



CONTRACT PROCEDURE RULES

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1 Introduction

- 1.1 These Contract Procedure Rules (the “Rules”) are part of the Council’s Constitution and govern all contracts let by the Council or on its behalf for the supply of goods or materials or for the execution of works.
- 1.2 The Council is obliged to make these standing orders under s.135 of the Local Government Act 1972, which must include provision for securing competition for such contracts and for regulating the manner in which tenders are invited, but may exempt from any such provision contracts for a price below that specified in standing orders and may authorise the authority to exempt any contract from any such provision when the authority are satisfied that the exemption is justified by special circumstances. The Rules meet this obligation and form part of the Council’s Constitution. The Rules shall be reviewed every two years.
- 1.3 The Rules must always be followed for every contract entered into or proposed to be entered into by the Council unless overriding law (European or UK) requires something different.
- 1.4 The Rules must be read in conjunction with other parts of the Council’s Constitution (for example, if a decision about a contract is also a “key decision”, then the requirements set out in the Constitution in relation to Rules and to key decisions will also have to be met).
- 1.5 It is the responsibility of all Directors to ensure that their staff are adequately trained in the application of these Rules and that audit trails are in place for all procurement.
- 1.6 Any dispute regarding the interpretation of these Rules shall be referred to the Head of Strategic Procurement (HoSP) and the Director - Law & Governance.
- 1.7 In accordance with the requirements of the Scheme for Financing schools and Financial Regulations for schools where a school acts as an agent of the Council these Rules apply to all schools within Milton Keynes except Trust and Academy schools. School’s governing body shall have the powers and duties as defined for Directors within these Rules.
- 1.8 Anyone making procurement decisions should be familiar with these Rules and those within the Procurement Handbook. Officers must ensure that any persons and or organisations acting on behalf of the Council fully comply with these Rules.
- 1.9 The Contract Procedure Rules apply to all Procurement activities, including expenditure of external funding, such as grant allocation, received by the Council from external sources.
- 1.10 If the Rules are not followed and/or there is a failure to enter into a contract on behalf of the Council in accordance with the Rules it will be a breach of the Code of Conduct and this could be a disciplinary offence. All Officers are responsible for reporting any suspected breach of these Rules to the Head of Strategic Procurement, the Head of Internal Audit or the Director- Law & Governance.

Recommended Reading

It is strongly recommended that Officers and Chief Officers read the following documents in conjunction with these Rules and essential to read where a procurement is high risk or high value. These are available on the intranet and offer further guidance:

- Financial Procedure Rules.
- The Council's Procurement Best Practice Guide.
- The Public Contract Regulations 2015.

1.11 Summary of thresholds

The current OJEU (Official Journal of the European Union) thresholds can be found by clicking on the link below:

<https://www.ojec.com/thresholds.aspx>

The Corporate Procurement Team (CPT) will provide assistance on all requirements however it is mandatory for the Corporate Procurement Team to be engaged with for all projected procurements of £25,000 and above.

The table below indicates the procurement rule dependant on Contract Value.

Value of Works/Supplies	Means of Advertising	Requirement	Approval to Tender/award
Less than £500	Not Applicable	Verbal quotation is sufficient, with a written record kept for 24 months	Not required by CPT
More than £500 but does not exceed £25k	No formal advert required but Corporate Procurement can assist if required	Three written quotations to be obtained and records retained for 24 months.	Officers must seek written approval from Senior Managers/Budget Holders prior to placing any orders. CPT must be notified of all contracts awarded over £5000 to ensure that they are published on the Council's contract register.
More than £25k and up to £100k	Must be advertised via the E-Tendering Portal.	Where possible at least three written quotations to be obtained via the e-tendering portal. The exception to this is if the Council is calling off from a framework where the rules of the framework will be adhered too.	Officers must complete a Report of Officers Decision Document which must be signed off by relevant approved authority

Over £100k up to £500k	Must be advertised via the E-Tendering Portal. If over the threshold for OJEU then an advert will automatically be published to satisfy those criteria	Where possible at least 3 tender returns to be obtained via the e-tendering portal unless calling off from a framework where the rules of the framework will be adhered to.	Officers must seek approval by the relevant approved authority in accordance with the Procurement and Financial Scheme of Delegation, contained in the Executive Scheme of Delegation, For tenders at this value, Officers must follow the Procurement Approach process. http://staffintranet/lqss/procurement/new-governance-process-for-100k-500k-procurement
Over £500k	Must be advertised via the E-Tendering Portal. If over the threshold for OJEU then an advert will automatically be published to satisfy those criteria	Where possible at least 3 tender returns to be obtained via the e-tendering portal unless calling off from a framework where the rules of the framework will be adhered to.	Officers must seek approval to commence tender and approval to award contract from either Cabinet or Cabinet Member (Delegated Decision) as appropriate.

