

SLOUGH BOROUGH COUNCIL

CONTRACT PROCEDURE RULES¹

To be approved by the Council on 23rd

November 2021

Operative with effect from 24th

November 2021

UK Procurement Thresholds to January 2022²	
Works Contracts	£4,733,252
Light Touch Regime Services	£663,540
Supplies Contracts	£189,330
Services Contracts	£189,330

¹ **Legal Status of these Contract Procedure Rules**

Slough Borough Council is required by section 135 of the Local Government Act 1972 to maintain Contract Procedure Rules.

The Group Manager Commercial is the custodian of these Contract Procedure Rules and is responsible for keeping them under review. If the UK Directives or any other Law is changed in a way that affects these Contract Procedure Rules then the Group Manager Commercial will issue a notice and the change must be observed until the Contract Procedure Rules can be revised.

² The UK Thresholds will need to be updated in line with relevant Crown Commercial Service Procurement Policy Notes.

Document Control

Version	Date	Lead Author	Main Changes
1.0	28 October 2021	HB Public Law Commercial Team	Final draft following review and approval at Strategic Finance board
1.1	03 November 2021	Commercial Team	Updated draft following Member Panel on the Constitution

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**Slough Borough Council Procurement Application and Authorisation Table³
(Services)**

Total Aggregate Contract Value⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation⁵
Less than £25,000	3 quotations where possible signed off by the Authorised Officer in accordance with the Scheme of Delegation.	3 quotations where possible. Authorised Officer to complete quotation proforma.	Authorised Officer in the Service Area	No	Purchase Order Standard Terms and Conditions	Quotation proforma must be signed off by the Authorised Officer (Scheme of Delegation) before accepting quotation and raising purchase order. Quotation proforma must be sent to procurement for recording on contract register as per government	Authorised Officer in accordance with the Scheme of Delegation (Section 3.6 of the Constitution)

³ All procurements and transactions must fall within the powers delegated to the relevant officer and must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, the Council or one of its committees or sub-committees. No contract, agreement or other document shall be signed or sealed unless it gives effect to a decision or resolution (in accordance with the Council's Constitution) of the Cabinet, or one of its committees or sub committees or in accordance with the Scheme of Delegation.

⁴ Contracts should not be artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

⁵ Scheme of Delegation, Part 3.6 of the Slough Borough Council Constitution.

Total Aggregate Contract Value ⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁵
						transparency requirements.	
£25,000 - Threshold	<p>Minimum of 3 quotations.</p> <p>OR</p> <p>Consider accessing local/national framework agreements where permitted and running mini competitions or call offs.</p>	<p>Obtain and retain a minimum of three quotes.</p> <p>These quotes must be obtained through the SE Shared Services E-portal.</p> <p>Please seek advice from the Procurement Team for advertising.</p>	Authorised Officer in accordance with the Scheme of Delegation.	All Contract Values over £25,000 must be published on the SE Shared Services E-portal and contracts finder as per government requirements.	<p>Please seek advice from the Procurement Team. The contract used will depend upon the value and complexity of the procurement.</p> <p>Contracts over £100,000 must be sealed and HB Law advice sought from outset.</p>	<p>Full business case and quotation paperwork to be submitted to Review Board (Procurement, Legal and Finance) before submission to the Authorised Officer (Scheme of Delegation)</p> <p>Information Governance board Approval required for IT projects with a contract value in this value band.</p> <p>Capital Monitoring Board Approval required for all capital projects that fall within this value band.</p>	Authorised Officer in accordance with the Scheme of Delegation (Section 3.6 of the Constitution)
£180,000 to £500,000 – Goods/Services	Formal tender process using SE Shared Services E-portal and contracts finder and the UK Find a Tender Service.	Most economically advantageous tender must be selected, achieving Best Value and Value	Authorised Officer in accordance with the Scheme of Delegation.	Yes Use of SE Shared Services E-portal procurement	Services: Please seek advice from the HB Public Law and the	<p>Project must be on the forward plan to Cabinet each April.</p> <p>Full business case and quotation paperwork to be</p>	Executive Director in accordance with the Scheme of Delegation (Section 3.6 of the Constitution)

