on the council’s contracts register*
£20,000 - £49,999	Three written quotes	Officer and line manager	Quotations returned electronically to department and reviewed by at least two officers or to be electronically opened by the council’s approved e-tendering package	Officer in consultation with head of service.	Signature	Publish details of all contracts on the council’s contract register*
£50,000 – £214,904 [^] inc. VAT; £179,087 exc. VAT	Open tender by advert on Central Digital Platform via the SE Shared reform available on the intranet that must be completed	Tenders to be evaluated by a minimum of two officers.	Tenders to be electronically opened by two officers using the procurement team and Legal / Democratic Services. There is a pin order to provide details of the contract award.	Officer in consultation with head of service	Up to £100,000 Signature	Publish details of contract award on SE Shared Services Portal and Central

[^] This value is inclusive of VAT- previous values were exclusive of VAT.- Please ensure that you take this into account when calculating contract value. Please refer to 3.1 and the Procurement team for advice.

	Services Portal.		tendering package		Over £100,000 Sealing	Digital Platform Publish details of all contracts on the council's contract register*
Above threshold £214,904 [^] inc. VAT; £179,087 exc. VAT	Invitation to tender by advert on Central Digital Platform via the SE Shared Services Portal	Tenders to be evaluated by a minimum of two officers. Where a competitive flexible procedure has been completed using a reduction of numbers stage, approval of shortlist by officer, and head of service	As above	Above threshold (£214,904 [^]) to £250k head of service approval in consultation with CEO or Deputy CEO	Sealing	Publish details of provisional contract award and contract award on Central Digital Platform and SE Shared Services Portal. Publish details of all contracts on the council's contract register*
				£250k to £500k head of service in consultation with CEO or Deputy CEO and portfolio holder. A Significant Operational Decision (SOD) form must be completed and submitted to Democratic Services for inclusion in the members' bulletin		

4 Use of frameworks and joint procurement

- 4.2 A framework is usually a contract that has been officially tendered for by another local authority, public sector organisation, purchasing consortium, or central government. Acquiring goods, works or services under a framework can be an efficient method of procuring the council's requirements. The contract is awarded to one or more suppliers and has provision for other named public sector bodies to use the contract without having to undertake their own tender process so long as these public bodies have been clearly identified in the advert which led to the creation of the framework.
- 4.3 Frameworks may be used at any of the threshold levels as an alternative to the procurement routes identified in tables 4.13 and 22 subject to 5.3 below. A framework should only be used where the benefits justify its use and the council is able to prove value for money has been achieved.
- 4.4 Caution must be taken as the rules for accessing a framework can vary from one agreement to another. Failure to comply with the rules of a framework could result in the council being found in breach of the Procurement Act 2023. Officers are recommended to seek guidance from the Procurement team in order that they can:
- establish if the council can legally access the Framework

- determine whether the council must enter into an agreement with the contracting authority which created the Framework prior to using it
- Check whether a payment will need to be made to the framework provider, and confirm there is budget available for the payment – there could be a payment to access the Framework, or a percentage fee attached to any payments under the Framework
- check that the advertised total contract value of the Framework has not been exceeded
- establish the rules of the Framework governing the selection and invitation of organisations listed on the framework. Where no guidance is provided, all organisations listed on the Framework should be invited to a mini-competition or further competition
- establish the evaluation criteria set within the Framework. The published criteria must be used to determine the successful tenderer. If the evaluation criteria does not meet the council’s requirements of no higher than 90% on price (as outlined in para 9.6.3.2), then agreement to use the framework must be sought by the relevant head of service
- acknowledge that only minor modifications to the terms and conditions of the Framework are permissible. If more substantial contractual modifications are required, the council must follow the appropriate procurement process depending on the contract value
- comply with any minimum requirements outlined in the Framework regarding the provision of information to the bidders
- ensure that where the value of the requirement is above £50,000 for goods and services or £100,000 for works, tenders are returned using the council’s e-tendering portal, unless the framework provider is using its own e-tendering portal to receive the submission of electronic tenders. In this instance tenders can be opened by the framework provider
- ensure that the provisions for the contract award procedure detailed in the Framework are followed. In addition, the council’s procedure detailed in section 10 on contract award must be followed

5.5 The council may participate in a procurement process organised by another authority; however this council is legally responsible for ensuring compliance with the Procurement Act 2023 whether undertaking the procurement exercise itself, or jointly with other authorities. This council will be responsible for adhering to the associated governance processes.

5.6 Officers shall ensure in consultation with the Procurement team that all procurement activity whether undertaken directly by their department on behalf of other authorities or through participation in a joint procurement process led by another authority it is conducted in accordance with the Procurement Act 2023. Officers should immediately inform the Procurement team or Head of Governance, People and Performance about any concerns of non-compliance should any occur during the procurement process.

6. Exemptions

- 6.1. There is provision within the Procurement Code for the requirement to obtain quotations or tenders, or an element of the process to obtain quotations of tenders to be waived, however the following conditions apply:
- no exemptions can be made if the above threshold procedure applies
 - no exemptions can be made retrospectively
- 6.2. An exemption can only be applied when it is to the clear benefit of the council to exercise an exemption. In considering whether an exemption is appropriate, an assessment needs to be made of the costs, benefits and risks that follow should an exemption be agreed. An exemption will only be agreed where the risks are proportionate to the benefits. The justification for an exemption must be well evidenced.
- 6.3. Although it is not an exhaustive list, it is likely that the grounds for the exemption will be one of the following:
- a contract is required as a matter of genuine urgency (for example, flood alleviation or damage) or in force majeure situations where it is not possible to complete a full procurement process
 - unforeseen circumstances that any diligent council could not have foreseen (for example, a national pandemic)
 - there are sound reasons why there would not be a genuine competition and no reasonable alternative is available, for example IT software maintenance
 - the specification for goods and services is of a specialised nature which only a limited number of suppliers can meet and tenders will be invited from all suitable suppliers
 - the contract period cannot be accurately determined as the service area is undergoing review or restructure which may change future requirements. In these instances, an exemption may be granted for a limited period of time in order to ensure the correct delivery model can be agreed prior to tender or quote
 - an additional piece of work is required that could not have been originally envisaged and can therefore only be completed by a specific supplier. For example, upgrades to existing IT systems where it is not financially feasible to use an alternative supplier. Please note, this may result in a contract variation being required rather than an exemption. In all instances, if the original contract value is likely to be exceeded you should seek advice from the Procurement team.
- 6.4. All exemptions and the reasons for them must be recorded using the exemption form on the intranet. The officer seeking the exemption must provide clear and sufficient evidence why the contract matches one or more of the criteria set out above. If none of the above criteria apply the officer must clearly state the reasons for applying for the exemption. Please note, this evidence may need to be provided to the Cabinet Office or the Public Procurement Review Service

(PPRS) to explain why a procurement process was not undertaken. If you are unsure whether the exemption is likely to be granted you should seek advice from the Procurement team.

