

## SECTION 11 – CONTRACT STANDING ORDERS

These Contract Standing Orders are made under section 135 of the Local Government Act 1972.

Guidance regarding the use of these Standing Orders and further explanation as to how they operate can be found on the intranet and should be used in conjunction with these Standing Orders

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# 1 Introduction and application of Contract Standing Orders

These Contract Standing Orders (**CSOs**) set out the framework for the procurement of supplies, works, and services. They are an essential set of rules and compliance with them will ensure that officers both seek and obtain good value for money and that public money is properly spent and accounted for.

**These CSOs apply to all contracts for the procurement of supplies, the provision of services (including adults and children's care services and concessions) or the execution of works by the Council or on its behalf. Whether a grant falls within the scope of these CSOs is to be decided according to the guidance given at paragraph 3.7 of the CSOs.**

- 1.1 Council officers and members must comply with these CSOs in all instances when buying works, services, and supplies on behalf of the Council, and failure to comply may result in disciplinary action being taken against the officer concerned. Officers have a duty to report any breaches of these CSOs to the Head of Corporate Procurement.
- 1.2 These CSOs form part of the Council's Constitution and provide the framework that governs the Council's procurement of contracts for works, services and supplies. Following these CSOs helps the Council to demonstrate:
- good internal governance;
  - propriety and the proper spending of public money;
  - value for money and effective use of resources is being achieved;
  - obtaining additional social value
  - the delivery of high-quality works, services, supplies;
  - compliance with relevant laws.
  - controls to deter fraud, bribery and corruption
  - support of the local economy and small to medium enterprises (**SMEs**)
  - application of sound procurement practice
- 1.3 Every contract for works, services and supplies made by the Council must conform to all relevant UK legislation. UK public procurement legislation and policy require that contracts
- Deliver value for money
  - Maximise public benefit
  - Share information with all possible suppliers and others fairly
  - Enable the Council to act, and is seen to act with integrity
  - Enable the Council to treat suppliers equally and fairly
  - Take all reasonable steps to prevent unfair advantages or disadvantages
  - Reduce barriers to entry for SMEs whenever and wherever possible

The Council may suspend these general requirements in some circumstances, advice **must** be sought from Corporate Procurement if you wish to do so.

A bidder or supplier harmed, or who may suffer harm, as a result of the Council failing to comply with the public procurement legislation and regulations will have a right to take legal action against the Council. Remedies available include:

- The award of damages, potentially beyond the value of the contract;
- A financial penalty imposed on the Council;
- An order to set aside a decision of the Council to award the contract;
- Suspension of the tender process;

- Restriction on the Council on enforcing any contract obligations still to be performed against the contractor.

1.4 Contracts must not be artificially split to avoid the application of the key thresholds contained in these CSOs. The Council’s responsibilities are collective rather than based upon what individual services require.

For example, if two Council departments both require taxi services for service users of £100,000 each, the Council should be commissioning one £200,000 transport contract.

1.5 All figures in these CSOs are **inclusive** of VAT unless stated otherwise.

1.6 Officers dealing with the procurement of standard or repetitive supplies and services, or where multiple smaller individual requirements are needed (e.g., personal care) should always consider the use of Framework Agreements and existing Council contracts and should seek guidance from the Head of Corporate Procurement.

## 2 Scope

2.1 These CSOs **apply**:

- whenever the Council intends to spend money (or provide other payments in kind) under contracts for works, services or supplies;
- to expenditure from either capital or revenue sources;
- to works and services concession contracts;
- to supplies for re-sale;
- to both officers and members;
- where the Council acts as the lead partner in a multi-authority procurement (in addition to the equivalent rules for partner organisations);
- Where any third-party organisation, for example another local authority or a wholly managed service where the Council holds an interest, is authorised to procure works, services and/or supplies on behalf of the Council as the Council’s agent or representative.

2.2 These CSOs **do not** apply in several areas, as identified in 2.3. Where these CSOs do not apply, officers must still seek a written record of approval as follows (indicated against each situation in 2.3). For example, all those identified under circumstance B in section 2.3 require prior written approval from the s151 officer.

	<b>Circumstance</b>	<b>Written record and approval</b>
A	The proposed contract is excluded under the Procurement Legislation and	No procurement approval required, though other

	is <b>not</b> considered a commercial contract.	approvals may be required (e.g., approval to recruit)
B	The proposed contract is excluded under the Procurement Legislation and <b>is</b> considered a commercial contract.	<p>Prior written approval from the S151 Officer is required.</p> <p>This should be reported and recorded at a prior meeting of the commissioner's Directorate Management Team, with the record added to the contract file post contract award</p>
C	<p>The contract is for the following social care services:</p> <ul style="list-style-type: none"> <li>a) to out of area social care placements;</li> <li>b) to social care packages that are, or are considered to be at the time of placement, funded by the Integrated Care Board as part of continuing health care;</li> <li>c) to education placements made to support young people with an Education, Health and Care Plan under the Children &amp; Families Act 2014 or subsequent legislation</li> <li>d) to secure or forensic placements made for young people under the Children Act 1989 or subsequent legislation;</li> <li>e) residential care placements, nursing care placements, care and / or support provided in the person's home, supported living placements, non-emergency respite placements, and 16+ semi-independent living that have been attempted via a Framework or other mechanism as set out in these CSOs, and require spot purchases to meet</li> </ul>	<p>Assistant Directors / Heads of Service must ensure that a record of the reasons for the choice of provider is maintained on the individual's case notes, and this may be reviewed by the Executive Director: People.</p> <p>This should be reported and recorded at a prior meeting of the commissioner's Directorate Management Team, with the record added to the contract file post contract award</p>

	the individuals needs following the failure of these mechanisms	
D	The proposed contract is required to address unforeseen risks or events that place residents, service users, officers, or the public at serious and immediate risk of harm without the intervention of the contract	<p>Prior approval from the budget holder, supported by written reports to the Assistant Director / Head of Service after the immediate situation is resolved and the risk mitigated.</p> <p>These reports may be subject to review by the S151 Officer</p> <p>This should be reported and recorded at the next meeting of the commissioner's Directorate Management Team, with the record added to the contract file</p>

2.3 These CSOs **do not** apply:

- (A) to contracts of employment;
- (A) where the Council is providing a financial support payment to a resident or service user
- (A) to service level agreements made between departments within the Council;
- (A) where the Council is acting as an agent on behalf of other commissioning authorities, for example the NHS, and is only procuring contracts on their behalf (i.e., the Council will not be party to the contract);
- (A) Non-Procurement Activity Grants the Council has awarded to 3<sup>rd</sup> parties (though please refer to the Award of Grants Policy) [\(link\)](#)
- (B) to acquisitions and disposals of land or buildings unless related to a contract for works, services or supplies;
- (B) to financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments, in particular transactions by the Council to raise money or capital;
- (B) in the case of individual investments which are not deemed as the purchase of supplies or services for the purposes of these CSOs;
- (B) any contract related to the receipt of investment advice or a related ancillary service under the Financial Services & Markets Act 2003

- (B) where the Council instructs counsel or any external legal advisors to represent or act on its behalf in relation to litigation;
  - (B) contracts to engage artists, shows, attractions, events, or other entertainment media to provide entertainment or facilities.
  - (B) contracts for the purpose of research & development only (the CSOs do apply to supplies and services commissioned at the end of the development period)
  - (B) contracts awarded to Local Authority Controlled Companies created under Vertical Arrangements
  - (B) contracts awarded as the result on Ministerial Directives
  - (C) to out of area social care placements;
  - (C) to social care packages that are, or are considered to be at the time of placement, funded by the Integrated Care Board as part of continuing health care;
  - (C) to education placements made to support young people with an Education, Health and Care Plan under the Children & Families Act 2014 or subsequent legislation
  - (C) to secure or forensic placements made for young people under the Children Act 1989 or subsequent legislation
  - (D) in the case of civil contingencies;
  - (D) to resources deployed for unforeseen emergency (cases where individuals the Council is supporting or Bracknell Forest residents are at immediate risk of harm without immediate action, and this risk could not be identified through the regular support offered by the Council) care packages or accommodation costs aimed at supporting appropriate action to protect individuals from abuse, neglect, or homelessness;
- 2.4 However, in all instances listed in 2.3, all relevant legislation, rules, and guidance **must** still be complied with together with other relevant parts of the Council's Constitution.
- 2.5 The following entities have their own rules and are **not** bound by these CSOs **except** when they participate in joint purchasing with the Council:
- all schools within the Borough of Bracknell Forest;
  - companies in which the Council has an interest, except for Local Housing Development Vehicles and Local Authority Controlled Companies under Vertical arrangements.
  - Special Purpose Vehicles and other arrangements created via Inter Authority Agreements under Horizontal Arrangements.
- 2.6 These CSOs **do** apply to the award of utility contracts. If the Council, as a "utility," wishes to procure works, services and/or supplies for the purpose of carrying out its "utility activities" of any value you **must** contact the Corporate Procurement Service for advice.
- 2.7 The associated guidance on the individual procurement process gives more information on the tendering of works, services and supplies by the Council and the procedures to be followed.