Total Aggregate Contract Value ⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁵
	<p>OR</p> <p>Consider accessing local/national framework agreements where permitted and running mini competitions or call offs.</p>	<p>for Money for Council.</p> <p>The Procurement Team must be contacted for guidance and support.</p> <p>Use of SE Shared Services E-portal, Contracts Finder and the UK Find a Tender Service system is mandatory.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>		<p>system is mandatory.</p> <p>Procurement Must be advertised on Contracts Finder and the UK Find a Tender Service.</p>	<p>Procurement Team.</p> <p>All contracts to be sealed by HB Law.</p>	<p>submitted to Review Board (Procurement, Legal and Finance) before submission to Executive Board.</p> <p>Information Governance Board Approval required for IT projects with a contract value in this value band.</p> <p>Capital Monitoring Board Approval required for all capital projects that fall within this value band.</p>	<p>Note: Cabinet may request any project on the forward plan to be presented to Cabinet before award.</p>
Over £500,000	Formal tender process using SE Shared Services E-portal and contracts finder and the UK Find a Tender Service.	Most economically advantageous tender must be selected, achieving Best Value and value	Authorised Officer in accordance with the Scheme of Delegation with support from the	Yes Use of SE Shared Services E-portal system is mandatory.	Please seek advice from the HB Public Law and the Procurement Team.	Project must be on the forward plan to Cabinet each April. Full business case and quotation paperwork to be	Cabinet approval is required. Any contract over £500k is a significant decision and must be approved prior to

Total Aggregate Contract Value ⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁵
	<p>OR</p> <p>Consider accessing national framework agreements where permitted and running mini competitions or call offs.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	<p>for money for Council.</p> <p>The Procurement Team must be contacted for guidance and support.</p> <p>Use of SE Shared Services E-portal, Contracts Finder and the UK Find a Tender Service system is mandatory.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	Procurement Team.	Procurement must also be advertised on Contracts Finder and the UK Find a Tender Service.	<p>All contracts to be sealed by HB Law.</p> <p>All Contracts to be sealed.</p>	<p>submitted to Review Board (Procurement, Legal and Finance) before submission to Executive Board.</p> <p>Information Governance Board Approval required for IT projects with a contract value in this value band.</p>	procurement and prior to any contract award.

**Slough Borough Council Procurement Application and Authorisation Table⁶
(Works)**

Total Aggregate Contract Value ⁷	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁸
Less than £25,000	3 quotations where possible signed off by the Authorised Officer in accordance with the Scheme of Delegation.	3 quotations where possible. Authorised Officer to complete quotation proforma.	Authorised Officer in accordance with the scheme of Delegation.	No	Purchase Order Standard Terms and Conditions	Quotation proforma must be signed off by the Authorised Officer (Scheme of Delegation) before accepting quotation and raising purchase order. Quotation proforma must be sent to procurement for recording on contract register as per government transparency requirements.	Authorised officer in accordance with the Scheme of Delegation (Section 3.6 of the Constitution)

⁶ All procurements and transactions must fall within the powers delegated to the relevant officer and must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, the Council or one of its committees or sub-committees. No contract, agreement or other document shall be signed or sealed unless it gives effect to a decision or resolution (in accordance with the Council's Constitution) of the Cabinet, or one of its committees or sub committees or in accordance with the Scheme of Delegation.

⁷ Contracts should not be artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

⁸ Scheme of Delegation, Part 3.6.2 of the Slough Borough Council Constitution.

Total Aggregate Contract Value ⁷	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁸
£25,000 to £1,000,000	3 quotations where possible signed off by the Authorised officer in accordance with the Scheme of Delegation.	3 quotations where possible.	Authorised Officer in accordance with the Scheme of Delegation.	Yes Use of SE Shared Services E-portal system is mandatory.	For Construction / Works Contracts, please seek advice from the HB Public Law and the Procurement Team. An appropriate model form contract such as JCT or NEC should be used.	Full business case and quotation paperwork to be submitted to Review Board (Procurement, Legal and Finance) before submission to Executive Board.	Authorised Officer in accordance with the Scheme of Delegation (Section 3.6 of the Constitution).
Over £1,000,000	Formal tender process using SE Shared Services E-portal and contracts finder and the UK Find a Tender Service. OR Consider accessing national framework agreements where permitted and running mini competitions or call offs. Principles of fair access to public	Most economically advantageous tender must be selected, achieving Best Value and value for money for Council. The Procurement Team must be contacted for guidance and support. Use of SE Shared Services E-portal, Contracts	Authorised Officer in accordance with the Scheme of Delegation with support from the Procurement Team.	Yes Use of SE Shared Services E-portal system is mandatory. Procurement must also be advertised on Contracts Finder and the UK Find a Tender Service.	For Construction / Works Contracts, please seek advice from the HB Public Law and the Procurement Team. An appropriate model form contract such as JCT or NEC should be used.	Project must be on the forward plan to Cabinet each April. Full business case and quotation paperwork to be submitted to Review Board (Procurement, Legal and Finance) before submission to Executive Board.	Cabinet approval is required. Any contract over £1,000,000 is a significant decision and must be approved prior to procurement and prior to any contract award.