- 6.5. All exemptions for a contract value of less than £50,000 must be approved by the relevant head of service, and the Head of Corporate Finance. The Procurement team should be contacted for advice prior to the responsible officer sending to the relevant approvers. The head of service must ensure that the form is signed and kept for future audit. A copy should be sent to the Procurement team for reference.
- 6.6. For exemptions above the contract value of £50,000, approval must be sought from the relevant department CEO or Deputy CEO, the Head of Corporate Finance, and the Head of Legal, Democracy and HR. The Procurement team should be contacted for advice prior to the responsible officer sending to the relevant approvers. Once approved by the Head of Legal, Democracy and HR, a copy will be provided for the Procurement team for information. A register of approved exemptions should be kept by the Head of Legal, Democracy and HR.
- 6.7. If an exemption is agreed it will still be necessary to complete the contract administration procedures such as agreeing the requirements, pricing, any compliance checks, for example insurance and financial checks and contract formation and signing.

7. Pre-procurement considerations and project start up

Preliminary market engagement

- 7.1.1 Preliminary market engagement with organisations which may be interested in supplying goods or providing services to the council is encouraged.
- 7.1.2 Preliminary market engagement with suppliers and other persons (such as trade associations or consultant advisors) can be used to develop requirements and approach (e.g. specification), identifying any innovation or new developments in the pipeline, and assist in estimating the cost of the requirements for example.
- 7.1.3 Officers should avoid seeking quotes from suppliers or having demonstrations prior to a formal procurement process without speaking to the Procurement team beforehand.
- 7.1.4. Any advice obtained may be used to assist in the creation of the procurement documents and inform how the procurement process is conducted but the lead officer must ensure the use of this information does not distort competition by favouring any supplier or discriminate against any suppliers or organisations. If information is provided to organisations taking part in the market engagement process, the lead officer must consider how it is subsequently made available to

any organisations taking part in the formal procurement process. In some cases, there may be grounds to exclude a supplier from the procurement process so the Procurement Team should be consulted for any procurement processes above threshold.

If the council is carrying out a market engagement event for an Above Threshold tender, a market engagement notice must be published by the procurement team.

Public Services (Social Value) Act 2012

- 7.2.1 The Public Services (Social Value) Act 2012 requires the council to have regard to economic, social and environmental well-being in connection with any service contract above threshold where the council commissions an individual, voluntary sector organisation, or company to provide those services on behalf of the council. It may also be applied voluntarily on sub threshold procurements.
- 7.2.2 The council has a Social Value Charter which sets out the council's social value requirements. The Charter has a number of commitments that it expects supplier to sign up to either on a voluntary or a mandatory basis, depending on the value of the contract being procured. In addition, for higher value contracts, suppliers should be asked a specific question relating to social value as part of the quality evaluation criteria, see para 9.6.3 for more information.
- 7.2.3 Prior to undertaking a procurement process the lead officer should consider:
- how the procured service might improve the economic, social and environmental well-being of the relevant area (within the boundaries of the public bodies involved in the procurement exercise)
 - how the economic, social and environmental elements should be incorporated into the relevant procurement documents such as the specification, evaluation criteria, and contract conditions. Only economic, social and environmental matters which are relevant to what is to be procured may be incorporated. Those that are included must be proportionate to the requirement being procured

Procurement project start-up

- 7.3.1 The lead officer must determine whether the procurement falls within the definition of a key decision as per the council's scheme of delegation. If it does, then the lead officer must follow the relevant approval procedures before the procurement process commences. If in doubt, please contact Democratic Services.
- 7.3.2 Determining the appropriate procurement route can be extremely complex, therefore prior to the commencement of any procurement process over £50,000 it is recommended that the lead officer notifies the Procurement team as well as notifying the legal services team.

7.3.3 The lead officer should ensure that all necessary contractual, policy and legislative requirements have been considered, such as:

- TUPE transfer of staff for services contracts
- Safeguarding
- health and safety
- Modern slavery
- sustainability
- Equalities and diversity
- Public Sector Bodies Accessibility Regulations 2018
- Payment of living wage and zero-hours contracts – mandatory for all Crawley contracts
- social value
- technology requirements
- company finances
- insurance
- employment and skills
- contract considerations
- Prevent duty – in instances where the contract could allow potential for radicalisation
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7.3.4 For above threshold procurements, there is a requirement to keep records on all material decisions that led to the award of a contract and this requirement begins at project start-up. The lead officer must begin recording from project start-up and onwards how the objectives of the Procurement Act 2023 and the National Procurement Policy Statement were taken into consideration, that the conflict of interest assessments were carried out as required and how decisions were made on the composition of the specification and the award criteria.

8. Quote process

- 8.1 Where the estimated value or amount of a proposed contract does not exceed £19,999.99, the officer concerned, in consultation with the budget holder, should determine value for money prior to making the purchase. Evidence of value for money could be for example the receipt of two quotes or evidence obtained through on-line research. A purchase order should be raised for all purchases via the council's financial management system, where required. If there is any doubt whether the contract will be valued above this threshold, a formal quote process should be undertaken
- 8.2 Any contract valued between £20,000.00 and £49,999.99 for goods and services or between £20,000.00 and £99,999.99 for works should follow the formal quote process. If there is any doubt whether the contract will be valued below the

highest threshold prior to the start of the procurement process, then a local tender process should be followed regardless.