### 3 Roles and responsibilities

- 3.1 Overall responsibility for these CSOs rests with the Head of Corporate Procurement. Further information and advice on these CSOs can be obtained from the Corporate Procurement Service.
- 3.2 Overall responsibility for the procurement of education placements made to support young people with an Education, Health and Care Plan under the Children & Families Act 2014 or subsequent legislation, or for secure or forensic placements made for young people under the Children Act 1989 or subsequent legislation, rests with the Executive Director: People.
- 3.3 **Any** officer undertaking procurement or purchasing activity on behalf of the Council (but especially Above Threshold) **must** comply with these CSOs and any and all relevant legislation and regulations.
- 3.4 Executive Directors are responsible for ensuring that chief officers and **all** staff with procurement responsibilities within their directorates fully understand and comply with these CSOs.
- 3.5 Executive Directors are responsible for **all** purchase orders and contracts tendered and let by their directorates, are accountable to the Executive for the performance of their duties in relation to contract letting and management and must ensure that all Council officers comply with these CSOs.

The duties set out in paragraph 3.6 also apply to a Responsible Officer (except for paragraphs 3.6.5, and paragraphs 3.6.14 to .16 which are duties to be complied with by an Executive Director personally)

Paragraphs 3.6.5, and 3.6.14 to .16, also apply to Assistant Directors and Heads of Service (where no AD is present in the organisational structure) for contracts below £150,000 in value, in accordance with section 5.

- 3.6 Their duties are as follows:
  - 3.6.1 To seek and obtain value for money and secure continuous improvement in all procurements.
  - 3.6.2 To ensure no contract is entered into by their Directorate without there being adequate and agreed budget provision.
  - 3.6.3 To ensure compliance with all applicable legislation, seeking advice from the Head of Corporate Procurement at an early stage in the process whenever Above Threshold or otherwise appropriate.
  - 3.6.4 To ensure that Non-Commercial Considerations do not influence any decision to seek quotations or tenders or to enter into any contract.
  - 3.6.5 To ensure **all** staff (including any agents or consultants acting on their behalf) dealing with procurement for their directorate are fully aware of and comply with these CSOs and to arrange adequate training on their operation.
  - 3.6.6 To declare to the Council any pecuniary interest whether direct or indirect they personally have in any contract to be let, and to make that declaration in writing to the Borough Solicitor and the Head of Corporate Procurement.

- 3.6.7 In the event of any breach of these CSOs to take immediate action and report it to the Borough Solicitor and the Head of Corporate Procurement, whilst carrying out corrective action and appropriate investigations where necessary.
- 3.6.8 To ensure every contract Above Threshold has a named officer with responsibility for it.
- 3.6.9 To keep securely proper records of all purchase orders, signed contracts and copies of all relevant documentation to provide a full audit trail of actions taken. These must be provided to the Corporate Contracts Register for all contracts greater than £5000 in value.
- 3.6.10 To ensure the Corporate Procurement Pipeline is kept up to date with all procurements greater than £150,000 in value to be carried out in the next 18 months.
- 3.6.11 To comply with the Council's arrangements for the obtaining and opening of quotations and tenders as set out in these CSOs.
- 3.6.12 To ensure that the Council's seal is affixed to any contract where this is required to give the contract legal efficacy or to reflect established industry practice and to ensure that all other contracts are signed by an Executive Director or by a person authorised under delegated powers to act on his or her behalf or placed through the Corporate Finance System.
- 3.6.13 To keep a record of any waivers of these CSOs updated to the Corporate Register of Waivers.
- 3.6.14 To keep a written record of any delegations they make of their powers under these CSOs and ensure these are published on the Council's Intranet.
- 3.6.15 To ensure that records are kept in a manner that ensures reviews of contracts are undertaken in good time ideally at least one year in advance of termination dates and that appropriate action is taken.
- 3.6.16 To make arrangements for the publication of tenders and of contracts awarded as the Council may require from time to time.
- 3.7 Grant allocations by the Council which are a procurement activity, i.e., *funds given to procure services on behalf of the Council*, referred to hereon as "procurement activity grants" irrespective of whether this involves expenditure of external funding, shall be subject to the principles detailed at paragraph 3.10.
- 3.8 Grants given to or applied for by the Council which are for internal use only, or grants given by the Council to a voluntary organisation which has bid for funds and is providing services **directly to individuals as part of their charitable work rather than carrying out a service on behalf of the Council** (referred to herein as "non procurement activity grants") are outside the scope of these CSOs.
- 3.9 However non procurement activity grants are subject to the Award of Grants Policy [\(link\)](#)
- 3.10 Procurement activity grants, as defined in paragraph 3.7, shall be subject to the same requirements for advertising and authorisation as any other type of procurement as per these CSOs.



## 4 Delegation

- 4.1 An Executive Director may delegate the duties assigned to them within these CSOs. For example, an Executive Director may delegate to another named officer or officers the authority to approve commissioning or approval of waivers.
- 4.2 All such delegations shall be formally recorded and logged with the S151 officer through the Scheme of Delegations, before being updated on the Council's Intranet system for officers to refer to.
- 4.3 Delegations may be revoked at any time by the delegating Executive Director, at which point the delegated duty will revert back to that Executive Director.
- 4.4 No delegation shall abrogate or remove the responsibility associated with the duty given to the Executive Director. The duty will remain with the Executive Director.

## 5 Consultation and approvals prior to advertising a procurement

- 5.1 Pre-procurement approval is split between the following levels based upon the Total Contract Value

Under £5k	£5k - £50k	£50k – £150k	£150k - Threshold	Threshold - £1m*	Above £1m*
Budget Holder	Assistant Director	Executive Director	Executive Director	Executive Member	Executive

(\*) If your Threshold is greater than £1m, you are only required to seek Executive approval for Above Threshold contracts, all Below Threshold Contracts rest with the Executive Director even if greater than £1m.

- 5.2 Above £5k a procurement must have a formal report detailing the commissioner's procurement strategy prior to commencing procurement. These are split as follows;

Under £5k	£5k - £50k	£50k – £150k	£150k - Threshold	Threshold - £1m	Above £1m
Not required	Summary Plan	Summary Plan	Procurement Plan	Strategic Procurement Plan	Strategic Procurement Plan

Summary Plans, Procurement Plans and Strategic Procurement Plans represent increasing complexity of requirements, quality assessments, market analysis and forward planning as a procurement increases in value and / or risk.

The Contract Segmentation Tool, Summary Plan, Procurement Plan and Strategic Procurement Plan template and guidance documents provided by the Corporate Procurement Service can assist in the preparation of these reports [\[link\]](#). The Corporate Procurement Service will directly assist in the preparation of Strategic Procurement Plans.

- 5.3 Procurements can only be published following approval of these reports by the relevant decision maker. Note however, Above Threshold procurements have a large volume of compulsory pre-procurement activity as identified in section 6. Therefore, the Council will be considered to have "commenced" a procurement well

in advance of these Reports and the commissioner **must** ensure they have carried out these activities.

- 5.4 Note – any decision that is considered to “substantially affect two or more wards” are also considered to be Key Decisions, regardless of value. If a commissioner considers their procurement to be a Key Decision, it **must** be subject to approval by Executive Member or Executive, even if a lower value than defined in paragraph 5.1.
- 5.5 The Council’s Constitution defines Executive Decisions and Key Decisions and the procedure for making these [\[link\]](#), for example publication on the Executive Forward Plan for 28 days before the decision and call-in for 5 days afterwards. Planning of a procurement must take into account these procedures in consultation with Democratic Services.
- 5.6 Note – **all** Executive Member & Executive Decisions are in the public domain in advance of the decision date due to this. All Procurement Plans and Strategic Procurement Plans **must** be confidential annexes to the Decision reports, and **no** decision report should contain details of a procurement plan other than to refer to the confidential annex to protect the Council’s commercial position.
- 5.7 Summary Plan / Procurement Plan / Strategic Procurement Plan –The procurement plan report will set out how the procurement will be managed to deliver the best outcomes for the Council. The level of detail in the report should be proportionate to the whole life value of the contract and the level of risk, but should where relevant include:
- High level summary of contract purpose and outcomes, including the approach to reflecting these in the specification;
  - Governance process, including the engagement of key stakeholders (including service users), approval of key documents during the procurement process and any delegations requested for contract award;
  - Market analysis, including any work that needs to be done by the Council to market itself to potential bidders as an important customer;
  - Review of potential performance issues of existing contractors, and how they will be mitigated / managed through the procurement process;
  - Key risks, including sustainability risks, and how they will be managed during the procurement process;
  - The proposed Lot structure to be adopted and how it will support achieving the Council’s objectives, or otherwise the justification for not dividing into Lots.
  - Approach to evaluation, including evaluation criteria and weightings. Evaluation criteria shall include an assessment of the bids against the deliverables to be secured under the contract;
  - Legal issues, including terms and conditions for the contract, contract length and extensions etc.;
  - Commercial issues such as pricing strategy, management of change, and performance management/incentives;
  - Approach to Social Value, including performance obligations, main areas of potential benefit, VCSE and sustainability opportunities;
  - Overall projected timescales and milestones;
  - Approach to assessing and agreeing preferred route to market.