If the lowest Quotation/ Tender obtained exceed the threshold applicable to the procedure selected, the Officer must consult with the Corporate Procurement Team for approval to proceed or restart the procurement.

2 Roles and Responsibilities

- 2.1 Directors are responsible for all contracts tendered and let under their control. They should ensure sufficient oversight and governance is in place to satisfy themselves of compliance with these rules.
- 2.2 Directors must ensure that procurement is undertaken by authorised Officers who can demonstrate knowledge and understanding of these Rules and skills appropriate to the task and in particular :
 - 2.2.1 ensure that their staff comply with these Rules;
 - 2.2.2 keep registers of contracts completed by signature, rather than by Council's seal and arrange their safe keeping;
 - 2.2.3 Maintain records of all waivers or exemptions of these Rules, and make these available when required; and
 - 2.2.4 use the Council's suite of standard contracts and clauses unless the Director -Law and Governance has authorised otherwise; and
- 2.3 Any Officers undertaking these duties must:
 - 2.3.1 act only under proper authority granted under the Leader's Scheme of Delegation or Cabinet resolution

- 2.3.2 comply with the processes set out in the Constitution;
- 2.3.3 have adequate budgetary provision and authority
- 2.3.4 apply the MK Approach (the Council's project management standard) to each revenue procurement in excess of £100,000 pa and £10,000 for capital.
- 2.3.5 have regard to the guidance in the Procurement Handbook, and ensure Value for Money
- 2.3.6 check whether a suitable corporate contract or other such externally let contract or framework agreement exists before seeking to let another contract;
- 2.3.7 keep the records of all quotation and tender documentation and contracts, including those documents relating to unsuccessful bids and quotes, for a period of 6 years from the expiry or termination of a contract;
- 2.3.8 take all necessary legal, financial and professional advice; and
- 2.3.9 Ensure that performance indicators and contract monitoring arrangements are built into every contract awarded.
- 2.3.10 The Officer responsible for the contracting activity must comply with these Rules and any UK legislation; failure to do so could result in disciplinary action and/or potential court legal proceedings. It is strongly recommended that they seek advice from the Corporate Procurement Team before proceeding. The Corporate Procurement Team also offer training available on the Organisational Workforce Development pages of the Council's intranet.
- 2.3.11 Officers must take account of all necessary legal, financial, procurement and any technical advice.
- 2.4 When any employee either of the Council or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain HR and legal advice before proceeding with inviting Tenders or Quotations.
- 2.5 The Head of Strategic Procurement shall :
 - 2.5.1 hold electronic copies of all contracts and acceptance letters entered into by the Council that were let using the Council's E-tendering system;
 - 2.5.2 ensure that regular training is offered to external stakeholders and internal procurers in relation to procurement processes and the Council's E-tendering system;
 - 2.5.3 ensure that the E-tendering system provides an effective public register of current contracts and upcoming opportunities; and
 - 2.5.4 ensure that appropriate support is given by Corporate Procurement to Officers undertaking activity under these rules.
- 2.6 All contracts (both procurement and disposals) must:
 - 2.6.1 achieve Best Value for public money spent;

- 2.6.2 be consistent with the highest standards of integrity;
- 2.6.3 ensure fairness in allocating public contracts;
- 2.6.4 comply with all legal requirements;
- 2.6.5 allow sufficient time for suppliers to prepare detailed and quality tenders and for any clarification to be managed effectively;
- 2.6.6 publish and apply objective evaluation criteria;
- 2.6.7 support the Council's corporate and departmental aims and policies; and
- 2.6.8 comply with the Procurement Strategic Plan
- 2.6.9 have an appropriate level of contract monitoring to ensure that the works, goods and services are being delivered as specified within the tendered price.