- 8.3 The quote process must be transparent and fair. All suppliers invited to submit a quote must be issued with the same information at the same time and subject to the same conditions. A record of all correspondence between the council and supplier shall be maintained. Should any further information be issued, this must be given to all suppliers on the same basis, unless it is commercially sensitive to a specific supplier. A realistic timescale for response must also be given.
- 8.4 A request for quote should, where appropriate, contain the following information (ask the Procurement team for an up to date list of requirements and access to all the standard documents):
- background information and instructions to suppliers – concise relevant information about the council, and details of the quote procedure. This must include the evaluation criteria
 - the specification or requirements document – providing full details of the goods, services or works that are required
 - council terms and conditions (see also 10.6)
 - price schedule – a form or spreadsheet for the bidder to complete enabling the bidder to easily submit their quote pricing information
 - quality questions – a series of questions in order to help evaluate the qualitative elements.
 - a statement that the council is not bound to accept any quote and that all submissions are at the supplier’s own cost
- 8.6 A minimum of three suppliers must be asked to provide a quote and it is recommended that at least one should be a local supplier², where practicable. Suppliers can be selected by any means deemed suitable by the lead officer, including the use of the council’s e-tendering portal where suppliers that have expressed an interest in working with the council register their interest. Where there are less than three suppliers that can provide the goods or services, then this must be evidenced by the lead officer following the procurement exemption process as detailed in section 6.
- 8.7 Quotes must be submitted either electronically via email or using the council’s approved e-tendering system which can be accessed via the Procurement team.
- 8.8 After evaluating the quotes, in consultation with the head of service, the responsible officer must notify all the suppliers of the award decision in writing

² a local supplier is defined as a business that is either based in Crawley or has operational activity within Crawley (RH10 or RH11) that generates local employment and benefits. Whilst operational activity within Crawley is preferable it is acknowledged that this may have limitations, therefore businesses within the Gatwick Diamond or wider West Sussex areas are encouraged. See Section 23 for further definitions.

as soon as practicable. Feedback to unsuccessful suppliers should be provided should they request it.

- 8.9 All documents must be kept for a minimum of 12 months. The successful quote should be kept for the duration of the contract period (see section 11 for more information on record keeping).

9. Local and above threshold tender processes

Scope

- 9.1.1 There are three main types of tender process:

- a) local tender - defined as any procurement process below threshold (see intranet page for current thresholds)
- b) above threshold tender – defined as any procurement above the relevant thresholds. This category includes the following procurement routes;
 - i. open (see paragraph 9.1.7)
 - ii. Competitive flexible
 - iii. light touch (see paragraph 9.1.10)
- c) concessions contract – normally an arrangement where the service users as opposed to the council make payments to the contractor for use of the service. Concession contracts normally follow a local tender process irrespective of the value. Further details may be found in section 9.1.13 to 9.1.14.

- 9.1.2 The duration of a tender process will be dependent upon the complexity of what is being procured and the type of procurement process being undertaken. Broadly speaking a local tender process will on average take three to six months and an above threshold tender 12 to 18 months depending on the complexity.

- 9.1.3 Any contract valued at £50,000 or above for goods and services or £100,000 for works must follow a formal tendering process and the Procurement team should be notified. If there is any doubt whether the contract will be valued below these thresholds then a tender process should be followed regardless.

- 9.1.4 A local tender process can be undertaken for any contract below the above threshold. Local tenders must be conducted as a single stage open tender exercise. An open tender exercise is where the council advertises the opportunity and all interested parties complete and return the full tender documents.

9.1.5 Any contract above threshold must follow the Procurement Act 2023 and any associated Legislation and the Procurement team must be notified. The responsible officer, in conjunction with the Procurement team, must determine the type of procurement exercise to be undertaken.

Specialist above threshold tender process

9.1.6 The only other procedure available under the Procurement Act 2023 is the Competitive Flexible Procedure. This process should not be undertaken without the prior notification to the Procurement team or the Head of Governance, People and Performance.

Light touch tenders

9.1.10 Light touch contracts are contracts wholly or mainly for the suppliers whereby the services are supplied for the benefit of individuals (for example, health or social care services) or the community generally.

9.10.11 Light touch tenders are subject to a light touch (simplified) procurement regime if they exceed the threshold value as stated at Schedule 1 of the Procurement Act 2023. Whether a contract is a Light Touch or not is determined by Common Procurement Vocabulary (CPV) codes contained at Schedule 2 of the Procurement Act 2023. Guidance should be sought from the Procurement Team before defining a contract to be within the Light Touch regime.

9.10.12 For all tenders above Threshold covered by this light touch regime, the lead officer must ensure:

- the requirements are advertised on the Central Digital Platform
- the procurement is undertaken in accordance with the provisions in the local tender process
- a contract award notice must be published on conclusion of the procurement

9.10.13 For all tenders below Threshold, please follow the procurement process relevant to the specific contract value.

Concessions contracts

9.1.12 A concession contract (where the service users, as opposed to the council, make payments to the contractor for use of the service) should be undertaken in accordance with the relevant process using the thresholds. The Procurement Team should be contacted to advise on the required process.

Advertising of tender opportunities

- 9.2.1 Prior to advertising any local or above threshold tender opportunity, a full completed set of tender documents must be published simultaneously at the time of placing the advert. All tender documents must be available to all suppliers free of charge.
- 9.2.2 All tender exercises (above £50,000 for goods and services and £100,000 for works) must be advertised for the statutory minimum period of 25 days on the SE Shared Services Portal which links directly with the Central Digital Platform via the Procurement team. In order to stimulate interest in the opportunity and to meet best practice guidelines it is strongly recommended that tenders are advertised for a minimum of six weeks. Other media can also be used to ensure market penetration. The advert must contain details of the tender exercise including timescales, any conditions of participation (where allowed) details of the award criteria and evaluation process and a link to the website where the tender documents are published.
- 9.2.3 In addition to the above, all above threshold tenders must be advertised by the Procurement team on the Central Digital Platform via the council's e-tendering portal.

Invitation to Tender – local and above threshold tenders

- 9.3.1 Tenderers must be given an adequate period in which to prepare and submit a proper tender. This should not be less than a period of 25 days for a local tender, with day one starting the day after the advert is placed. It is strongly recommended to allow at least six weeks. Where an above threshold tender process applies this must not be less than the minimum time period allowed for the particular procurement route being followed and should be confirmed with the Procurement Team.
- 9.3.2 All invitation to tender documents and requirements must be proportionate to the nature, complexity and cost of the contract but shall include the following (you can contact the Procurement team for the latest template documents):
- information for tenderers - concise information about the council; background to the project; details of the procurement process and the timetable for completion; full details of the evaluation criteria and weighting, including any sub-criteria; and details of presentations, site visits and interviews that will be used to award the contract (see also 9.6). It should also include a form of tender that includes confirmation of exemption from Freedom of Information Act and confirmation of non-collusive tendering and confirmation of no canvassing and mandatory and discretionary exclusions
 - conditions of participation – legal and financial capacity and the technical ability of the supplier – please note this is only allowed for Above Threshold

tenders

- specification / project brief– detailing the council’s requirements in sufficient detail to enable the submission of competitive offers
- council contract terms and conditions – all contracts to be in writing in a form approved by Legal Services (see 10.6)
- price schedule – a clearly structured form or spreadsheet enabling the bidder to easily submit the full details of the tender prices excluding VAT
- quality questions– a series of questions in order to evaluate the qualitative elements of the tender. The Procurement Team can be contacted for examples of suitable questions to ask bidders.