Total Aggregate Contract Value ⁷	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁸
	contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.	<p>Finder and the UK Find a Tender Service system is mandatory.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>					

1. SCOPE

- 1.1 These Contract Procedure Rules provide the governance structure for the Council to procure works, goods and services.
- 1.2 The Contract Procedure Rules are designed to ensure that Authorised Officers obtain Best Value Services and Value for Money from purchasing arrangements. The Council has a responsibility to do this in a transparent way that offers best value for residents.
- 1.3 These **mandatory** Contract Procedure Rules apply to everyone who commissions or procures contracts on behalf of the Council, including external consultants and third party providers.
- 1.4 These Contract Procedure Rules should be read in conjunction with the Council's Financial Procedure Rules which set out mandatory financial procedures to be followed. These can be found by following the link. <http://www.slough.gov.uk/moderngov/ieListDocuments.aspx?CId=563&MId=6439&Ver=4&Info=1>
- 1.5 All procurement activity must be undertaken with regard to high standards of probity and in accordance with the relevant provisions of the ethical framework contained in Part 5 of the Council's Constitution.
- 1.6 All Officers must ensure that the Council's approved processes and standards for Procurement, as set out in these Contract Procedure Rules and the accompanying Procurement and contract management guidance are adhered to. Failure to comply with the requirements in these Contract Procedure Rules may result in disciplinary action in accordance with the Officers Code of Conduct.
- 1.7 All information governance, insurance, safeguarding, social value, conflict of interest and business continuity requirements must also be adhered to in line with the Procurement and contract management guidance and the Council's Information Governance Policies.
- 1.8 These Contract Procedure Rules are designed to ensure compliance with the Council's Constitution, the Council's Financial Procedure Rules, Council policies, the Public Procurement Regulations 2015 (PCR15) and English law.
- 1.9 The Procurement Application and Authorisation Table set out within these Contract Procedure Rules provides a summary of the key requirements that must be adhered to for all procurements. However, all Council Officers are strongly advised to read the rest of these Contract Procedure Rules for further guidance and to seek the advice and support of the Procurement Team and HB Public Law as appropriate.
- 1.10 Where the Council is entering into a Contract as an agent and/or in collaboration with another public body or organisation, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the organisation with whom the Council is collaborating. Where the Council is acting as principal in such collaboration, then these Contract Procedure Rules will take precedence.
- 1.11 Framework Agreements that have been established by other Public Sector Bodies that are lawfully accessible to the Council should be used strictly in accordance with the terms and conditions of the relevant Framework Agreement. Please consult with the

Procurement Team when procuring from a Framework Agreement.

1.12 The following are out of scope of the Contract Procedure Rules:

- 1.12.1 Any purchase or sale of a property, interest in land, transaction in land and or lease transaction is excluded from the Contract Procedure Rules but must be authorised in accordance with the requirements set out in the Constitution;
- 1.12.2 Inter-authority and Inter-agency payments;
- 1.12.3 Subscriptions/memberships;
- 1.12.4 Emergency temporary accommodation for vulnerable people;
- 1.12.5 Procurement of Services from other public bodies where it can be evidenced that the body is the only supplier of the goods or service; and
- 1.12.6 The awarding of grants. However, Council Officers should always ensure the principles of openness, fairness, non discrimination and Value for Money applies.