It is important that the Corporate Procurement Service is engaged at a sufficiently early stage to provide advice and when necessary to jointly produce the Procurement Plan with the commissioner.

- 5.8 For all procurements, the Council is required to divide the complete requirement into sub-elements (“Lots”) to reduce barriers to SMEs or otherwise provide justification for not doing so.
- 5.9 When conducting call offs / mini competitions for any requirement under a pre-existing Council contract, Council Framework, or Council DM (for example, making care placements, setting up bus routes or individual building maintenance projects) officers are **not** required to submit plans or approvals through this process, even should that call off be individually Above Threshold, so long as it complies with the Plan approving the overarching contract, Framework or DM. Should it vary from what was defined in that Plan, additional approval may be required at the discretion of the decision maker as defined in paragraph 5.1.
- 5.10 Call offs under an existing Council contract, Framework or DM are considered to be approved through the process that created the overarching contract, framework, or DM. Such an approval should contain an estimate of the volume and value of Call offs to be made during the agreement’s term.
- 5.11 Call offs under a third party / external contract, Framework or DM do require plans initially, to obtain approval to access that agreement, but once approved no further plans or approvals are required for future call offs from that specific agreement. Officers should ensure the plan they submit clearly states the **whole** volume of call offs that will be made through that agreement.
- 5.12 Procurements of residential care placements, nursing care placements, care and / or support provided in the person’s home, supported living placements, non-emergency respite placements, and 16+ semi-independent living (other than those exempted in section 1), that;
- have been attempted via a Framework or other mechanism as set out in these CSOs, and;
  - require spot purchases to meet the individuals needs following the failure of these mechanisms.
- do **not** require approval through this process and shall instead be subject to oversight and approval through processes as defined by the Executive Director: People.
- 5.13 Officers **must** consult the Corporate Procurement Service for any procurement where the Total Contract Value is estimated to be more than £150,000. The route to market must be approved by the Head of Corporate Procurement. The procurement must be entered into the Corporate Procurement Pipeline a minimum of 18 months in advance of the procurement commencing.
- 5.14 Officers **must** consult and seek support from the Corporate Procurement Service for any procurement where the Total Contract Value is estimated to be Above Threshold. The route to market must be approved by the Head of Corporate Procurement.

Where there is not sufficient capacity within the Corporate Procurement Service to support an Above Threshold procurement, this does **not** allow the requirement to procure to be set aside. Alternative support for that procurement will be agreed by the Head of Corporate Procurement and the Executive Director.

- 5.15 Officers may also submit a procurement plan to the Strategic Commissioning & Procurement Group for advice on their strategy and route to market. This is strictly voluntary, but officers are encouraged to bring procurements for discussion at an early stage to support the continuous improvement of procurement practise across the Council.
- 5.16 When it can reasonably be anticipated that the Total Contract Value might exceed 80% of the Threshold the Responsible Officer must ensure that an estimate of the anticipated Total Contract Value is prepared and recorded in writing, along with evidence to support that estimate, in the contract folder. The estimate should not be more than twelve months old when tenders or quotations are invited and is to be inclusive of Value Added Tax.
- 5.17 Subsidy Control rules **must** be considered by the commissioner and / or contract lead in situations or circumstances where the proposed arrangement (as either a contract, grant, or other award), may provide an advantage through public resources being given on a selective basis to any organisation(s) that could potentially distort competition and / or trade.
- 5.18 The Council has a legal duty to consider the application of the relevant Subsidy Control rules when making awards. This requires a bespoke assessment of each measure against the relevant provisions within:
- the Subsidy Control Act 2022;
  - the Northern Ireland Protocol;
  - the Withdrawal Agreement;
  - the World Trade Organisation rules; and
  - other trade agreements to which the UK is a party.
- 5.19 In most instances, only the Act itself will be engaged. The guidance to be considered and the process to be followed is as set out in the attached link - Subsidy control [\[link\]](#). Advice from Legal Services should also be sought in such circumstances if a subsidy arises or it is unclear whether the regime is applicable.

## **6 Notices and pre-procurement activity**

- 6.1 The PA2023 places many duties on Contracting Authority when commissioning supplies, works and services. A number of these apply to **only** Covered Procurements, but others apply to **all** contracts if you have chosen to advertise the contract where you would not otherwise be required to.
- 6.2 These duties relate to not just during a procurement, but also pre-procurement activity and contract management following award. A full description of these duties and how to fulfil them is provided in the guidance accompanying these CSOs [\[link\]](#).
- 6.3 This includes the publication of up to 14 Notices and significant advance planning (a minimum of 18 months) of procurement activity. Failure to comply with these requirements will result in a high risk of legal challenge.
- 6.4 Note – due to these duties the Council is considered to have “commenced” a procurement significantly in advance of any publication of that procurement and officers are expected to plan appropriately. Failure to do so will result in a high risk of legal challenge.

6.5 Unless otherwise indicated, the commissioner and / or contract lead **must** fulfil each of these requirements. They **must** also conduct other activities as designated in these CSOs to support to completion of all requirements, e.g., completion of the Corporate Procurement Pipeline.

6.6 Summary of Notices and duties (please refer to accompanying guidance)

	Under £5k	£5k - £50k	£50k – £150k	£150k - Threshold	Threshold - £1m	Above £1m
Pipeline Notice (Corporate Procurement Service – annually)						Yes
Pre-Market engagement activity*				advised	Yes	Yes
Lot Division*	Yes	Yes	Yes	Yes	Yes	Yes
SME barrier removal*	Yes	Yes	Yes	Yes	Yes	Yes
Preliminary Market Engagement Notice				advised	Yes	Yes
Tender Notice					Yes	Yes
Dynamic Market Notice			Advised	Advised	Yes	Yes
Transparency Notice			Advised	Advised	Yes	Yes
Assessment Summary					Yes	Yes
Contract Award Notice					Yes	Yes
Contract Details Notice	If Below Threshold Notice used	If Below Threshold Notice used	If Below Threshold Notice used	If Below Threshold Notice used	Yes	Yes
Contract Performance Monitoring		advised	advised	advised	Yes	Yes
KPI Publication (annually)						Yes
Contract Performance Notice (annually)						Yes
Contract Change Notice	Refer to Corporate Procurement	Refer to Corporate Procurement	Refer to Corporate Procurement	Refer to Corporate Procurement	Yes	Yes
Payment Compliance Notice	Yes	Yes	Yes	Yes	Yes	Yes

	Under £5k	£5k - £50k	£50k – £150k	£150k - Threshold	Threshold - £1m	Above £1m
(Corporate Procurement Service – annually)						
Contract Termination Notice (for any reason, including natural end)	If Below Threshold Notice used	If Below Threshold Notice used	If Below Threshold Notice used	If Below Threshold Notice used	Yes	Yes
Procurement Termination Notice (for any reason other than award)	If Below Threshold Notice used	If Below Threshold Notice used	If Below Threshold Notice used	If Below Threshold Notice used	Yes	Yes
The following are not required, <b>unless</b> the Council’s actions cause a contract to become a Covered Procurement, and then they are required						
Planned Procurement Notice	Yes	Yes	Yes	Yes	Yes	Yes
Below Threshold Tender Notice	Yes	Yes	Yes	Yes	Yes	Yes

(\*) or justification for not doing so recorded by the commissioner.

## 7 Obtaining quotations and tenders

- 7.1 a) Subject to paragraph 7.1(b) below, for any procurement between £5000 to Threshold, a **minimum of 3** quotations or tenders must be sought. Procurements Above Threshold must be advertised as per section 6.

For procurements of less than £5000 only one quotation need be sought.

(b) Procurements of residential care placements, care and or support provided in the person's home, supported living, respite (other than those exempted in section 1) shall be collectively procured via a Framework or other mechanism as set out in these CSOs. Individual placements should first be attempted via these mechanisms. If contractors under these mechanisms are not able to support an individual, the relevant officers may instead carry out spot purchases to meet that individual’s needs.