9.3.3 The tender documents must be finalised and available at the time the advert is placed.

Evaluation criteria

9.4.1 The evaluation criteria are those used to determine the award of the contract in a tender process. These fall into two categories – Conditions of Participation and Award Criteria.

9.5 Conditions of participation (Above Threshold only)

9.5.1 Conditions of participation are conditions that a supplier must meet if it is to be awarded the contract. Such criteria relate to the legal and financial capacity and the technical ability to perform the contract.

Suppliers must be able to meet these conditions of participation to do business with the council so they must be proportionate to the nature, complexity and cost of the contract.

Conditions of participation can include, but are not limited to, insurance, turnover, accreditation / qualifications etc. Advice should be sought from the Procurement team.

All conditions of participation should be applied to all associated suppliers and subcontractors.

The council cannot require suppliers to submit audited accounts, have the specified level of insurance at tender stage or have particular qualifications without allowing for their equivalents;

9.5.2 Note that conditions of participation are not allowed for any contracts (goods, services or works) below the services Above Threshold value.

9.6 Award criteria

9.6.1 Award criteria are used to assess the ability of suppliers to meet the council’s specification requirements and the cost of providing the service. This is referred

to as the Most Advantageous Tender (MAT) evaluation and is the split between quality and price. The tenderer should be requested to answer quality questions to evidence that they meet the qualitative elements of the award criteria, in addition they should be requested to submit a price schedule in order to evaluate the price elements of the award criteria. The criteria must be linked to the requirement and should be sufficiently clear, measurable and specific. Information should not be requested that will not be evaluated unless there are reasons for doing so, and it is explicitly mentioned in the documents that it will not be evaluated. The award criteria must be proportionate to the council's requirements, taking the nature, complexity and cost of the contract into consideration

9.6.2 Award criteria are split into price and quality criteria and given a percentage score. If you wish to award more than 90% on price this must be formally agreed in writing by the relevant CEO or Deputy CEO. An email is an acceptable method of gaining written approval.

9.6.3. Award criteria may include the following:

- quality assessment of the goods, services or works to be supplied under the contract and how or when they will be supplied;
- how and when those goods, services or works are to be supplied;
- the qualifications, experience, ability, management or organisation of staff where those factors are likely to make a material difference to the quality of goods, services or works being supplied;
- the price, other costs or value for money in all circumstances

9.6.4 Evaluation criteria used to determine the award of the contract must be clearly detailed in the tender advert or in the tender documents, which must be available at the time of placing the advert. This information must include details of the relevant weighting of each question or section and detail any sub-criteria used. It must also state the method that will be used to assess suppliers' responses. Furthermore, if there are any minimum pass-mark requirements for specific sections, these must also be detailed in the documents.

9.6.5 The evaluation of the price element must be undertaken on the whole life cost cycle criteria. These may include, but are not limited to:

- costs relating to acquisition such as equipment purchase price, installation, training, consultancy etc.
- cost of use, for example consumption of energy
- maintenance costs
- end of life costs such as collection and recycling

9.6.6 All relevant costs should be considered, and a price schedule developed for inclusion in the tender pack so that all suppliers can accurately submit their

price on an equal basis.

Tender receipt and opening

9.7.1 Electronic receipt (e-tendering)

- 9.7.1.1. All tenders are to be returned electronically using the council's approved e-tendering solution. All information must be submitted via the e-tendering solution by the date and time stipulated in the Invitation to Tender.
- 9.7.1.2. All tenders will be stored electronically by the e-tendering system in a secure locked-down area until the closing date and time has passed. Access to the system will be password protected. Only once the deadline for receipt has passed will the e-tendering system allow the authorised user to login and electronically open the tenders. The e-tendering system provides a full audit trail including when the tender was submitted, date and time of opening, supplier details and the tender price.
- 9.7.1.3. All electronic tenders over the value of £50,000 for goods and services, and £100,000 for works contracts must be formally opened by at least two officers simultaneously, with at least one member being from the Procurement team.
- 9.7.1.4 Once the tenders have been opened the tender documents can be downloaded and stored by the lead officer in a secure folder. The Procurement team can provide a report of tenders received should it be required.
- 9.7.1.5 Use of any other electronic tendering or bid submission portal or system (for example, GCloud) to receive tenders or quotes via Frameworks shall be subject to the prior approval of the Procurement team.
- 9.7.1.6 The In-tend e-tendering portal can be used for quote processes. In this instance quotes can be formally opened electronically by the lead officer or the procurement team on behalf of the lead officer. The lead officer should ensure that the In-tend system is set so that opening of quotes is locked until the closing date and time has passed.

9.7.2 e-auctions

- 9.7.2.1 If the lead officer wishes to use an e-auction to fulfil the requirement, use of such system shall be subject to the prior approval of the Procurement team. The procurement documents must clearly state that it is intended to use an e-auction to conclude the procurement.
- 9.7.2.2 By using e-auctions it is customary in the case of late bids being received that the time (but not the date) for the receipt of tenders is extended to give rival bidders an opportunity to respond. Provided that such arrangements are set out in the tender details this procedure shall not be a breach of the Procurement Code.