2. APPLICATION

- 2.1 The Contract Procedure Rules provide the governance structure within which the Council may procure Supplies, Services and Works. The aims of these Contract Procedure Rules are to ensure:
 - 2.1.1 Commitment to the principles of transparency, fairness, proportionality and equal treatment within the procurement process;
 - 2.1.2 Value for Money and propriety in the spending of public money;
 - 2.1.3 Supplies, services and works are delivered effectively and efficiently without compromising the Council's ability to take strategic decisions;
 - 2.1.4 The Council is not exposed to unnecessary risk or challenge arising from non-compliant procurement activity;
 - 2.1.5 Compliance with legislation, and relevant guidance including Procurement Policy Notes issued by the Crown Commercial Service; and
 - 2.1.6 The delivery of economic, environmental and social value through Procurement.
- 2.2 Changes to the Council's financial thresholds set out in these Contract Procedure Rules which are below the UK Thresholds may, from time to time, be recommended by the Group Manager Commercial and Monitoring Officer. Following consideration by the Monitoring Officer, such changes would need approval from (1) the Executive Officer; and (2) the Constitution Committee.
- 2.3 These Contract Procedure Rules should be subject to an annual refresh to ensure the appropriateness of the financial thresholds, any changes required as a result of a change in law and all non material changes. Minor changes to these Contract Procedure Rules can be considered and approved by the Director of Finance (S151). For the avoidance

of doubt, “Minor Changes” include the annual adjustment to UK Thresholds for Works, Supplies, Services and Light Touch Regime Services as issued annually by the Crown Commercial Service in a Procurement Policy Note.

- 2.4 Should the annual refresh result in material changes being required, then such material changes shall be presented for approval to (1) the Executive Officer; and (2) the Constitution Committee
- 2.5 The Group Manager Commercial and the Monitoring Officer shall maintain and issue the Contract Procedure Rules and the Procurement and contract management guidance. The Contract Procedure Rules take precedence over the Procurement and contract management guidance. Please report any inconsistencies in writing to the Group Manager Commercial.
- 2.6 The Procurement and contract management guidance provides a more detailed explanation of Procurement best practice, procedures, processes, associated Council policies and required Contract terms.
- 2.7 Unrestricted and full direct on line access free of charge to the procurement documents must be available from the date of the publication in the Find a Tender Service of a Contract Notice or the date on which an invitation to confirm interest is sent.
- 2.8 Where there is inconsistency between these Contract Procedure Rules and the Financial Procedure Rules, the latter take precedence. Please report any inconsistencies in writing to the Monitoring Officer.

3. COMPLIANCE WITH CONFIDENTIALITY AND CONFLICTS OF INTEREST REQUIREMENTS

- 3.1 All officers must take appropriate measures to protect confidentiality and effectively prevent, identify and remedy conflicts of interest arising in the conduct of Procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all suppliers. They should also comply with the Code of Conduct for Officers. If a conflict of interest is suspected or identified, such conflict should be immediately notified to the Monitoring Officer.
- 3.2 If an Officer is involved in a procurement project estimated at £180,000 and above, all such officers must ensure they sign a confidentiality agreement and a declaration of interest. This must then be returned to the Procurement Team prior to commencement of the procurement. A declaration does not automatically exclude anyone from the procurement process; it alerts the procurement lead and allows them to manage the procurement accordingly.
- 3.3 Should an Officer identify any actual or potential breach of the requirements of the Officers Code of Conduct in connection with the formulation, procurement or administration of a contract (whether in relation to that of their own role or that of any other Officer) the Officer shall immediately notify the Monitoring Officer in writing. The Monitoring Officer will investigate the matter and recommend what action should be taken in consequence in connection with the contract concerned.
- 3.4 Where a Supplier or an undertaking related to a Supplier, has advised the Council, or has otherwise been involved in the preparation of the procurement process, the Council must take appropriate measures to ensure that competition is not distorted by the participation of that Supplier in the Procurement.

4. ROLES AND RESPONSIBILITIES

Each Director and Group Manager is accountable for all Procurement activity in their respective departments. **Their role is to ensure:**