3 Defining the need

- 3.1 Under Best Value legislation the options for the delivery of the required supplies, services or works must be considered. The options are:
 - 3.1.1 not buying the supplies or services or having the works done at all;
 - 3.1.2 provision of the supplies, services or works internally by the Council;
 - 3.1.3 providing the supplies, or services in partnership with an existing partner / contractor where that contract permits;
 - 3.1.4 by commissioning jointly with another public contracting authority, where this aligns with our corporate objectives and provides Best Value;
 - 3.1.5 shared service delivery with another public contracting Authority, where this aligns with our corporate objectives and provides Best Value;
 - 3.1.6 procuring a third party service provider to provide the ongoing supplies, services or works
 - 3.1.7 consider whether appropriate and affordable Social Value considerations can be built into the specification (see section 5 and the handbook for further information);
 - 3.1.8 consider whether the requirements can be broken down to allow competition from smaller suppliers, whilst remaining compliant with the relevant UK and EU legislation.
 - 3.1.9 consider the overall shape and size of the requirement in relation to the market available to deliver in order to determine the best sized contract to tender. Consideration should be supported by evidence on the regional supply chain and best practise.
- 3.2 Competition is presumed to provide evidence of Best Value where a set of works to be procured, particularly capital works, may be reasonably packaged as a contract for which there is an existing or primed marketplace. Where such works are not put to the market but provided by the Council or transferred under existing contracts, other evidence must be obtained to demonstrate Best Value and provided to the Head of Strategic Procurement.
- 3.3 Where procurement is intended to take place:

- 3.3.1 the size, scope and specification of the supplies, services or works required must be decided in advance of the procurement process and must avoid over specification of requirements.
- 3.3.2 the supplies, services or works required must be clearly and carefully identified and specified, together with the terms for payments and any other terms and conditions.
- 3.3.3 the duration of the contract must be defined that will provide the most economically advantageous outcome for the Council and not to avoid or delay the requirement to conduct a subsequent future procurement process;
- 3.3.4 the estimated total cost must be established at the start of the procurement process. The estimated total cost is the whole contract value aggregated over the term of the contract period, or over a term of four years where no term is specified (i.e. not just annual contract cost).
- 3.3.5 a realistic project plan must be drafted to allow sufficient time for the wider market to become aware of the opportunity and sufficient suppliers to prepare and submit tenders to maximise the opportunity for value for money to be achieved.
- 3.4 Approval to commence a procurement process must be obtained in accordance with the Leader's Scheme of Delegation and reported in the Forward Plan where it involves Key Decision
- 3.5 Approval to commence all capital procurements with an estimated total cost in excess of £ 20,000 shall be submitted to the Place Portfolio Board for approval prior to approval by Officers or Cabinet to commence tender
- 3.6 Revenue procurements in excess of £100,000 shall be subject to the project controls established in MK Approach. Where a procurement is part of an existing project or programme already managed via MK Approach that shall suffice.
- 3.7 The size, scope, term and specification of the goods, services or works required must be decided in advance of the procurement process commencing.
- 3.8 The Officer must define the duration of the contract that will provide the most economically advantageous outcome for the Council. This decision must be made in advance of the procurement process.

4 Pre-tender market research and consultation

- 4.1 The Officer responsible for the procurement must ensure that sufficient time is programmed to allow effective market research, development of fit for purpose specification and MEAT criteria and the proper completion of tender processes.
- 4.2 Potential tenderers may be consulted prior to an issue of the invitation to tender by holding market engagement sessions to provide advance notice to the market and to consult in general terms about the nature, level and standard of the contract packaging and other relevant matters, provided this does not prejudice any potential tenderer. Such sessions may also be held to research the current market offering especially where innovation and change is common.
- 4.3 Technical advice must not be sought or accepted on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial

interest in them, if this may prejudice the equal treatment of all potential Candidates or distort competition.

- 4.4 Pre-tender consultation with service users, their advocates and other future beneficiaries on what is being procured is allowable and is considered best practice to ensure that the specification correctly addresses needs. Service users should also be consulted on the performance measures and engaged in contract management arrangements wherever practicable.
- 4.5 In considering or undertaking any of these actions, the Officer responsible should seek advice from the Corporate Procurement Team and Legal Services.