Records of placements being offered through frameworks and other mechanisms should be maintained by the commissioner and contract lead.

Under £5k	£5k - £50k	£50k – £150k	£150k - Threshold	Threshold - £1m*	Above £1m*
One formal quote	Three formal quotes	RFQ seeking 3 quotes	RFQ seeking 3 quotes	Above Threshold Tender	Above Threshold Tender

(\*) If your Threshold is greater than £1m, you are only required to carry out an Above Threshold Tender when actually Above Threshold, otherwise a RFQ seeking 3 quotes remains sufficient.

- 7.2 Where procurements are not advertised, the Responsible Officer **must** ensure that the selection of suppliers from whom tenders or quotations are sought is carried out openly, fairly, and transparently, with the reasons recorded in the contract file.
- 7.3 When not accessing a 3<sup>rd</sup> party Framework or DM, all procurements with a total contract value more than £50,000 **must** be conducted using the e-Sourcing portal. Use of the portal is also advised for procurements of less than £50,000.

## **8 Contract documentation and standard contract conditions**

- 8.1 The provisions of any Statute or Regulation take precedence over anything said in these CSOs, and all contracts entered into by the Council must comply with all those requirements.
- 8.2 The Council's standard conditions of contract are to be employed for procurements unless,
- (a) Leasing arrangements are involved, or
  - (b) the requirement is particularly complex, or the use of the standard conditions is considered inappropriate by Legal Services
- 8.3 If a supplier requires the use of their terms and conditions in order to contract, the advice of the Borough Solicitor **must** be sought.
- 8.4 In all procurements where the Total Contract Value is expected to be Above Threshold, the advice of Legal Services **must** be sought on the drafting of bespoke terms and conditions for the contract. This should be done **a minimum** of 12 months prior to the new contract start date.
- 8.5 For procurements between £5000 and Threshold, it is recommended that the Council's Standard Terms & Conditions be used as per paragraph 8.2. The Council holds a variety of Standard Terms to fit different requirements. If a commissioner chooses not to use the Standard Terms and Conditions, they must seek the advice of Legal Services in drafting bespoke terms as per paragraph 8.4.
- 8.6 Terms and conditions **must** be published and made available to bidders as part of the tender pack, therefore they **must** be completed before the publication of a procurement.
- 8.7 Bidders may seek to clarify or amend terms as part of the clarification period of a tender. Note – should the Council amend terms during a procurement they **must** be amended for all bidders equally and released in reasonable time to not influence the content of their bid.
- 8.8 The Council may **not** negotiate or otherwise amend the contract terms and conditions with the successful bidder following award of contract.

## **9 Advertising**

- 9.1 The Council uses the e-Sourcing Portal to advertise and run RFQs, mini competitions, call offs and tenders, as well as to operate the Council's Contract Register. The Portal allows opportunities to either be openly advertised, where any appropriately registered supplier may express interest (advertised), or for quotes / tenders to be sent to specifically nominated suppliers only (by invitation).
- 9.2 All opportunities with a total estimated whole life contract value Above Threshold **must** be openly advertised. Below this figure opportunities may be advertised at the discretion of the commissioner, based upon market knowledge and the need to generate market interest, though note if you choose to advertise it becomes a Covered Procurement despite being Below Threshold.
- 9.3 Whatever the value, where the Council advertises contracts using the Portal the opportunity **must** also be advertised on the government's Contracts Finder website if the opportunity will exceed £25,000 in value and release the relevant Notices as per section 6.
- 9.4 Below Threshold the commissioner is responsible for this. Above Threshold it is the responsibility of the procurement professional supporting the commissioner.
- 9.5 If the commissioner uses the Portal, automated tools are in place to support these publications. If they don't use the Portal, publication on the Contracts Finder and FTS sites must be made directly, where required.
- 9.6 All suppliers invited to tender must be issued with the same information at the same time and subject to the same conditions.
- 9.7 Where advertising is preferred, but not required by these CSOs, if the commissioner chooses not to advertise, they **must** record the reasons for their decision in the contract file.

## **10 Evaluating bids**

- 10.1 Care should be taken to evaluate the bid using the most advantageous tender rather than simply the unit price. The lowest priced tender may not offer the best value for money over the life of the contact, taking into account price, quality, social value, and the environment.
- 10.2 Procurement evaluation criteria and how the Council shall apply them must be published to bidders as part of the procurement documents.
- 10.3 Should a submitted bid appear to be priced too low to deliver the required quality of service this should be clarified. The bidder should be challenged as to how they can deliver the expected quality and requirements at that price.
- 10.4 Should this show that the proposed service is indeed unsustainable, the tender may be rejected. Before any bid is rejected on this basis, you **must** take advice from the Corporate Procurement Service.
- 10.5 Equally, should you believe a bidder has made a genuine error in their bid, the Council may afford that bidder an opportunity to correct their error. However, this must be done in a specific way to avoid legal challenge, and all bidders afforded the same opportunity. You should seek advice from the Corporate Procurement Service in how to do this.



- 10.6 Each bid should be evaluated by scoring objectively in accordance with the award criteria by a panel of appropriate officers, other experts, or service users. The process and evaluation model should be set out in the procurement plan. The contract should be awarded to the bidder submitting the tender that achieves the highest moderated score in the evaluation process. Training & guidance is available from the Corporate Procurement Service in how to conduct procurement bid evaluation.
- 10.7 The criteria used to evaluate each bid must:
- Be based on the predetermined award criteria specified in the procurement documents, including the weighting to be used;
  - Include the total value of the contract;
  - Be strictly observed throughout the tender process;
  - Be capable of objective assessment;
  - Avoid discrimination and apply equal treatment of bidders.
  - Where possible, remove barriers to entry for SMEs. Note – the commissioner must record rationales for why barriers aren't removed in the contract file where this isn't possible.
- 10.8 Where the opportunity is Above Threshold, or where there is a perceived risk through the term or nature of the contract regardless of contract value, an assessment of the bidders' financial standing should be undertaken to the satisfaction of the relevant Director.
- 10.9 The results of the tender evaluation process must be recorded in writing, including scores and rationales of individual evaluators and final scores and rationales following moderation.
- 10.10 The Council is not obliged to accept any tender, however, if the commissioner chooses not to award to any bidder, then they must publish a Procurement Termination Notice.

## **11 Approval and acceptance of quotations and tenders**

- 11.1 All RFQs and tenders must be carried out according to the procedures set out in these CSOs and such guidance released by the Corporate Procurement.
- 11.2 All Above Threshold procurements **must** be carried out using **either** the Competitive Open Procedure **or** the Competitive Flexible Procedure under the PA2023
- 11.3 Where commissioners use the Competitive Flexible Procedure, the standard template and methodology prepared by the Corporate Procurement Service should be used. Where a commissioner wishes to adopt a different methodology under the Competitive Flexible Procedure, they **must** first obtain approval from the Head of Corporate Procurement.
- 11.4 The evaluation of written quotations and tenders and any pre-qualification of bidders must be carried out according to the procedures set out these CSOs and associated guidance of the Corporate Procurement Service, clearly documented and recorded in the contract file and, if above the Threshold, advice must be sought from the Head of Corporate Procurement.
- 11.5 It has been assumed for the purposes of setting out the different Thresholds within the Threshold Guide that VAT will apply to the procurement, due to VAT being

included in the calculation of the Threshold. If, however, Finance have confirmed within a Strategic Procurement Plan that VAT will not apply to the procurement, then the figures within the definitions section of these CSOs may be disapplied and the figures referred to in “Procurement Policy Note – New Thresholds Values and Inclusion of VAT in Contract Estimates” (dated December 2021 and published by the Cabinet Office), as updated from time to time, may be used instead for the purposes of establishing whether the planned procurement is above Threshold.

- 11.6 The Responsible Officer may accept a tender or quotation where the Total Contract Value is Below Threshold. Where the tender is Above Threshold, a report should be submitted by officers to the Executive Director, but if an Executive Director has not delegated power to a Responsible Officer to accept a quotation the Executive Director **must** prepare a report on the acceptance of the tender or quotation and keep it available for auditing.
- 11.7 Bids which are received after the date and time stipulated in the RFQ or Invitation to Tender document should **not** be considered.
- 11.8 All bids received through the Portal **must** be opened **within** the Portal, either by the commissioner or other officer delegated by the Responsible Officer for that specific procurement. When directly supported by the Corporate Procurement Service this will be the assigned procurement professional.
- 11.9 Should bids be received through means other than the Portal, advice should be sought from the Head of Corporate Procurement before being considered or opened. This may result in such a bid being disqualified and set aside. Should it be decided that such a bid should be included in the procurement, the Head of Corporate Procurement **must** provide a written record containing their reasoning to the commissioner. This should be retained in the contract file.
- 11.10 Following the conclusion of a procurement process, prior to the award of contract, a Contract Award Report should be prepared for the relevant decision maker, as per paragraph 10.11 or as otherwise delegated or instructed in the approval to procure as per section 5.
- 11.11 The Contract Award Report will set out how the procurement conducted in line with the procurement plan and published evaluation criteria, as well as who the winning bidder is.