- 4.1 Compliance with the Constitution, Financial Procedure Rules, Contract Procedure Rules and the Procurement and contract management guidance;
- 4.2 Compliance with the Public Contract Regulations 2015 (the “PCR”);
- 4.3 Compliance with the Local Government Transparency Code October 2015 issued by the Department for Communities and Local Government;
- 4.4 That no commitment to enter into a Contract with a Supplier over £25,000 is made without the required Authorisation as set out in the Procurement Application and Authorisation Table in these Contract Procedure Rules;
- 4.5 That the 10 day Standstill Period between the Contract award decision and Contract signature/sealing is observed where required to do so. Please seek advice from the Procurement Team;
- 4.6 That the appropriate Council template contract has been used in the Procurement, or where such template contract is not applicable, that the alternative terms and conditions have been approved by HB Public Law. Input from Procurement must be sought for contracts over £25,000 to determine if legal advice is required from HB Public Law. (For the avoidance of doubt, the proper use of Framework Agreements is permitted under the Contract Procedure Rules in accordance with the Procurement Application and Authorisation Table.)
- 4.7 That no contract commences prior to the terms and conditions of contract being signed and, where necessary, sealed;
- 4.8 That all Key Decisions as defined in the Constitution are minuted and published on the Council’s website;
- 4.9 That all Contracts are awarded on the basis of the *Most Economically Advantageous Tender (MEAT)*. The MEAT shall be assessed from the Council’s point of view, namely that a tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as Life-Cycle Costing, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the Contract;
- 4.10 All risks have been identified, evaluated, recorded and appropriately mitigated (e.g. provision of performance bond, parent company guarantee and appropriate payment provisions and termination clauses within Contracts);
- 4.11 That all Invitation to Tender documents clearly describe the Evaluation Criteria, sub criteria and weighting and that the tender evaluation is based strictly on the published criteria and weighting;
- 4.12 That Evaluation Criteria require the bidders to state how they will meet social value considerations which are clearly linked to the subject matter of the contract (i.e. employment, training, apprenticeships, use of SME’s and local Suppliers);

- 4.13 Immediate corrective action is taken in the event of a breach of the Contract Procedure Rules and that any such breach is reported immediately to the Procurement Team; and
- 4.14 That Contracts are not artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

5. AUTHORISATION

- 5.1 Please refer to the Procurement Application and Authorisation Table contained within these Contract Procedure Rules.
- 5.2 Any planned procurements with an anticipated value in excess of £180,000, must be submitted to the April Cabinet each year. In the event that a procurement with an anticipated value in excess of £180,000 arises which was not submitted to the April Cabinet, such procurement will need to obtain separate Cabinet approval before proceeding.
- 5.3 For procurements with an anticipated value above £25,000, a detailed business case should be prepared and submitted for review to the board consisting of Procurement, Legal and Finance, before submission for approval in accordance with the Application and Authorisation table contains within these Contract Procedure Rules.
- 5.4 All transactions must fall within the powers delegated to the relevant officer and must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, the Council or one of its committees or sub- committees.
- 5.5 No contract, agreement or other document shall be signed or sealed unless it gives effect to a decision or resolution (in accordance with the Council's Constitution) of the Cabinet, or one of its committees or sub committees or in accordance with the Scheme of Delegation.
- 5.6 Any Procurement must be authorised in accordance with the Application and Authorisation table within these Contract Procedure Rules and Scheme of Delegation as published within Part 3.6 of the Constitution.
- 5.7 A Member shall not enter, either orally or in writing, into any contract on behalf of the Council
- 5.8 A member shall not negotiate personally on behalf of the Council for the purchase of goods or services or the sale of any land, property, plant rights, or commodities or for any lease or tenancy. All such negotiations shall be conducted by an Officer authorised by the Council except that, at the request of the Leader or Deputy Leader a Cabinet Lead Member and, at the request of the Scrutiny and Overview Committee, a Scrutiny Member may attend any personal interview in the course of negotiations with Officers. In matters of special importance, the cabinet may instruct one or more of its members together with the Officer concerned to conduct negotiations.
- 5.9 Where appropriate, an Equalities Impact Assessment should be completed. Please refer to the Procurement Team for guidance.
- 5.10 The Council is a Regulated Activity Provider. The Council has ultimate responsibility for the management and control of Regulated Activities provided under Contracts procured pursuant to these Contract Procedure Rules for the purposes of the Safeguarding Vulnerable Groups Act 2006. The Relevant Officer must consider whether

there are any Safeguarding aspects to their procurement and, if so, consult with the Safeguarding Lead for input.

- 5.11 A partnership arrangement must not be used as a means of avoiding the Contract Procedure Rules or Public Procurement Regulations. All new partnership arrangements are required to be reported as required by the Financial Procedure Rules. This clause is not applicable to the award of grant payments.