General conduct and tender evaluation process

9.8.1 The head of service shall ensure that every tender process undertaken is transparent and that all participants are treated fairly and equally at all times throughout the process. In particular:

- Ensure that competition is not distorted in circumstances when some participants in a procurement exercise may have previously assisted the council in preparation of the procurement documents (for example, via a market engagement exercise). As a minimum any additional background information which the council provided to participants during a market engagement exercise should be made available to all participants of the procurement exercise.
- all participants have access to the full procurement documents electronically free of charge from the SE Shared Services Portal via the Procurement team as soon as the advert is published.
- a record is maintained of all the correspondence between the council and the participants including details of any additional information provided to participants and any clarification questions from participants which should be submitted in writing through the Portal or, in exceptional circumstances, by email
- a reply is issued to all participants answering those clarification questions of a generic nature. Clarification questions specific to a particular participant or containing information of a commercially sensitive nature should only be communicated to that particular participant
- should the procurement process need to be extended, this must be communicated to all participants allowing sufficient time before the closing date to ensure that no submissions may have already been received

9.8.2. When undertaking the evaluation, the lead officer must ensure that:

- confidentiality of tenders, and the identity of tenderers, is preserved at all times
- information about one tenderer's response is not to be given to another tenderer
- tenders are evaluated and awarded in accordance with the evaluation criteria outlined in the tender documents
- a thorough tender evaluation is undertaken by a minimum of two officers
- advice is sought from the relevant service on any areas of award criteria that require specialist knowledge in order to evaluate effectively for example, financial information, equalities and diversity, health and safety, and sustainability. This should be scheduled with the relevant officer well in advance
- there is a formal record of how the evaluation process was conducted and the contract award recommendation has been reached. In particular, details must be kept of the discussions and outcomes of any moderation meetings where officers evaluating the tender submissions have discussed and amended or averaged tenderers scores.

- the tender evaluation process and scoring spreadsheet is independently checked before a contract award recommendation is made
- a conflict of interest assessment is carried out at the beginning of procurement process and is kept under review and revised / updated at each set out of the procurement stage
- Where a conflict of interest is identified, steps are taken to mitigate against it and that the Head of Service and Procurement Team are notified

9.8.3 The arithmetic content in tenders must be checked. If arithmetical errors are found you should notify Legal services and the Procurement team at the earliest opportunity, and subject to advice received, the tenderer should be notified and requested to confirm or withdraw their tender, in writing.

9.8.4 Where appropriate, the lead officer will check that submitted tender prices are compared with any pre-tender estimates or budgets and that any discrepancies are examined and resolved, in particular:

- to be alert to the risk of collusion between tenderers and aware of indications of potentially anti-competitive behaviour and report any suspicious bidding activities to the Procurement team
- to be alert to the possibility of receiving an abnormally low bid from one or more tenderers. If an abnormally low bid is suspected the procedure outlined in section 9.10 below shall be followed

Conflicts of interest

At the start of each procurement process, a Conflict of Interest Assessment must be undertaken. This must cover anyone who has a potential or perceived conflict:

- acting for or on behalf of the council has the ability to influence a decision to award a contract under a procurement; and
- they have a personal, professional or financial connection (either directly or indirectly) with a supplier participating in said procurement

This assessment is kept under review throughout the procurement process and is to be updated / revised at each stage of the process.

The Lead Officer will be expected to mitigate any potential or perceived conflicts of interest – this could be through one or more of the following: separation of duties, through the design of the procurement, sharing of information, excluding suppliers or excluding evaluators. The procurement team and the Head of Governance, People and Performance should be consulted.

Clarifications and post-tender negotiation

- 9.9.1. Providing clarification on an Invitation to Tender in writing or by way of a meeting is permitted. When clarifying information, the lead officer must ensure that all potential tenderers, not just the one requesting the information, also receive notification of the clarification (see also 9.8.1). All clarifications should be communicated via the council's e-tendering portal.
- 9.9.2. Post-tender negotiation means negotiations with any tenderer after submission of a tender and before the award of the contract with a view to obtaining adjustments in both price and content. Public procurement rules only allow limited negotiation on certain types of procurement route. It is not allowable on most tender procedures.
- 9.9.3. Post-tender negotiation must only be conducted in accordance with any guidance issued by the Legal or Procurement Teams. The Head of Governance, People and Performance must be formally consulted:
- wherever it is proposed to enter into post-tender negotiation, and
 - about whether negotiation is to be with all tenderers or the one who is deemed the preferred bidder from the evaluation process
- 9.9.4. Where post-tender negotiations have been agreed and result in a fundamental change to the specification or contract terms, the contract must not be awarded but re-tendered.
- 9.9.5. If post-tender negotiations are necessary, then such negotiations shall only be undertaken with the tenderer who has previously been identified as submitting the most economically advantageous tender. Post-tender negotiations must be conducted by a team of at least two officers. Officers appointed by the CEO or Deputy CEO to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

Abnormally low bids

- 9.10.1 A bid may be regarded as being abnormally low if there is a significant difference in price between the lowest priced bid and other bids received. In the event that officers believe that one or more of the bids received from tenderers may be an abnormally low bid the officer should consult with the Procurement team and Legal Services, at the earliest opportunity, to review the bid or bids submitted and for support throughout the clarification process.
- 9.10.2 The Council may reject any tender that offers a price that the Council considers to be abnormally low for the performance of the contract however will need to follow the process below:

The supplier must be notified that the Council considers the price to be abnormally low and

Give the supplier reasonable opportunity to demonstrate that it would be able to perform the contract for the price offered

9.10.3 Tenderers should not be allowed to modify abnormally low bids.

9.10.4 In determining whether the bid or bids are an abnormally low bid the officer, in consultation with the Head of Governance, People and Performance, should take into account the evidence provided by the tenderer in response to the written request and verify the bid, or parts of the bid, being considered abnormally low with the tenderer.

9.10.5 If after reviewing the evidence provided by the tenderer it still does not satisfactorily explain the low level of price submitted by the tenderer, then the lead officer in consultation with the Head of Governance, People and Performance may reject the bid or bids as an abnormally low bid where the evidence supplied does not satisfactorily account for the low level of the bid, and in such case shall immediately notify the tenderer that the bid is being rejected. Abnormally low bids must be rejected before contract award.

10. Contract award procedure

Approval of contract award

10.2.1. Following completion of a comprehensive evaluation process of all tenders submitted as detailed in section 9.8 of the Procurement Code, the contract approval process is delegated to:

10.2.2. the relevant head of service for tenders up to the threshold for goods and services contracts and up to £250,000 for works contracts.

10.2.3. the relevant head of service in consultation with CEO or Deputy CEO for goods and services contracts from above threshold to £250,000.

10.2.4 the head of service, in consultation with CEO or Deputy CEO and portfolio holder, for all tenders between £250,000 and £500,000. the head of service must complete a significant operational decision form that must be submitted to Democratic Services for publication in the Councillors' information bulletin.

10.2.5. For all tenders above £500,000 approval by Cabinet, unless specific delegated approval has already been agreed by Cabinet, in which case it would need to be reported in the Councillors Information Bulletin following completion of the

Executive Decision Form and is subject to call-in. All contracts above £500,000 must be included in the forthcoming decisions list 28 days prior to the contract award. In the case of genuine urgency, by the relevant head of service, in conjunction with the Head of Corporate Finance and after consultation with the relevant portfolio holder, or in their absence, the Leader.