Not a Key Decision	Under £5k	£5k - £50k	£50k – £150k	£150k - Threshold	Threshold - £1m*	Above £1m*
	Budget Holder	Assistant Director	Executive Director	Executive Director	Executive Member	Executive Member
Key Decision	Executive Director	Executive Director				

(\*) If your Threshold is greater than £1m, you are only required to seek Executive approval for Above Threshold contracts, all Below Threshold Contracts rest with the Executive Director even if greater than £1m.

- 11.12 The level of detail in the contract award report should be proportionate to the whole life value of the contract and the level of risk, but should where relevant include;
- The subject matter and the whole life value of the contract proposed to be made;
  - The procurement process that has been followed;
  - (Where applicable) The results of market analysis undertaken;

- Details of the evaluation criteria, the weightings, and the results of the evaluation process;
- The name of the successful bidder and the reasons why its tender was selected;
- The reasons for the rejection of the other bids received;
- (Where applicable) conflicts of interests detected, and subsequent measures taken;
- any risks associated with the award of the contract and measures taken to minimise that risk.
- any additional or non-standard action required to support mobilisation.

11.13 Below Threshold the Contract Award Report will be prepared by the commissioner. Above Threshold the Contract Award Report will be prepared by the Corporate Procurement Service, or other procurement professional delegated by the Head of Corporate Procurement to support the procurement.

11.14 Where the cost as defined in the approval to procure has been significantly exceeded or scope significantly altered the Contract Award Report should instead be submitted to the decision maker on the approval to procure.

If unsure what constitutes significant alteration, advice should be sought from the Corporate Procurement Service. As an indicative guide, an alteration of 10% of the estimated value should be used.

11.15 Where the decision maker wishes to accept a tender other than the highest scoring acceptable tender, full supporting documentation must be kept to evidence why the highest scoring acceptable tender was not considered the Most Advantageous Tender, in line with the published tender criteria.

## 12 Contract Signature

12.1 All contracts entered into by the Council **must** be completed (subject to delegated financial limits) in accordance with the following requirements.

Under £5k	£5k - £50k	£50k – £150k	£150k - Threshold	Threshold - £1m	Above £1m*
Purchase Order approved by Budget Holder	Signed by Executive Director or officer with relevant delegated authority. This may include the Borough Solicitor				Signed by the Borough Solicitor under Seal

(\*) If your Threshold is greater than £1m, you are still required to have contracts valued greater than £1m signed by the Borough Solicitor under Seal, even when Below Threshold.

12.2 It is advised that all contracts should as a matter of good practice be signed or sealed before the supply, service or work begins.

12.3 When signed, a contract **must** be signed and dated by an authorised Council signatory to be valid. Officers should review the Scheme of Delegations to confirm the relevant signatory for a contract.

12.4 The Council's Seal is held by the Borough Solicitor and contracts requiring sealing **must** be submitted through the sealing process managed by Legal Services.

12.5 Following contract signature / sealing it is the responsibility of the contract lead to enter the contract on the Corporate Contract Register on the Portal and to keep the entry up to date during the contract's duration.

### 13 Waiver of CSOs

13.1 If there are special circumstances to waive or suspend any section or sections of CSOs, the following approvals must be obtained depending on contract value:

- Only Full Council has the authority to fully suspend these CSOs.
- for all contracts up to the relevant Threshold (as defined in these CSOs), to be calculated according to total contract value inclusive of any previous extension or variation, the Executive Director may approve a waiver that meets one of the conditions defined in paragraph 13.3.
- Approval must first be sought from the Corporate Procurement Service, then the Legal Service, prior to submission to the Executive Director. Officers within these services may refer any waiver to the Head of Corporate Procurement or the Borough Solicitor if they feel the level of risk the waiver represents requires this.
- for contracts Above the relevant Threshold no waiver may be sought as doing so breaches legislation. Officers must instead report the breach to the Chief Executive. The Chief Executive may choose to accept the legal risk or not to proceed with the breach.
- A waiver solely in respect of a direct award without competition in place of a compliant procurement will not remove the requirement to follow any aspect of the internal authorisation process for expenditure relevant to the procurement as set out in these CSOs, unless this is specifically included as part of the waiver (note - a waiver to not follow such authorisation processes will only be granted in exceptional circumstances).

13.2 The standard Waiver form is to be used.

13.3 Acceptable reasons for a waiver are limited to;

- Quantifiable and significant cost and efficiency savings can be achieved through seeking an alternative route, which outweigh the legal risk of the waiver. This must be evidenced;
- Reasons of unforeseen extreme urgency mean that normal time limits cannot be met, including as a result of unforeseen emergency or disruption to Council services. For example, storm damage to public buildings rendering them unsafe. Not having sufficient time or resource to tender does **not** in itself constitute urgency, as in legal terms this is the fault of the Council for poor planning.
- The Council would otherwise be exposed to immediate and significant financial, legal, or reputational risk that has been identified in the relevant risk register and is considered to outweigh the risk of the waiver. This must be evidenced;
- Only one supplier is objectively able to provide the works, services or supplies in question including, but not limited to,
  - where the provision is specialist,

- where the supplier has exclusive intellectual property rights, artistic or other rights,
- where the supplier has a monopoly; or
- where the supplies bought are for re-sale.

In such circumstances only one supplier need be asked to quote / tender, however the quote / tender must still be evaluated for capability and suitability. The lack of other available suppliers must be evidenced.

- Where less than 3 suppliers are asked to quote. The benefit for seeking fewer suppliers must be evidenced as outweighing the legal risk of the waiver.
- Additional or new works, services or supplies are required which, through unforeseen circumstances, were not included in an existing Council contract and are necessary for the completion of the contract and / or cannot be carried out separately.

Forgetting to include the additional or new services in the original tender / RFQ will not in itself be considered justification for a waiver. Any officer wishing to rely on this rationale must first have considered whether including additional or new works, services or supplies would be a contract modification / variation and permitted under UK public procurement legislation.

- Supplies are required as a partial replacement for, or addition to, existing supplies or installations and obtaining them from another source would result in incompatibility or disproportional technical difficulties in operation or maintenance of existing equipment. It must be evidenced that the risk of wholly replacing all equipment outweighs the legal risk of the waiver.
  - Where a waiver is to allow the continuation of Council services or operations whilst a compliant procurement process is completed. Note – where such a waiver is approved it will only be for the time necessary for the completion of the procurement.
- 13.4 Approval must be sought from the Corporate Procurement Service and Legal prior to submission to the Executive Director to be valid.
- 13.5 An Invalid waiver will be considered a breach of these CSOs.
- 13.6 The Responsible Officer must ensure that the final approved waiver is recorded in the Corporate Register of Waivers ([link](#)), recording the reasons for waiver and the approvals obtained. The Head of Corporate Procurement shall maintain a full record, sequentially numbered, of all Waivers granted.
- 13.7 Where the Responsible Officer has conducted a compliant procurement but received less than 3 bids (e.g., they accessed a framework, or ran an RFQ inviting 5 suppliers, but only received 2 bids), a waiver is **not** required.
- 13.8 A waiver will **not** be granted where this means the Council will be in breach of **any** UK legislation.

## **14 Framework Agreements, Dynamic Markets & Open Frameworks**

- 14.1 The intention behind a framework agreement is to streamline the competitive process by enabling the commissioners, at any time during the term of the framework, to buy works, services, or supplies by placing an order (without reopening competition) or by holding a mini tender process (competed services), without having to tender each individual purchase. Multiple orders or call-off

contracts can be made through the framework. Framework agreements can be useful where the Council needs to make repeated and potentially high value purchases, such as for temporary staff support, reactive maintenance, area transport or care placements.