5 Public Services (Social Value) Act 2012

- 5.1 This Act of Parliament requires public authorities to have regard to economic, social and environmental well - being in connection with public service contracts; and for connected purposes.
- 5.2 Officers must consider the following **before** starting the procurement process:
 - 5.2.1 How what is proposed to be procured might improve the economic, social and environmental well-being of the Council and how the procurement might be structured to deliver that improvement;
 - 5.2.2 When considering this potential improvement, Officers must only take into account what is relevant to that procurement and whether or not it is proportionate to do something;
 - 5.2.3 Officers **must** consider whether to do any consultation as part of its thinking about whether improvements could be made; and
 - 5.2.4 Compliance with the Act is not negated if Officers delay the procurement so much so that to comply would not be possible in the time given.
- 5.3 Officers must consult Corporate Procurement and Legal Services for advice on specifying requirements under Social Value and how to evaluate tenders.
<http://staffintranet/lgss/procurement/social-value>

6 Quotation or Tender Procedures

- 6.1 Where the Estimated Total Cost is less than £500, a verbal quotation is sufficient, with details kept locally for a 24 month period.
- 6.2 Where the Estimated Total Cost is more than £500 but does not exceed £25,000, at least three (3) written quotations shall be obtained and the details kept for 24 months. CPT must be notified of all contracts awarded over £5000 to ensure that they are published on the Council's Contract Register.
- 6.3 Where the Estimated Total Cost is between £25,000 and £100,000, at least three (3) written quotations (Invitation to Quote) must be obtained via the E-tendering system and retained with all other financial documentation.
- 6.4 Where the Estimated Total Cost exceeds £100,000 the Officer will

- 6.4.1 liaise with the Corporate Procurement team and complete a tender request form with all required information, including budget figures and validation from finance colleagues;
- 6.4.2 consult Legal Services in advance as to the level of their involvement needed;
- 6.4.3 for all tenders and contracts over £100,000 up to £500,000 a procurement approach report must be completed and published at least 5 Working days before tender publication. For all tenders and contracts with a value above £500,000, notify Democratic Services and place entry on the Forward Plan for Cabinet decision or Delegated Decision to tender and a separate line for award, this includes extensions or variations to contract
- 6.4.4 advertise the tendering process;
- 6.4.5 manage the procurement process consistent with the MK Approach of project management.
- 6.4.6 undertake a procurement process to obtain, where possible, at least three (3) formal competitive tenders via E-tendering system unless undertaking a call off from a framework where the framework rules will be adhered too. The Head of Strategic Procurement to agree where this is not possible due to market conditions and an Officer can produce evidence to support this;
- 6.4.7 tender in a form consistent with these Rules;
- 6.4.8 seek the approval to tender and award from the relevant Director for all tenders up to a value of £500,000
- 6.4.9 seek the approval to tender and award from Delegated Decision or Cabinet for all tenders above £500,000 in value; and
- 6.4.10 enter into signed contract based on the Council's standard terms and conditions for supply or services, supplies or works, where such contract has been awarded by Cabinet or other such nominated Committee or Officers in accordance with the scheme of delegation.

7 Framework Agreements

- 7.1 The term of a Framework Agreement must not exceed four years. A Framework Agreement may be entered into with one provider. Where an agreement is concluded with several organisations, there must be at least three in number, unless agreed by Legal Services and the Head of Strategic Procurement. Any use of a Framework agreement must comply with the Public Contract Regulations and abide by national best practice.
- 7.2 Any Officer using an externally let Framework Agreement must ensure that Procurement and Legal Services have approved the procurement and contract details both for the overarching agreement and any subsequent contract derived from the framework before progressing to use the framework.
- 7.3 Any Officer intending to carry out a mini-competition under a Framework Agreement must ensure that their requirement is met by the specification of that framework, if more than 10% of a requirement does not fall under the framework scope then a full tender exercise must be carried out; if less than 10% then agreement from the Corporate Procurement Team is required for validation.