- 10.2.6 In all instances, the decision for contract award must be made on the basis that:
- this Procurement Code has been fully complied with
 - the most advantageous tender is accepted based on the evaluation criteria advertised and contained in the tender documents
 - the evaluation process has been carried out satisfactorily
 - the tender and all other costs associated with the procurement to which the tender relates are within the approved budget
 - any necessary, written, approval has been obtained including member approval relating to matters of policy

Call in procedure

- 10.3.1. Acceptance of tenders over £500,000 is subject to call-in under the council's Scrutiny Procedure Rule 14(a) to 14(i). Refer to the Head of Governance, People and Performance for further advice.

Notification of contract award to tenderers – above thresholds

- 10.1.1. Following approval of a contract award recommendation, in respect of any tender above threshold the lead officer in consultation with the head of service must, notify all tenderers of the outcome and commence a mandatory 8 working day standstill period.

- 10.1.2. In notifying the tenderers of the outcome, the lead officer must provide the following:

All bidders:

- an assessment summary for each bidder containing the following information:
 - the assessment methodology set out in full / details of where this is included in the associated tender documents;
 - the scores and the reason for those scores against award criteria; and
 - the reasons why they were not given the score immediately above for every award criteria

If bidder is unsuccessful:

- whether they passed or failed the conditions of participation, and why
- whether they failed any other questions
- the same information regarding the successful bidder's tender (including their assessment summary)

- 10.4.3 This should be sent through the council's e-tendering Portal by the Procurement Team, or lead officer.

- 10.4.4 After the issue of the assessment summaries to all bidders, the lead officer will need to provide information to the Procurement Team to place a Contract Award Notice which will officially commence the standstill period. The Contract Award Notice sets out the details of the supplier(s) that the council intends to award the Contract to. It sets out information relating to the standstill period including start and end dates.
- 10.4.5 The standstill period must run for a period of 8 working days, commencing the day immediately after the notification is sent to the tenderer and concludes at midnight on the 8th working day. The standstill period does not apply to awards under a Framework or the award of a Light Touch Contract.
- 10.4.6 Should a tenderer request further information or a debrief during the standstill period, the lead officer should immediately consult with the Procurement team and Head of Governance, People and Performance for advice. The council may extend the standstill for a further period until the tenderer has received and considered the information.
- 10.4.7 If the council receives notification from a tenderer that it intends to challenge a contract award decision then the Head of Governance, People and Performance and the Procurement Team must be notified immediately and the council must automatically refrain from entering into the contract.
- 10.4.8 Upon satisfactory conclusion of the standstill period, a Contract Details Notice needs to be published on the Central Digital Platform by the Procurement Team.
- 10.4.9 Once the notice has been placed, the lead officer may advise the successful tenderer or tenderers that the standstill period has passed and instruct the Head of Governance, People and Performance to draw up a formal contract with the successful tenderer or tenderers.
- 10.4.10 The lead officer must ensure that details of the contract award and successful organisation are also published in accordance with the requirements of the Transparency Code (see section 16). The Transparency Code requirements also apply to contracts awarded under a Framework.

Notification of contract award to tenderers – local tenders

- 10.1.3. Tenders below threshold are not covered by the full requirements laid out under in section 10.4. However, it is considered best practice to follow the same general principles of notifying unsuccessful tenderers, implementing a voluntary standstill period and if requested by the tenderer, providing further feedback on the outcome of the procurement.
- 10.1.4. Contract award letters should include a brief assessment summary and reasons for unsuccessful bidders failing any element of the requirements.

- 10.5.3 No other information should be given without taking the formal advice of the Head of Governance, People and Performance.
- 10.5.4 Once the informal standstill period has concluded, the lead officer must notify the Procurement team so that a contract award notice can be placed in the on the Central Digital Platform within 30 days of the contract award.
- 10.5.5 The lead officer must ensure that details of the contract award and successful organisation are also published in accordance with the requirements of the Transparency Code. The Transparency Code requirements apply to contracts awarded under a Framework.

Contract formalities and documents

- 10.6.1. All contract documents (draft and final versions) should be developed in association with Legal Services during the course of the procurement process to ensure that all relevant policy and contracting conditions are incorporated.
- 10.6.2. All Contracts will include implied 30-day payment terms between the Council and a supplier and the terms are also implied into the associated sub-contracts.
- 10.6.3. All contracts must be concluded before the supply, service or construction of works begins, except in exceptional circumstances, and then only with the prior written consent of the relevant CEO or Deputy CEO. A contract award letter is insufficient.
- 10.6.4. The lead officer shall ensure that Legal Services are given instruction and provided with all the necessary supporting documents and information in order to draw up the final contract.
- 10.6.5. The council's official purchase order should be used where applicable.
- 10.6.6. In addition to the above, the formal advice of the Head of Governance, People and Performance must be sought for the following contracts:
 - those involving leasing arrangements (these also require approval of the Head of Corporate Finance)
 - where it is proposed to use a third party's contract terms and conditions
- 10.6.7. Signature
 - 10.6.7.1 The officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

10.6.8. Sealing

10.6.8.1. Where contracts are completed by each side adding their formal seal, such contracts shall be signed by at least two authorised signatories.

10.6.8.2. Every council sealing will be consecutively numbered, recorded and signed by the persons witnessing the seal. The seal must not be affixed without the authority of the Cabinet or a head of service or CEO or Deputy CEO acting under delegated powers. A contract must be sealed where:

- the council wishes to enforce the contract for more than six years after its end, or
- where the total value is expected to exceed £100,000

11. Record keeping

11.1 The lead officer shall ensure that sufficient documents is retained to justify decisions taken at all stages of the procurement procedure to explain the material decision made for the purpose of awarding or entering into a public contract. As such the following documents must be retained in a secure and easily retrievable format:

- Details of all notices which have been placed throughout the procurement process, to include mandatory and voluntary notices
- Any and all decision making
- all documents, including internal and external communications, and project meeting notes, regarding the preparation of the procurement documents and undertaking the process
- invitations to quote and quotes received
- Invitation to Tender and tenders received
- a written record of any exemptions obtained under the Procurement Code and the reasons for them
- any contract award decision and the reasons for it
- the award criteria
- all evaluation information or reports
- clarification and post-tender negotiation to include minutes of meetings)
- the contract documents
- the post-contract evaluation and monitoring documents
- written records of all communications with all tenderers and with the successful tenderer throughout the period of the contract
- Completed conflict of interest assessment summary

11.2. These records are to be kept until a notice is published that there will be no award or three years post contract award.