- 14.2 It may be possible to access an existing framework agreement, let by the Council or another contracting authority. As you would be calling off from the framework this negates the need to conduct a full procurement for the new requirement, though a call off / mini competition under the framework may still be required.
- 14.3 The following principles should be followed when deciding whether to buy works, services or supplies under an existing framework agreement established by another body:
- There should be evidence that the framework can be accessed by the Council (i.e., we are a named commissioning authority through some means);
  - For competed services, the framework must provide for the holding of a mini competition.
  - For the making of a purchase without re-opening competition the framework must clearly identify the criteria for selecting, in order of priority, the contractor to be first, and subsequently, offered the order;
  - The framework should offer value for money;
  - The technical aspects and quality standards of the framework shall meet the Council's requirements.
- 14.4 For procurements equal or above Threshold, the award of a framework agreement is regulated by the PA2023.
- 14.5 If the framework arrangement falls within the PA2023, then the term of the framework must **not** exceed four years. There is a provision to establish a framework for a longer period, but this is only applicable in exceptional circumstances and where it can be justified by the subject of the framework.
- The Corporate Procurement Service **must** be contacted for advice if you wish to create a Framework with a term of more than 4 years or 8 years for an Open Framework.
- 14.6 Call-off contracts can extend beyond the lifespan of the framework agreement or Dynamic Market, but not an Open Framework. However, call-off contracts made close to, or at the end of, the term of the framework that have a disproportionate duration may amount to a breach of the PA2023. Before such a call-off contract is made, advice **must** be obtained from the Corporate Procurement Service.
- 14.7 The use of a framework agreement **must** be approved as part of the Procurement Plan.
- 14.8 A framework agreement is closed for the duration of its operation which means that no new suppliers can be added to the framework.
- 14.9 If you wish to create a contract which allows for new suppliers to be added, you **must** set up either a Dynamic Market (DM) or Open Framework (OF). If you wish to set up a DM or OF or modified under the Light Touch regime you **must** contact the Corporate Procurement Service.
- 14.10 If you are creating a framework under the Light Touch regime, a degree of flexibility is available. Contact the Corporate Procurement Service for further information.

14.11 A contract award report is not required for orders / placements called off under a framework agreement. However, before the order / placement is made a purchase order to the value of the purchase must first be authorised, seeking approval to spend if you have not done so through a Summary Plan / Procurement Plan / Strategic Procurement Plan already.

## 15 Contracts

15.1 All contracts shall, as a **minimum**:

- be in writing;
- specify what is to be supplied (that is, the works, materials, services, matters or things to be furnished, had, or done);
- specify the payment provisions (that is, the price to be paid and when);
- specify the timescale within which the contract is to be performed; and
- specify the termination provisions under which the Council shall and may terminate the contract.

15.2 In addition, every contract Above Threshold **must** also clearly state as a **minimum**:

- the performance standards to be met, associated performance reporting and performance management;
- the insurance requirements;
- health and safety requirements;
- equality and diversity requirements;
- (Where relevant) that the contractor may not assign the contract or sub-contract any part of the contract without prior written consent from the Council;
- information governance, Freedom of Information and Data Protection requirements;
- (Where relevant) supply of anonymised TUPE data by the contractor to the Council and an organisation structure freeze within the contractor at a point designated by the Council prior to the of contract
- contract management requirements;
- a right, given to the Council, of access to documents and records which relate to the subject matter of the contract for monitoring and audit purposes;
- an obligation on the Council to pay undisputed invoices within 30 days;
- an obligation on the principal contractor to pay any subcontractor invoices within 30 days;
- a clause for the prevention of corruption and bribery;
- contract enforcement mechanisms;
- a requirement to provide electronic invoicing compliant with BS EN 16931-1:2017 and PD CEN/TS 16931-2:2017; and
- rights of termination

15.3 Formal advice from Legal Services **must** be sought on contract terms and conditions for the following contracts:

- where the estimated total contract value of the opportunity is Above Threshold;
- those involving leasing arrangements;
- where it is proposed to use the external supplier's own terms;
- those that are considered to be high risk in terms of service failure or the Council's reputation; or
- those that are complex in any other way. You may use the Contract Segmentation Tool to support this assessment

## 16 Contract extensions

- 16.1 If the original contract includes an option to extend the initial term (e.g., it was let as a 3 +1 +1 contract), and the authority to spend and enter into the contract was given for the whole life contract value, the relevant Assistant Director may authorise the extension period. (Continuing the example this would be activating either or both of the 12-month extensions)
- 16.2 The contract lead should retain a written record of the Assistant Director's decision in the contract file.
- 16.3 If the authority to enter into the contract was not given for the extension period, authority to extend the initial term **must** be obtained before the contract is extended. The value of the extension period will determine who can authorise the extension based on the values in the table at paragraph 5.1 above.
- 16.4 If the original contract does not include an option to extend the initial term, **no** extension is possible. To continue with the current contractor a new contract **must** be directly awarded without competition via waiver. Note – such a waiver will only be approved to allow the minimum time necessary for the completion of a compliant procurement process.

## **17 Contract Modifications / variations**

- 17.1 Requests to modify or vary an Above Threshold contract **must** be made in writing to the Corporate Procurement Service **before** the modification is sent for approval by the relevant Executive Director.
- 17.2 Where a modification or variation will result in a Below Threshold contract becoming Above Threshold due to additional scope or value, it **must** be treated as if Above Threshold as per paragraph 17.1.
- 17.3 Requests to modify or vary a Below Threshold contract must be sent for approval by the relevant Assistant Director. Advice may be sought from the Corporate Procurement Service prior to this.
- 17.4 Where a modification or variation occurs during the life of the contract that cannot be met from within existing budgetary provision, an immediate report shall be made to the Section 151 officer who shall decide what further action is necessary.
- 17.5 Any individual modification is **not** permissible in any circumstance if it does **any** of the following (in relation to each modification, independent of any past modifications already made);
- Increase or decrease value by more than 10% generally or 15% for works contracts
  - Increase or decrease the contract term by more than 10%
  - Materially change the scope of the contract (i.e., change its purpose)
  - Materially change the economic balance in favour of the supplier (e.g., increase income share apportioned to the supplier)
  - Change the supplier **unless** for corporate restructuring (i.e., contract novation)
- 17.6 Advice should be sought from the Corporate Procurement Service if you are unclear if these apply.

### ***Circumstances where the modification or variation falls within approved contract value authorised in Contract Award Report***



- 17.7 Modifications or variations Below Threshold (inclusive of the new total contract value) can be approved by the Assistant Director as per paragraph 17.3.
- 17.8 If the sum for the modification or variation falls within the approved contract value in the relevant Contract Award Report but is Above Threshold (inclusive of the new total contract value), then for the modification or variation, Executive Director and Head of Corporate Procurement written approval shall be required as per paragraphs 17.1 and 17.2.

***Circumstances where the modification or variation does not fall within approved contract value authorised in Contract Award Report***

- 17.9 If the variation or extension of the contract does not fall within the approved contract value authorised in the relevant Contract Award Report then officers should proceed as in the case of a **new procurement** and follow the procedures within these CSOs and accompanying guidance, as determined by the total contract value inclusive of the modification or variation.
- 17.10 Following approval, a Contract Modification Letter **must** be completed by the contract lead, signed by the contractor and the Council, and appended to the contract document for all parties.
- 17.11 Contract signature rules as per section 11 apply to Modifications also, therefore the Letter **must** be signed by a designated signatory or sealed as required based upon the new Total Contract Value
- 17.12 Following completion of a contract modification, the contract lead **must** update the relevant Corporate Contract Register entry and **must** publish a Contract Modification Notice.
- 17.13 Regardless of other factors, if a variation or extension takes the Total Contract Value above £400k then this will need to be recorded as a Key Decision, unless advised otherwise by the Borough Solicitor or Democratic Services.

**18 Contract Management**

- 18.1 The Responsible Officer **must** ensure that there is a named contract manager (the contract lead) or each new contract.
- 18.2 For each contract Above Threshold, the contract lead will work jointly with the commissioner and the Corporate Procurement Service or other designated procurement professional during the procurement process.
- 18.3 As part of the procurement process the contract lead and commissioner and, where relevant the Corporate Procurement Service, will agree the contract management measures that are appropriate for the contract. This will include, but not be limited to,
- performance measurement / management,
  - review meetings,
  - risk management,
  - governance and escalation.
- 18.4 The approach to contract management shall be proportionate, with management activity linked to contract risk and value.
- 18.5 The Contract Lead **must** publish a Contract Performance Notice annually.

- 18.6 The Commissioner and Contract Lead **must** maintain a contract file in the Council's shared digital file structure containing all details, documentation, reports, records, and decisions related to a procurement (responsibility of Commissioner) and subsequent contract (responsibility of Contract lead).
- 18.7 This contract file **must** contain the unique project identifier in the Portal related to the procurement and contract, so it can be linked to the audit records held in the Portal and the Corporate Contracts Register entry.
- 18.8 The contract file **must** have either "PCR2015", "PA2023", or future codes as designated by the Corporate Procurement Service, in its file title, so officers can readily identify which legislation applies to the contract.
- 18.9 In the event of an investigation by the Procurement Investigation Agency, officers **must** co-operate fully with investigators and provide any documents or records requested through the means defined by the investigators, as well as attending interviews as required.