6. PROCUREMENT METHOD

- 6.1 Authorised Officers must treat Suppliers equally and without discrimination and must act in a transparent and proportionate manner.
- 6.2 Before commencing a Procurement procedure Authorised Officers may conduct market consultations with a view to preparing the Procurement and informing Suppliers of their Procurement plans and requirements provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency. Officers may, for example, seek or accept advice from independent experts or authorities or from market participants. Please consult with the Procurement Team before commencing market consultation.
- 6.3 The default position in acquiring Supplies, Services and Works should always be open competition through competitive tendering. Please refer to the Procurement Application and Authorisation Table set out within these Contract Procedure Rules to determine the Procurement process that should be used.
- 6.4 The Procurement Team must be consulted on promoting opportunities to local companies through Business Newsletters and Supplier Events.
- 6.5 All tender opportunities for Supplies, Services and Works over £25,000 will be advertised on the SE Shared Services E-portal system in accordance with the Procurement Application and Authorisation Table. In addition, all tender opportunities for Supplies, Services and Works over £25,000 must be advertised on Contracts Finder. Procurement over the UK financial threshold must be advertised in the Find a Tender Service (FTS) and on Contracts Finder. A Contract Award Notice must also be published on Contracts Finder. Please consult with the Procurement Team.
- 6.6 The use of Selection Questionnaires (“**SQs**”) can only be used for contract values above the UK financial Threshold. Suitability Assessment Questions may be asked as appropriate for contract values below the UK financial Threshold. Please contact the Procurement Team for the appropriate procurement document template.
- 6.7 The Procurement Team must approve accessing externally established Framework Agreements. Approval for subsequent call-offs from the approved Framework Agreements will be subject to the requirements of these Contract Procedure Rules and compliance with the rules for call-off set out in the Framework Agreement.
- 6.8 Procurement activity for Contracts for certain health, social, community, educational and cultural related services, “Light-Touch Regime Services”, whose value is equal to or over the threshold of £663,540 must be tendered and awarded in compliance with the PCR. Please seek input from the Procurement Team in connection with the procurement and award of Light-Touch Regime Services Contracts. For the avoidance of doubt, procurements for such Light-Touch Regime Services below the threshold of £663,540 must still be conducted in accordance with the principles of these Contract Procedure Rules. The Procurement Team must be contacted for guidance and support on such

procurements.

- 6.9 Authorised Officers may decide to award a Contract in the form of separate lots and may determine the size and subject-matter of such lots. The Authorised Officer must document the main reasons for their decision not to subdivide into lots.

7. ENGAGEMENT OF CONSULTANTS

- 7.1 An Authorised Officer may only appoint an external consultancy or advisory firm providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the service.
- 7.2 Appointment of individual consultants and individual advisors must be procured through the Council's corporate contract for temporary agency resources where appropriate.
- 7.3 Subject to the corporate contract not meeting the service needs, and the resources not being available across the Council, the Authorised Officer shall seek to procure an external consultancy or advisory firm providing professional or consulting services. Such procurement shall comply with the appropriate threshold/process as set out in the Procurement Application and Authorisation Table contained within these Contract Procedure Rules.

8. SINGLE TENDER ACTION

- 8.1 A Single Tender Action is the awarding of a Contract to a Supplier without undertaking a competitive tendering exercise. This is permitted only in exceptional circumstances. Procurement advice should be sought in all cases from the Procurement Team. Exceptional circumstances may include where the works, supplies or services can only be supplied by a particular Supplier.
- 8.2 Where a competition has been undertaken and only a single bid has been received, the award of a Contract subject to an appropriate review being undertaken and an audit trail being available for inspection, can be approved by the Executive Officer and or Cabinet.

9. CONCESSION CONTRACTS

- 9.1 Concession Contracts are contracts under which the Council outsources works or services to a Supplier, who then has the right to commercially exploit those works or services in order to recoup its investment and make a return. The key feature is that the Supplier bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs.
- 9.2 Concession Contracts must meet certain requirements and advice should be sought from the Procurement Team and HB Public Law.

10. INFORMATION GOVERNANCE

- 10.1 When procuring, the responsible Officer must ensure Due Diligence checks are carried out to provide sufficient guarantees that the Supplier's technical and organisational security measures for handling and protecting information and data are appropriate, suitable and lawful. This is a requirement under Data Protection Legislation⁹.

⁹ Data Protection Legislation means (i) the Data Protection Act 2018; (ii) the GDPR, the Law Enforcement

- 10.2 Evidence of these checks, copies of policies and guarantees provided by the Supplier must be retained by the Officer responsible for management of the Contract and be regularly reviewed throughout the life of the Contract. Please refer to the Procurement and contract management guidance for more detail or contact the Information Governance Officer.
- 10.3 Contract managers must ensure appropriate security measures are applied to prevent the unauthorised or unlawful processing of personal data or accidental loss or destruction of, or damage to, personal data.
- 10.4 Officers must ensure that contracts with providers that involve the processing of personal data contain clauses as required by the Data Protection Legislation. The Council's Standard Contracts contain these clauses.