11.3 Documents relating to a successful tender must be kept for a minimum of six years (12 years if the contract is under seal) after the final settlement or end of contract. However, documents which relate to unsuccessful tenderers may

be disposed of after 12 months from the award of the contract, provided there is no dispute about the award.

- 11.4. The original signed or sealed contract documents must be forwarded to Legal / Democratic Services for indexing, inclusion on the council's contracts register and secure storage

Publication of Contracts

The Council must publish a copy of all Contracts with a contract value of more than £5m, unless the information is deemed to be commercially sensitive and there is an overriding public interest in it being withheld from publication or other disclosure. The Head of Governance, People and Performance and the Procurement Team must be contacted for advice.

12. Contract management

- 12.1 No contract shall commence unless and until the procurement exercise and contract documents have been completed.
- 12.2 Heads of services shall ensure that all contracts are adequately managed based on an assessment of the contract value, service complexity, and level of risk or strategic importance to the council.
- 12.3 During the life of the contract the head of service shall ensure:
- a contract manager with the relevant skills, expertise and resource is assigned to effectively manage the contract, and has received any additional training required to adequately perform the contract management function
 - the performance of the contract is appropriately monitored and compliance with the specification and contract conditions is ensured
 - that where social value commitments have been made, these are monitored and reported to the procurement team on an annual basis
 - that where any statutory duty (for example safeguarding duty, data protection, or health and safety) is transferred to the contractor that the contractor complies with the duty including any reporting or record keeping requirements
 - a joint risks' register for the contract is agreed with the contractor with an agreement on who owns the risk;
 - discuss any proposed contract variations with Head of Governance, People and Performance before they are carried out. This includes any variances to the original contracted price. Only variations that have been clearly and specifically detailed in the initial tender documents may be made during the course of the contract
 - authorise in writing any variations to contracts before they are carried out. These variations to be authorised by the relevant head of service, relevant

director or relevant Cabinet member (see also 13)

- ensure that a record is kept of all certificates and instructions issued under the contract
- agree any price fluctuation or indexation provisions, subject to appropriate supporting documentary evidence being provided by the contractor; and
- notify the Head of Governance, People and Performance of any breach of contract

- 12.4. For Contracts with a total value above £5m, the Contract will need to contain at least 3 Key Performance Indicators (KPIs). The contract manager will need to ensure that these are regularly measured and monitored and ensure that a Contract Performance Notice is placed on the Government Portal annually, reporting the supplier's performance against the KPIs.

Further information on the importance and benefits of contract management can be found in the contract management guidance document available on the intranet.

13. Contract variation / modification

- 13.1 Following consultation and agreement by Head of Governance, People and Performance and the Procurement team, contracts may only be modified without the need for a new procurement exercise if any of the following cases apply:

- a) the modification is unambiguously provided for in the Contract; and
- the Tender or Transparency Notice: and
 - the modification would not change the overall nature of the Contract
- b) the modification is not a substantial modification where:
- there is only a 10% change to the maximum contract term;
 - it does not materially change the scope of the contract; or
 - it does not materially change the economic balance of the Contract in favour of the supplier

- c) The modification is a below-threshold modification where it does not itself increase or decrease the estimated contract value by more than
- For goods and services 10%
 - For works 15%

The aggregated value of the below-threshold modifications would be less than threshold amount for this type of Contract

The modification would not materially change the scope of the Contract

- d) The circumstances giving rise to the modification could not have reasonably been foreseen by the council before the contract award; and
- The modification would not change the overall nature of the Contract; and
 - The modification would not increase the estimated value of the Contract by more than 50%

- e) The council considers that
- Known risk materialised not due to act or omission of the Council or supplier;
 - Contract cannot be performed to satisfaction of the Council; and
 - Modification does not go further than is necessary to remedy

The award of a further Contract would not be in the public interest
The modification would not increase the estimated value of the Contract by more than 50%

It was identified in the Tender or Transparency Notice

- f) If a permissible Direct Award is made then refer to Head of Governance, People and Performance and the Procurement Team for advice.
- g) A novation or assignment of a public contract to a supplier that is not an Excluded supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance.

- 13.2 A new procurement exercise shall be required for any contract modification which:
- materially alters the contract from the one initially awarded
 - introduces conditions that if they had been part of the original procurement would have allowed other suppliers to participate
 - changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract
 - extends the scope of the contract considerably
 - introduces a new contractor to replace the initial contractor for any reason other than those listed in e) above
 - proposes a contract modification other than those provisions outlined in 13.1 above

- 13.3 Once negotiations with the contractor or contractors regarding the contract variation have concluded, the head of service must provide the Head of Governance, People and Performance with all the appropriate documents and instructions to issue a Contract Change Notice to be published on the Central Digital Platform.

- 13.4 For procurements with a contract value above £5m, a modified copy of the contract or the modification itself must be published on the Central Digital Platform.

14. Contract extension

- 14.1. Any contract that expressly provides for extension may be extended in accordance with its terms provided that the lead officer and the Legal team

are satisfied that best value will be achieved, and the extension is reasonable in all the relevant circumstances.

- 14.2. Where the contract terms do not expressly provide for extension, legal advice should be sought from the Head of Governance, People and Performance at the earliest opportunity.
- 14.3. Approval for a contract extension is delegated as per the contract award procedures set out in paragraph 10.2.
- 14.4. Once granted the contractor must be notified in writing of the contract extension and the Head of Governance, People and Performance and the Procurement team provided with the appropriate instruction and supporting documents to issue the contract extension.
- 14.5. A contract change notice must be published on the Central Digital Platform before any above-threshold contract is extended (including those contracts that have built-in extension options).
- 14.6. The exception to para 14.5 is when the contract extension is a modification that:
 - 14.6.1 increases or decreases the estimated value of the contract by 10% or less for goods/services and 15% or less for works;
 - 14.6.2 increases or decreases the term of the contract by 10% or less of the maximum term provided for on award

15. Contract termination

Contracts may be terminated, by the relevant head of service, by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract. Advice must be sought from the Head of Governance, People and Performance and Procurement Team before terminating any contract.