## **19 Outsourcing and Community Right to Challenge**

- 19.1 Where it makes economic sense and it is a functional solution, the Council may outsource services or transfer them to the local community to provide directly.
- 19.2 The 'community right to challenge' is part of the Localism Act 2011 and gives voluntary and community groups, charities, parish and town councils and council employees the right to express an interest in taking over the running of a Council service. The Council must consider and respond to this challenge.
- 19.3 Where the challenge is accepted, the Council must then run a procurement exercise in which the organisation making the challenge can bid to run the service (but is not guaranteed to win that procurement). In this event the challenging organisation should be treated as any other bidder.
- 19.4 Expressions of interest to deliver services under the 'community right to challenge' shall be dealt with through the Council's adopted 'Process Guide to dealing with expressions of interest under the Community Right to Challenge.'

## DEFINITIONS

In these CSOs, the following expressions have the following meanings:

1. Assistant Director / Head of Service: The most senior officer and manager of a department or service within a Directorate, where a specific procurement is being carried out. The Head of Service only acts in this decision-making function for the purposes of these CSOs where an Assistant Director is not present in the organisational structure.
2. award criteria: the evaluation criteria and methodology used to weight, select, and award a contract to a successful bidder.
3. award letter: written confirmation of the award of a contract by the Council to a successful bidder, using the standard template.
4. Bid: an offer made by each bidder to provide works, services, or supplies to the Council for a particular amount of money on specified terms, normally in the form of a tender or quotation.
5. Bidder: a person, business, company, or other organisation who responds to the Council's invitation to bid as part of the tender / procurement process.
6. Buying: purchasing works, services, or supplies from an external supplier or contractor.
7. call-off contract: a contract entered into under a framework agreement or Dynamic Market to a framework supplier following the holding of a mini-competition or the placing of an order. Although the framework agreement sets out the overarching terms and conditions, each individual "call-off" contract or order constitutes its own separate contract under the framework agreement.
8. codes of conduct: the Council's codes regulating the conduct of officers and members.
9. Commissioner: the officer responsible for the design and procurement of a contract for supplies, works or services. Usually, but not always, also the Contract Lead
10. Commissioning: the process used to plan, procure, evaluate, deliver, and monitor the provision of works, services, and supplies to allow the Council to meet its requirements in the most economical, effective, and efficient way.
11. concession contract: a contract under which the Council outsources works, services or a public asset to a contractor / supplier ('the concessionaire') who has the right to commercially exploit the asset, works or the services and who accepts a transfer of the operating risk in exploiting the asset, works or the services. The concessionaire pays the Council for this right rather than the Council paying the concessionaire.
12. conditions for participation: an initial assessment made of bidders of their legal or financial capacity to perform the contract, or their technical ability to do so, made before award criteria are evaluated. Award criteria assesses how well a bidder will perform a contract whilst conditions of participation look only at their base ability to do so.

13. conflict of interest: a set of circumstances that creates a risk that an individual's ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest.  
This may apply to both officers and members.
14. Constitution: a document approved by the Council which:
- a. allocates powers and responsibility within the Council and between the Council and others;
  - b. delegates authority to act to the executive, committees, executive members, and officers; and
  - c. regulates the behaviour of individuals and groups through rules of procedure, codes, and protocols.
15. contingency measures: actions to reduce the impact of, or prevent, identified risks which might affect the successful delivery of a contract.
16. Contract: an agreement entered into voluntarily by two or more parties that creates a legal obligation on the contractor to supply works, services or supplies to the Council in return for a payment.
17. Contract Lead: the officer responsible for managing a contract and its contractor within a service, and for ensuring that the Council achieves its objectives, as set out in the contract. This might not be the officer's job title – they might act in the role of contract lead or manager for only part of the time.
18. Contractor: A party that has agreed to supply works, services and / or supplies to the Council under a contract.
19. Contract Award Report: a report prepared by the contract lead / commissioner and the Corporate Procurement Service (Above Threshold) which makes a recommendation to the relevant decision-making body (refer to the table at paragraph 11.11) to award the contract to the successful bidder. The decision maker must agree the award of the contract before any bidder is notified of the tender outcome.
20. Contract File: a set of folders maintained by the commissioner and the contract lead in the Council's shared digital file structure, containing all documents, reports and decisions related to both a procurement and any resulting contract.
- Its title should contain both the Portal unique identifier and clear reference (i.e., "PCR2015" or "PA2023") to the legislation the procurement and contract fall under.
21. Contracts Finder: is a government website. **All** contracts that the Council advertises **over** £50,000 (or below **if** the commissioner chooses to advertise) must be advertised on Contracts Finder. The Council uses the e-Sourcing Portal to do this.
22. Contract management: the proactive process to be used by the Council to manage contract delivery to ensure that the contractor is fully complying with its contractual obligations, allows the Council to manage contractor performance and contract compliance and minimises risk to the Council of contractor default.
23. Contract modification / variation: an agreement to vary the terms of a contract. All parties to the contract must agree to the modification / variation and any modification / variation must be within the original scope of, and made in compliance with, the contract. Officers must consider whether the contract is being

varied, or whether the change is so substantial that the original contract is extinguished and a new one is being entered into, in which case a new procurement is required instead.

A Contract Modification Notice **must** be published with each modification / variation made.

24. Contracting Authority: A public body that falls under the requirements of the PA2023 and must comply with the Act. It means a person(s) or organisation(s) that are wholly or mainly funded from public funds; **or** is subject to public authority oversight; **and is not** operating on a commercial basis.
25. Corporate Contracts Register: a list of all the contracts let by the Council that are over £5,000 in whole-life value. The register is kept and maintained by Contract Leads using the E-Sourcing Portal.
26. Corporate governance: the action or manner of governing, managing, and overseeing the way that the Council operates.
27. Corporate Procurement Pipeline: a list of **all** procurements the Council will be carrying out in the next 18 months. The Pipeline is kept and maintained by Commissioners on sharepoint.

The Corporate Procurement Service uses the Pipeline to prepare a Pipeline Notice on behalf of the Council every financial year. Failure to list a procurement in the Pipeline may result against legal challenge against the Council.

28. Corporate requirements: where the requirement for supplies and services is used by the whole authority rather than individual directorates, for example stationery and agency staff.
29. Covered Procurement: Any Above Threshold procurement where the full Procurement Act 2023 applies, or any Below Threshold procurement where the Council has made the Procurement Act 2023 apply by its actions, e.g., advertising a Below Threshold procurement.
30. Declaration of interest: the requirement on members and officers to declare their financial or other interests or assets that could create a conflict of interest in the performance of their duties.
31. Disclosable interest: a financial interest or asset that could create a conflict in the performance of the duties of a member or officer.
32. Dynamic Market (DM): an electronic system similar to an electronic framework agreement. A DM provides a list of contractors from which the Council can conduct an e-competition for tenders. Contractors can apply to join the DM at any time. If considering a DM of **any** value, advice **must** be sought from the Corporate Procurement Service.
33. E-Sourcing Portal: a web-based system which the Council currently uses to advertise and run requests for quotes (RFQs) and tenders and publish contracts – the portal can be found at [link](#).
34. Evaluation Criteria: The qualification, quality, social value, environmental and price criteria which the commissioner will use to score bidders and select successful contractor(s). Evaluation criteria, how they will be scored and weighted must be

fully disclosed to all bidders from the point of publication as a part of the procurement documents.

35. Executive: Means a meeting to which the Leader and all those Members that are serving as Executive Members have been invited, or in the case of non-executive functions references to “the Executive” are deemed to be references to the Council or the committee or sub-committee to which the Council has delegated responsibility for that function
36. Executive Director: The Chief Executive or the most senior officer in a directorate of the Council
37. Executive Member: Means the Member of the Executive with responsibility for the service for which a procurement is being carried out.
38. Find A Tender Service: A government website where **all** contract and procurement Notices are published. All procurements Above Threshold **must** be advertised on it. The Council uses the e-Sourcing Portal to do this.
39. Framework agreement: an agreement made between one or more public bodies and one or more contractors. A framework agreement is a single or multi-contractor agreement. It is closed for its duration, meaning no new suppliers can be added.

A framework agreement sets out the terms for making specific purchases (‘calls-offs’) under the framework. The terms will include the nature of the works, services, or supplies to be supplied, the unit price, the standards for service delivery and the terms on which future purchases will be made. Purchases can be made:

- by order without re-opening competition. For example, offering an order to the contractor with the lowest price; or
- following a mini competition.

If you award a framework agreement to a single contractor, the call off / purchase method will always be by order to that contractor. With a multi-contractor framework, the method must be specified. The framework agreement will set out which purchase route is to be used and the procedure to be followed for making specific purchases. A framework agreement does not commit the buying organisation(s) (otherwise known as commissioner(s)) to make any purchases and framework suppliers can choose whether to accept the order or take part in a mini competition unless the framework agreement otherwise provides.