11. ACCEPTANCE

- 11.1 Acceptance of Contracts must be in accordance with the Constitution, and in all cases is subject to:
 - 11.1.1 Confirmation of budgetary provision as initially identified and allocated prior to any Procurement activity;
 - 11.1.2 A compliant Procurement process having been carried out; and
 - 11.1.3 Confirmation of the acceptable financial status of the contractor.
- 11.2 All contracts entered into by the Council must be in writing in a form approved by HB Public Law. Where a Council template contract is used, or such template contract is to be amended, this shall be prepared and/or ratified by HB Public Law.
- 11.3 Acceptance thresholds for Contract extensions and variations of all values are subject to further conditions as set out in Section 13 (Extensions and Variations) of these Contract Procedure Rules.

12. CONTRACT SIGNING AND SEALING

- 12.1 Every Contract must be in the contract form specified in the Procurement Application and Authorisation Table set out within these Contract Procedure Rules.
- 12.2 Every contract novation, contract extension or contract variation must use the appropriate SBC template. Please refer to the Procurement Team for such templates and seek advice from HB Public Law.
- 12.3 Contracts with an Estimated Procurement Value greater than £100,000 must be sealed on behalf of the Council, unless the Monitoring Officer or delegated officer directs otherwise. Legal input from HB Public Law should be sought on such Contracts.
- 12.4 In exceptional circumstances, where an IT Contract term is not fixed, the Estimated Procurement Value is calculated by multiplying the monthly spend value by 48 in accordance with Regulation 6 of the Public Contracts Regulations 2015. Please refer to the Procurement Team for advice on any such IT Contracts.

Directive and any applicable national implementing Laws as amended from time to time; and (iii) all applicable Law about the processing of Personal Data and privacy.

- 12.5 In the case of Framework Agreements or Dynamic Purchasing Systems the Estimated Procurement Value is calculated to include the total estimated value, net of VAT, of all the individual contracts envisaged for the total term of the Framework Agreement or the Dynamic Purchasing System.
- 12.6 Where the Monitoring Officer or delegated officer considers it desirable that a Contract should be sealed other than as specified above, then such Contract must be sealed.
- 12.7 All Contracts should have a clear start and end date and detail any extension options permissible.

13. EXTENSIONS AND VARIATIONS

- 13.1 Contracts may only be extended if the following provisions are met:
 - 13.1.1 The original Contract was awarded on a Contract Procedure Rules compliant competitive tender or quotation process and includes an option to extend;
 - 13.1.2 The extension or variation is in accordance with the terms and conditions of the existing Contract. Input from the Procurement Team should be sought to confirm this is the case and to support the drafting of the extension and/or variation documents;
 - 13.1.3 If the initial Contract was subject to UK Threshold procurement procedures (or EU procedures prior to January 2020), that the extension option was declared within the Find a Tender Service Notice or OJEU Contract Notice if prior to January 2020;
 - 13.1.4 The Contract has not been extended beyond the approved extension period; and
 - 13.1.5 Approval has been sought and obtained as per the Application and Authorisation Table within these Contract Procedure Rules following submission of a Business Case detailing the Contract Extension requirements.
- 13.2 In the event that the provisions of 13.1.1 to 13.1.5 are not met then an Exemption must be sought in accordance with section 14 (Exemptions) or alternatively a new Procurement must commence.
- 13.3 Regulation 72 of the Public Contracts Regulations 2015 permits an amendment, extension or renewal of an existing Contract without triggering a new Procurement exercise in the following cases:
 - 13.3.1 The original Contract includes a “clear, precise and unequivocal review clause”. The overall nature of the Contract must not be altered as a result of the change;
 - 13.3.2 New Services, Supplies and Works need to be purchased from the Supplier and a change of Supplier cannot be realistically made for economic or technical reasons and would cause significant inconvenience or substantial duplication of the Council’s costs. This is subject to the provision that each change does not increase the Contract’s value by more than 50 per cent as a result;
 - 13.3.3 Circumstances have arisen that the Council could not reasonably have foreseen and that require an amendment to the existing Contract. The Contract’s overall nature must not be altered and the Contract’s value must not

increase by more than 50 per cent as a result of any change;