- 7.4 Externally let framework agreements let on a national or regional basis may provide value for money, especially in relation to volume supplies and goods. However Officers must consider the Social Value considerations when determining whether such a framework meets the wider Council objectives, especially in relation to the delivery of services and works.
- 7.5 Framework Agreements let by Officer of Milton Keynes should always allow for a mini competition amongst suppliers on the framework, and the number of suppliers on the framework must be three or more. This requirement can only be waived with the express agreement of the Head of Strategic Procurement.
- 7.6 All frameworks will be managed to ensure that the maximum number of bids is received on as many occasions as possible.
- 7.7 Contracts based on Framework Agreements may be awarded by either:
- 7.7.1 applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without re-opening competition; or
 - 7.7.2 where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - a. inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders;
 - b. fixing a time limit which is sufficiently long to allow Tenders for each specific Contract to be submitted and considered;
 - c. taking into account factors such as the complexity of the subject of the contract;
 - d. evaluating tenders using MEAT criteria that reflect those outlined in the original Framework Agreement and that also related to the precise nature of the requirement.
- 7.8 Setting up a Dynamic Purchasing System (DPS)
- 7.8.1 The Public Contract Regulations 2015 stipulate that Contracting Authorities shall indicate the period of validity of the DPS in the call for competition. There is no maximum term for a DPS (unlike with a Framework Agreement). Approval for a DPS for longer than four years must be sought in line with Rule 2.4.
 - 7.8.2 In order to procure under a dynamic purchasing system, the rules of the open procedure must be followed. The default position for choosing a provider under a Framework Agreement should be a mini-competition. Where a mini-competition mechanism is not used this must be approved by the Corporate procurement team. The minimum time limit for receipt of tenders (under mini competition) shall be at least 10 days from the date on which the invitation to tender is sent, unless otherwise agreed with the Corporate procurement team.
 - 7.8.3 The DPS shall be operated as a completely electronic process, and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. All the candidates

satisfying the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited.

- 7.8.4 It is the Officer's responsibility to carry out due diligence on DPS providers and conduct mini competitions within the DPS (as per the DPS agreement terms) from agreement start date until expiry.

8 Legal Advice

- 8.1 For all contracts exceeding £100,000 Estimated Total Cost, Officers must obtain legal advice at the earliest stage of the procurement process to determine the level of legal engagement needed on the process.
- 8.2 Officers must use the standard templates for legal terms for supplies, services, ICT and consultants available from the Legal Services section of the staff portal.
- 8.3 Officers shall obtain legal advice for all contracts (regardless of value) if it involves all or any of the following:
- a. significant change(s) to a previous service, or provision of a new service for the Council;
 - b. the potential transfer of Council employees to a contractor;
 - c. the use or development of Council land or premises;
- 8.4 Officers shall obtain legal advice, for termination of contracts or expiry of contracts which could potentially trigger a potential transfer of a third party employee or asset.
- 8.5 If any Officer is asked to issue a certificate under the Local Authorities (Contracts) Regulations 1997 they must immediately report the situation to the Director-Law & Governance. Any such certificate must be approved by the Director - Law & Governance and also signed by the S151 Officer.
- 8.6 The Client Officer shall obtain the advice of Director- Law & Governance:
- a. where the Estimated Total Cost of the contract exceeds £100,000
 - b. for all leasing arrangements;
 - c. where the Officer is proposing to use the contractor's own terms and conditions; and
 - d. for the purchase of application software of an aggregate value of £25,000 or more.

9 Selection of Tendering Procedure

- 9.1 Subject to the provisions of Part II of the Local Government Act 1988, as well as of the Public Contracts Regulations 2015, the procedures below will be used in the procurement of a services, works or supplies contract:
- a. The Open Procedure, or
 - b. The Restricted Procedure.
 - c. Competitive Procedure with Negotiation
 - d. Competitive Dialogue
 - e. Innovation Partnership

- 9.2 Where procurement is particularly complex, the Officer must seek advice from the Legal Services and Corporate Procurement Team as to whether a procedure other than the Open Procedure or Restricted Procedure may be more appropriate.
- 9.3 For services falling under the Light Touch Regime (LTR) the procedures set out in rule 9.1 above may be used with modification as required or other procedures other than those set out in Rule 9.1 may be used subject to compliance with the Public Contracts Regulations 2015;
- 9.4 Where (b) is selected then Officers shall work with Finance, Procurement and Legal Services to ensure that the standard Prequalification Questionnaire (PQQ) template is adapted for use and that the thresholds set within are proportionate to the requirement.
- 9.5 The Officer must not seek to procure any goods, services or works if the requirement can be satisfied by calling off using an existing Corporate contract.
- 9.6 All goods, services and works with a procurement Total Value in excess of the Public Contract Regulation 2015 threshold are enforced by Public Contracts Regulations 2015, which lay down strict processes for advertising, timetabling and supplier selection. The latest thresholds and regulations can be found at the following site <https://www.ojec.com/Thresholds.aspx>. These regulations take precedence over these Rules or any other Council rules and carry potentially heavy penalties for non-compliance. Officers must comply with the detail and principles of the Directives at all times.