- 15.2. If an above Threshold contract is terminated, a Contract Termination Notice must be placed on the Central Digital Platform by the Procurement Team.
- 15.3. If a contract above £5m is terminated due to failure to perform reported KPIs, a notice must be issued on the Central Digital Platform.

16. Contracts register and transparency

- 16.1. As per the requirements of the Transparency Code, immediately upon the completion of every contract of £5,000 or over, the lead officer shall supply through the eform hosted on the council's intranet site, the details of the

contract for inclusion in the central contracts register (maintained by the Procurement team).

- 16.2 In addition, upon receipt of the completed contract from the successful tenderer or tenderers, the Head of Governance, People and Performance shall send an electronic copy of any contract that has been completed to the relevant head or heads of service and the Procurement team for inclusion in the central contracts register.
- 16.3 The central contracts register shall be available on the council's intranet and an edited version on the council's website.

17. Bonds and parent company guarantees

- 7.1 The lead officer must consult the Head of Corporate Finance about whether a parent company guarantee is necessary when a tenderer is a subsidiary of a parent company, and;
- the total value exceeds £300,000, or
 - the award is based on evaluation of the parent company, or
 - there is some concern about the financial stability of the tenderer, about whether a bond is required: or
 - where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the financial stability of the tenderer

18. Prevention of corruption and bribery

- 18.1. The lead officer must comply with the council's employees' code of conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- 18.2. High standards of conduct and integrity are obligatory. Corrupt behaviour will lead to dismissal and is a criminal offence under the Bribery Act 2010.
- 18.3. Officers shall not use any contract or other procurement arrangement entered into by the council for their own personal use, benefit or gain other than with the prior written approval of the Head of Corporate Finance.
- 18.4. The following clause must be included in every council contract:

The council may terminate this contract and recover all its losses if the Contractor, its employees or anyone acting on the contractor's behalf does any of the following things:

- a. offer, give or agree to give to anyone any inducement or reward in respect of this or any other council contract (even if the contractor does not know what has been done); or

- b. commit an offence under the Bribery Act 2010 or section 117(2) of the Local Government Act 1972; or
- c. commit any fraud in connection with this or any other council contract whether alone or in conjunction with council members, contractors or employees.

18.5. Any clause limiting the contractor's liability shall not apply to this clause.

19. Blacklisting

19.1 The Employment Relations Act 1999 (Blacklists) Regulations 2010 states that no person shall compile, use, sell or supply a prohibited list which:

- a) contains details of persons who are or have been members of the trade unions or persons who are taking part or have taken part in the activities of trade unions, and
- b) is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers

19.2 The Trade Union and Labour Relations (Consolidation) Act 1992 states that, amongst other things, it is unlawful to refuse a person employment:

- a) because he is, or is not, a member of a trade union, or
- b) because he is unwilling to accept a requirement;
 - (i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or
 - (ii) to make payments or suffer deductions in the event of his not being a member of a trade union.

20. Declaration of interests

20.1. If it comes to the knowledge of a member or an employee of the council that a contract in which he or she has a financial or personal interest has been, or is proposed to be, entered into by the council, he or she shall immediately give written notice to the Head of Governance, People and Performance. The Head of Governance, People and Performance shall report such declarations to the appropriate committee.

20.2. Such written notice is required, irrespective of whether the monetary interest is direct or indirect. An indirect financial interest is distinct from a direct financial interest in as much as it is not a contract to which the member or employee is directly a party.

20.3. A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a financial interest for the purposes of the Procurement Code.

- 20.4. The Head of Governance, People and Performance shall maintain a record of all declarations of interests notified by members and officers.
- 20.5. The Head of Governance, People and Performance shall ensure that the attention of all members is drawn to the appropriate provisions within the council's Code of Conduct.

21. Review and amendments to the Procurement Code

This Procurement Code shall be reviewed and updated on a regular basis, not less than annually. Minor amendments to the Procurement Code are delegated for approval to the Head of Corporate Finance and Head of Governance, People and Performance. Major amendments to the Procurement Code shall be agreed and adopted by the Full Council.

22. Procurement thresholds and contract award procedures - works contracts

Total contract Value	Procurement route	Short-listing or evaluation of suppliers	Receipt of quotes or tenders	Contract approval and award	Method of contract completion	Transparency Code obligations
Under £19,999	Evidence of value for money	Officer	Officer	Officer in consultation with the appropriate budget holder	Signature and or purchase order raised	Publish details of all contracts of £5,000 + on the council's contracts register*
£20,000 - £99,999	Three written quotes	Officer and line manager	Quotes returned electronically to department and reviewed by at least two officers or to be electronically opened by the council's approved e-tendering package.	Officer in consultation with head of service.	Signature	Publish details of all contracts on the council's contract register*
£99,999 – above threshold for works £5,372,609 [^] inc. VAT; £4,477,174 (exc VAT)	Invitation to tender, by advert on Central Digital Platform via the SE Shared Services Portal.	Tenders to be evaluated by a minimum of two officers.	To be electronically opened by two officers using the council's approved e-tendering package	Up to £214,904 [^] (£179,087 exc VAT) goods and services threshold officer in consultation with head of service	Up to £100,000 Signature	Publish details of contract awards on Central Digital Platform and SE Shared Services Portal. Publish details of all contracts on the council's contract register*
				Above £214,904 [^] (£179,087 exc VAT) goods and services threshold to £250k head of service approval in consultation with CEO or Deputy CEO		
				£250k to £500k head of service in consultation with CEO or Deputy CEO and Portfolio Holder. A Significant Operational Decision form (SOD) must be completed and submitted to Democratic Services for inclusion in the Members Bulletin Above £500k – approval by Cabinet	Over £100,000 Sealing	
Above threshold £5,372,609 [^] inc. VAT; £4,477,174 (exc VAT)	Invitation to tender by advert on Central Digital Platform via the SE Shared Services Portal and by advert on Find a Tender or Use of competitive flexible procedure	Tenders to be evaluated by a minimum of two officers.	As above	Approval by Cabinet	Sealing	Publish details of provisional contract award and contract award on Central Digital Platform and on SE Shared Services Portal. Publish details of all contracts on the council's contract register*

* the contracts register is managed through the Procurement team and Legal / Democratic Services. There is an eform available on the intranet that can be completed in order to provide details of the contract award.

^ This value is inclusive of VAT- previous values were exclusive of VAT.- Please ensure that you take this into account when calculating contract value. Please refer to 3.1 and the Procurement team for advice.