- 13.3.4 A new Supplier is required to replace the Supplier originally party to the Contract, either because this is the result of corporate restructuring, including takeover, merger, acquisition or insolvency leading to a universal or partial succession of the original Supplier, or because this change was envisaged in a review clause in the original Contract. This provision cannot be relied on if the Supplier is being replaced for a different reason;
- 13.3.5 The value of the modification is both below the UK Procurement Thresholds and is less than 10 per cent of the initial Contract value (where the contract is for Supplies or Services) or less than 15 per cent of the initial Contract value, in the case of a Works Contract. More than one change can be made under this provision provided the cumulative value of the modifications does not exceed UK Procurement Thresholds.
- 13.3.6 The proposed modifications are insubstantial. This does not include any modifications that result in any of the following:
- i. The Contract would become materially different;
 - ii. The scope of the Contract would extend considerably;
 - iii. The outcome of the initial Procurement procedure would have been different had the modification been implemented at that time. For example, other tenders would have been accepted or other candidates would have been admitted;
 - iv. The economic balance would shift in favour of the Supplier; or
 - v. A new Supplier would replace the original Supplier in a circumstance not provided for in paragraph 13.3.4 above.

13.4 Officers must consult with the Procurement Team to confirm if any of the circumstances set out in section 13.3 above apply, permitting a Contract amendment, extension or renewal and must also comply with the Procurement Application and Authorisation Table.

13.5 A Contract Variation Notice needs to be sent to Find a Tender Service in the case of Contract variations permitted and made in accordance with paragraphs 13.3.2 and 13.3.3 above.

13.6 In the event that the provisions of paragraph 13.3 are not met then an exemption must be sought in accordance with section 14 (Exemptions) or alternatively a new Procurement must commence.

14. EXEMPTIONS

14.1 Circumstances may arise where permission is required to waive one or more of the Contract Procedure Rules. Exemptions are reserved for exceptional circumstances and will only be approved where good and sufficient reason has been demonstrated. An Exemption will not be granted simply on the grounds of convenience or because of

inadequate forward planning.

- 14.2 The Council can only waive the rules established by the Council. The Council cannot waive UK law or UK Procurement Regulations.
- 14.3 Exemptions (in whole or in part) from the requirements set out in these Contract Procedure Rules may only be obtained by completing an Procurement Business Case.
- 14.4 The Business Case must be submitted to the Review Board for Procurement, Legal and Finance for initial consideration. If the Review Board is satisfied that the Exemption request meets the requirements of this section of the Contract Procedure Rules, the Business Case shall be submitted as per the Application and Authorisation table in these Contract Procedure Rules.
- 14.5 The Review Board must be satisfied that special circumstances exist which warrant an exemption being permitted. Such Exemption requests must set out in detail the terms of any exemption from the requirements set out in these Contract Procedure Rules.
- 14.6 Exemptions to any of the Council's rules must be sought in advance of any contractual agreement, order placement, use of Works, Services or purchase of Supplies.
- 14.7 Any Exemption can only be granted for a maximum period of 12 (twelve) months unless it can be demonstrated that any longer period is in the best interest of the Council.
- 14.8 Any Exemption can only be granted where the value of the exemption is below the relevant UK Threshold.
- 14.9 The circumstances under which an Exemption can be agreed are limited to the following circumstances:
 - a) **Sole Supplier:** It can be proven that there is only one Supplier who can deliver the Supplies or Services. (It is considered better practice to issue a tender to evidence that there is only one Supplier capable of delivering such Supplies or Services);
 - b) **Demonstrable Best Interest:** It can be demonstrated that it is in the Council's best interest and this is clearly demonstrated in the Exemption report. (For example, the Council is seeking to redesign service provision or exploring internal / external collaboration opportunities and therefore direct award to the incumbent provider is required for intervening period only);
 - c) **Emergency:** There is a clear need to provide a service or a product immediately in the instance of a sudden unforeseen crisis; the immediate risk is to health, life, property or environment (for example, Natural Disaster; Civil Unrest; Provider going into administration);
 - d) **Service Imperative: Demonstrable circumstance that is exceptional:** For example, an unanticipated delay during the tender process or Strategy and / or Spec and service design not completed when tender needed to begin for

unforeseen reasons. For the avoidance of doubt, an Exemption will not be granted simply on the grounds of convenience or because of inadequate forward planning; and/or

- e) **Extension as an Exemption:** Where an extension to a Contract is being sought but it is not possible under the current terms and conditions of the Contract.

For any queries not covered within these Contract Procedure Rules, please contact the Group Manager Commercial.

October 2021