10 Tendering Procedure

- 10.1 Tenders over £25,000 shall be administered by the Corporate Procurement Team using the E-tendering system.
- 10.2 No tender or quotation received after the latest time specified for receipt shall be accepted unless it can be demonstrated that the late submission was caused by a fault in the E-tendering system.
- 10.3 All Invitations to Tender shall include the following:
- a. a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
 - b. a requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
 - c. a requirement for tenderers to fully complete and sign all Tender documents including a Form of Tender and certificates relating to canvassing/lobbying and non-collusion.
 - d. notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderers' expense.
 - e. a description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and in descending order of importance.
 - f. a full breakdown of the MEAT criteria and any sub criteria to be applied to all tenders and the way in which clarification will be managed;

- g. the method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

- 10.4 The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.
- 10.5 Save for commercially confidential information, all Candidates invited to Tender or to submit a Quotation must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis. Tenderers should be notified at the outset of how any commercially confidential information will be dealt with and the rules of transparency, fairness and equal treatment of bidders must be adhered to when dealing with information which is considered to be commercially confidential.

11 Advertising Requirements

- 11.1 All contract opportunities above £25,000 in value must be advertised and run via the Council's E-tendering system.
- 11.2 All contract opportunities above £100,000 shall additionally be advertised on any other appropriate websites and/or in relevant trade journals to increase competition, giving at least 14 days public notice. Where the Estimated Total Cost exceeds the EU Threshold then the contract shall be advertised in accordance with the Public Contracts Regulations 2015.
- 11.3 All contracts between £100,000 and EU Threshold shall be advertised on the E-tendering system and wherever practicable a Meet-the-Buyer Day or other wide market engagement session shall be held to warm the market and seek feedback on our proposals **before** the formal commencement of the tender process.
- 11.4 For all contracts below the EU Threshold including below threshold contracts that fall under the Light Touch Regime (LTR), Officers shall consider potential European interest in the provision of goods, works or services. If the Relevant Contract could be of potential interest for economic operators within the European Union, the relevant contract should be advertised in the Official Journal of the European Union after seeking advice from Corporate Procurement. An award notice must also be published in the Council's Procurement Advertising portal at the end of the procurement.

12 Selection Criteria, Publication and Award of Contracts

- 12.1 Approval shall be sought from the relevant Officer, Cabinet or Cabinet Member or any other relevant body or identified process, in compliance with the Leader's Financial Scheme of Delegation before
 - a. issuing an invitation to tender; and
 - b. award of contract of contract

For all tenders and contracts above £100,000 to £500,000, approval will be by the relevant Officer, in accordance with the Leader's Scheme of Delegation, and for all tenders and contracts above £500,000 approval will be by Cabinet or Cabinet Member as appropriate.
- 12.2 For procurement with an Estimated Total Cost of £100,000 or above the most economically advantageous tender (MEAT) shall be selected. Guidance on the