Call offs under a Framework Agreement can survive the duration of the Framework itself, i.e., a call off for 10 years can be made in year 3 of a 4-year framework.

40. Grants: Where the Council is awarding funding to an organisation or individual in order to fulfil a specific purpose for a public benefit to the community of Bracknell Forest, subject to some conditions or the funding will be withdrawn. The Council divides these into Procurement Activity and Non-Procurement Activity Grants.

The Council may also receive grant funding from central government bodies or other organisations. Whilst the Council does need to fulfil the conditions of these grants, the Council is **not** awarding a grant in these cases – we have received a grant and are using it as a funding source to commission works, supplies, and services and therefore the activity funded by grants is still subject to these CSOs.

41. Lead partner: one of the parties to a joint commissioning arrangement who, on behalf of the other parties within the joint commissioning group, agrees to take the

lead in the procurement process and (where applicable) responsibility for managing a contract on behalf of the other parties within the group.

42. Local Authority Controlled Company (LACC): an organisation controlled by the Council under Vertical Arrangements that can be awarded contracts directly by the Council without the Council having to follow the public procurement regime, subject to certain conditions.

If you are considering the creation of a LACC, you must seek the advice of the S151 officer, the Borough Solicitor, and the Head of Corporate Procurement.

43. Most Advantageous Tender (MAT): the process of assessing a tender based on quality and price over the life of the contract. Factors such as the period for completion, maintenance costs, technical merit, and value for money should be taken into consideration.
44. Non-Commercial Considerations: elements which may influence the consideration of bidder or contractor. Advice should be sought from the Corporate Procurement Service if you are considering applying these;
- whether contractors employ self-employed individuals,
  - any involvement of the business activities or interests of the contractor with irrelevant fields of Government policy,
  - the conduct of the contractor in industrial disputes,
  - the country of origin or location of suppliers,
  - any political, industrial, or sectarian interest of the contractor,
  - financial support or lack of financial support by the contractor for any institution,
  - use or non-use by a contractor of technical or professional services provided by the Council under the Building Act 1984.
45. Non-Procurement Activity Grants: Grants where;
- Grants given to or applied for by the Council which are for internal use only; or
  - grants given by the Council to a voluntary organisation which has bid for funds and is providing services directly to individuals as part of their charitable work rather than carrying out a service on behalf of the Council; and
  - where the Council is not using the organisation to fulfil a statutory duty; and
  - where the Council is not monitoring the performance or outcomes of the organisation beyond the published grant conditions
46. Notices: the 14 public Notices the Council **must** publish in relation to procurements and contracts. The Council uses the e-Sourcing Portal to do this. Please refer to paragraph 6.6 to determine where a Notice is required and who is responsible.
47. Open Framework agreement: an agreement made between one or more public bodies and more than one contractor. A framework agreement is a single or multi-contractor agreement. It can be open either constantly or at fixed points to allow the addition of new suppliers. If not otherwise defined, it **must** be opened again at years 3 and 5 of its duration. An Open Framework **cannot** have a duration more than 8 years, or if awarded initially to only one supplier, 4 years.

At each opening the same criteria applied at its creation **must** be applied to new bidders – it **cannot** be adjusted in any way without contract modifications.

An Open framework agreement sets out the terms for making specific purchases ('calls-offs') under the framework. The terms will include the nature of the works, services, or supplies to be supplied, the unit price, the standards for service delivery and the terms on which future purchases will be made. Purchases can be made:

- by order without re-opening competition. For example, offering an order to the contractor with the lowest price; or
- following a mini competition.

The Open framework agreement will set out which purchase route is to be used and the procedure to be followed for making specific purchases. An Open framework agreement does not commit the buying organisation(s) (otherwise known as commissioner(s)) to make any purchases and framework suppliers can choose whether to accept the order or take part in a mini competition unless the framework agreement otherwise provides.

Call offs under an Open Framework Agreement **cannot** survive the duration of the Framework itself, i.e., a call off during year 8 of an Open Framework could only have a duration until the end of the Open Framework.

48. Outsourcing: the process of contracting out an existing service which is being provided internally by the Council to another party.
49. PA2023: the Procurement Act 2023, the primary legislation governing procurement and contracting for the public sector in the UK.
50. Procurement: the process of obtaining works, services, and supplies
51. Procurement Activity Grants: Where the Council is using a grant to deliver services on behalf of the Council, especially to meet statutory duties, and will be closely monitoring the delivery, performance, and outcomes of those services.
52. Procurement Plan: a plan which sets out the approach to a procurement process. A Procurement Plan must be completed for all contracts with an estimated whole life contract value (inclusive of any extension period) of between £150,000 and Threshold and must be approved by the relevant decision-making body – refer to the table at paragraph 5.2 - before the procurement commences.
53. RFQ (Request for Quote): a request to a supplier inviting it to submit a quotation for the supply of supplies or services.
54. Responsible Officer: The officer who is the primary commissioner and / or contract lead for a particular contract.
55. S151 Officer: The senior Council officer under section 151 of the Local Government Act 1972, with responsibility for overseeing the proper administration of the Council's financial affairs and budgeting. The s151 officer has a number of statutory duties and may halt a commissioning or procurement process if they consider that it is necessary in the scope of those duties. The s151 officer at the Council is the Executive Director: Resources.
56. Seal: The Council's seal is kept by, and is under the control of, the Borough Solicitor.



57. service outcome: a measure of the contract objectives in terms of service delivery.
58. Senior Responsible Officer: The Executive Director or a person to whom the Executive Director has given clear written delegated responsibility to exercise a function which these CSOs identify.
59. Social Value: The Public Services (Social Value) Act 2012 imposes a duty on the Council to consider at the pre-procurement stage of any service contract how the services proposed to be procured may improve the economic, social, and environmental well-being of Bracknell Forest and how the Council may secure that improvement as part of the procurement process. Refer to the Social Value Policy [\(link\)](#)
60. Standard selection questionnaire (SQ): the government questionnaire which must be used for pre-qualifying bidders in a procurement process. When conducting a procurement that equals or exceeds the Thresholds, this questionnaire must be used. It may not be amended aside from those sections where it is expressly permitted [\(link\)](#)
61. Strategic Procurement Plan: a detailed plan which sets out the approach to a procurement process. A Procurement Plan must be completed for all contracts with an estimated whole life contract value (inclusive of any extension period) Above Threshold and must be approved by the relevant decision-making body – refer to the table at paragraph 5.2 - before the procurement commences.
62. Sub-contractor: an individual, business, or other organisation who is hired by the main contractor to deliver part of the contract, and who is paid by the main contractor.
63. Subsidy Control: as set out in the Subsidy Control Act 2022, this is a set of legal conditions within which local authorities can legally provide subsidies, i.e., any form of financial assistance whether directly or indirectly to an organisation that is engaged in an economic activity. This could include, for example, a cash payment (grant), a loan with below market interest or the free use of equipment or office space. Outside of these conditions the Council may not provide subsidies to organisations without potentially triggering penalties or prejudicing contracts.
64. Summary Plan: a brief plan which sets out the approach to a procurement process. A Summary Plan must be completed for all contracts with an estimated whole life contract value (inclusive of any extension period) of between £50,000 and £150,000 and must be approved by the relevant decision-making body – refer to the table at paragraph 5.2 - before the procurement commences.
65. Supplier: any person, business, company, public entity, or other organisation which offers on the market the delivery of works, services and / or supplies to the market.
66. Tender: the written document submitted by a bidder as part of its tender process in which the bidder offers to provide supplies, services and/or works for the bid price to the Council.
67. Threshold: Means the contract value above which the Procurement Act 2023 and Procurement Regulations 2024 **fully** apply.

Note that as this relates to legislation, the Council is unable to waive the requirement to procure, any failure to procure will instead require the legal risk for

doing so to be accepted – this may result in disciplinary action for the officers responsible

The Threshold to be applied is determined by what is being procured, not who is procuring it or who it will support. For example, education support software for young people with learning disabilities would fall under Supplies, not Light Touch.

The Threshold values are updated every 2 years by the UK government; therefore, you should consult the Threshold Guide on the intranet for which Threshold applies to your contract and the current value.

68. Total contract value: the cost of the contract over its full duration, inclusive of VAT, including the value of any extension periods. If the precise value isn't known an estimate can be made, but it must be the most accurate estimate possible that can be evidenced based upon data available at the time of the estimate.
69. VCSE: Voluntary Community and Social Enterprise, the voluntary or non-profit sector of the economy.
70. Value for money: the optimum combination of whole life costs and quality (or fitness for purpose) of the supplies, works or services to meet the Council's requirement.
71. Waivers: limited circumstances in which compliance with these CSOs may be set aside in accordance with section 13 below. Permission must be obtained in advance to be valid. Failure to do so may lead to disciplinary action.