- use of MEAT and appropriate MEAT criterion is set out in the Procurement Handbook.
- 12.3 For procurement with an estimated total value between £25,000 to £100,000, the Quotation process via the E-tendering system must be used and the standard templates for ITQ, evaluation criteria and business evaluation must be used.
- 12.4 Award of contract for sums between £25,000 and £100,000 in value must be done via the E-tendering system and the appropriate authorisation to award provided in writing by the head of service and the Director.
- 12.5 The Client Officer shall determine the appropriate award criteria in advance of the publication of the contract notice or notice on E-tendering system. Appropriate details of the award criteria shall be notified to those tenderers participating in the procurement process, in advance of their tender or quotation submission.
- 12.6 The Client Officer, with advice from Corporate Procurement, shall ensure that the evaluation criteria (MEAT) properly include the evaluation of Social Benefits/Value and Quality factors to differentiate between bids. Such factors shall be clearly explained within all documentation.
- 12.7 In the event of using award criteria for selection of successful tenderer (for example in using the Restricted Procedure), the Officer shall ensure that they do not ask the same questions in the award criteria that have already been asked as part of the selection criteria.
- 12.8 The S151 Officer, in consultation with the relevant Cabinet member, will be required to approve where the price proportion of MEAT is less than 40%.
- 12.9 The client Officer may set a minimum quality threshold, below which a tender cannot be awarded the contract.
- 12.10 The Client Officer shall assess (using the Council's risk system – GRACE) the risks within each bid and shall then maintain a Risk Register entry for the successful bid to assist Contract Management.
- 12.11 The appropriate Director (with the agreement of the Head of Strategic Procurement and subject to taking legal advice) may permit a Tenderer to correct an error or omission that, in the opinion of the Director is an obvious error. All such corrections shall be formally recorded.
- 12.12 Only authorised Officers (as per the Leader's Scheme of Delegation) with the requisite delegated authority may award a contract. Any contract exceeding the budget provided must submit a decision to award as set out in 12.13 and 12.14 below:
- 12.13 If exceeding the budget by less than 10% the decision to award
- a. shall be submitted to the Place Programme Board and approval shall only be given if the relevant Officers have identified (and reported to the S151 Officer) compensating savings.
 - b. shall get the approval of Section 151 Officer if compensating savings have not been identified'
- 12.14 If exceeding the budget by more than 10% the
- a. approval of Section 151 Officer shall be obtained where the value of the contract is up to £500,000 and approval of Cabinet will be obtained where the value of the contract is over £500,000 before

awarding the contract.

b. shall require the funding of such overspend to be clearly identified.

12.15 All contracts awarded must be reported to the Corporate Procurement Team.

13 Notification of Unsuccessful Tenderers

- 13.1 Following contract award all unsuccessful tenderers will be notified by the E-tendering team by Corporate Procurement in writing, upon instruction from the relevant Officer responsible for the procurement. The relevant Officer will provide a completed unsuccessful letter and a detailed breakdown showing the relative characteristics and merits of the winning bid and the comparative scoring of the same compared to their bid.
- 13.2 Unsuccessful bidders will be offered written feedback where the value of the contract exceeds £25,000 and face-to-face feedback may be offered where determined as appropriate with legal advice as necessary.
- 13.3 All OJEU procurement projects will include a lessons learnt stage, where all bidders are asked for their feedback on the procurement they have participated in; this will be undertaken via the E-tendering system by the client Officer.
- 13.4 All those suppliers who failed to submit a bid, following invitation to tender at the SQ stage must be asked what their reasons were for not submitting. A summary of this information must be provided to Councillors, if requested, or the relevant Officer, as appropriate as part of the award of contract report. Corporate Procurement will retain information in order to enhance the procurement process.
- 13.5 If there are questions raised/informal challenges following the end of call in and before the award of the contract, a full review of the relevant part of the procurement exercise must be done by the Head of Service and relevant Director in conjunction with support from Legal Services and Corporate Procurement Team. The result of this review and the Council's final decision on the matter must be communicated to the respondent in a timely fashion using the E-tendering system.
- 13.6 With regard to paragraph 13.5, the decision to proceed to award of contract must be preceded by a full risk assessment of any likely further action, balanced against the requirement for business continuity.
- 13.7 For the avoidance of doubt, the EU Remedies Directive only applies to procurement required to be undertaken in accordance with the Public Contract Regulations 2015.
- 13.8 Officers must notify immediately their Director, Legal Services, the Corporate Procurement Team if there is a likelihood of a formal legal challenge to the award of contract. This should be before a legal challenge is issued to the Council.
- 13.9 If there is a formal legal challenge to the award of contract following a full OJEU procurement exercise then this must be managed by the relevant Director in conjunction with Legal Services and the Head of Strategic Procurement.
- 13.10 Officers should consult Legal Services and Procurement immediately where a non-EU procurement is subject to a formal legal challenge; note that there is no recourse under the Remedies Directive but a Court may make a judgement on wider general principles.

14 Execution

- 14.1 Every contract over a value of £100,000 shall be executed and delivered as a deed under the seals of the parties. If the contractor is unable to execute a contract under seal, it may execute by the signatures of two directors or the signature of 1 director and that of its company secretary (if it has one). The contractor may also execute by the signature of 1 director in the presence of a witness. Legal advice should be sought as appropriate.
- 14.2 Any other contract shall be required to be executed and delivered as a deed by the parties at the discretion of the Director -Law & Governance.
- 14.3 For all Relevant contracts with a value in excess £25,000 Officers shall use the standard contract terms and conditions issued by Legal Service unless such variation is agreed by the Director -Law & Governance.

15 Contracts Register

- 15.1 Directors must inform the Head of Strategic Procurement of any contracts awarded in excess of £25,000
- 15.2 The Head of Strategic Procurement must maintain a register of all approved and current contracts and framework agreements where the Estimated total Value is £25,000 or over. The register should be published on the Council website.
- 15.3 Directors must maintain a register, using the template provided by the Head of Strategic Procurement, of all current contracts where the value is less than £25,000.
- 15.4 The Corporate Procurement Team will verify the accuracy of the Contracts Register with Directors at least every 6 months. An up-to-date register must be available to the Corporate Procurement Team on request and formally issued to the Head of Strategic Procurement by 31 March every year.

16 Contents of Contracts

- 16.1 All contracts in excess of £100,000 shall be in writing and be based upon the standard suite of legal documents for supplies, services, consultants and ICT (or other such professional terms in use, such as JCT,ICE,NEC3 etc.) and shall document:
- a. A technical description of the goods, works and services to be supplied including delivery specifications, in sufficient detail to demonstrate that the required quality has or has not been achieved.
 - b. The requirement for compliance with the appropriate European specification or where no European specification exists, the appropriate British technical specification.
 - c. The price to be paid or the rates at which the price is to be calculated, any milestones for payments, a statement of discounts or other deductions and if prices are not fixed an appropriate price fluctuation clause by reference to a published index if the term exceeds 12 months.
 - d. The timescales within which the outputs / outcomes are to be completed.
 - e. A set of key performance indicators with the appropriate arrangements for increasing targets over the course of the contract

- f. An agreed process for contract management and escalation where performance is not meeting targets.

16.2 For all contracts over the EU Threshold value, for Services and Supplies and £250K for works contracts, Officers will include remedies for non-performance as follows, unless it is agreed with Strategic Finance in conjunction with the Head of Risk management and Head of Strategic Procurement that they are not appropriate: -

- a. Liquidated damages, other financial deductions, claw back and termination. This shall include liquidated damages, or other financial deductions, to be paid by or made to any supplier in respect of any delay in performing or completing such work or services.
- b. Liquidated damages (and all other non-performance remedies) will be recovered robustly and recorded as a debt owed to the Council.
- c. The write off of any non-performance remedy including liquidated damages above £500 must be authorised by the Director under advisement of the Head of Strategic Procurement and Strategic Finance.

16.3 All contracts will contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the relevant theft, false accounting, money laundering or bribery acts

16.4 All contracts shall contain clauses that ensures adherence to those relevant Council policies e.g. (without limitation) Anti-Fraud & Corruption, Data Protection, Safeguarding etc.

16.5 In the event of any request to sub-contract or assign contract, in part or in whole, the Officer shall seek the guidance from the Director-Law & Governance and the Head of Strategic Procurement.

16.6 All contracts shall contain clauses that the Council may terminate on the grounds of:

- a. Insolvency of contractor (including insolvency of parent company)
- b. Contractor applying for voluntary arrangement with its creditors
- c. Allegation of offences under the Prevention of Corruption Acts
- d. Collusive tendering / bidding
- e. Breach of contract conditions

17 Variations and Extensions

17.1 As well as complying with any statutory restrictions and compliance with these Rules, Directors may only authorise an extension to an existing contract if each of the following conditions are met: -

- a an extension for the particular period is provided for within the terms and conditions of the contract
- b there has been satisfactory performance by the supplier; and

c in accordance with the limits of delegated authority.

- 17.2 Subject to any statutory restrictions and compliance with these Rules, Directors may, with the approval of the Head of Strategic Procurement, authorise any other variation to an existing contract, and if relevant a consequent change in price, determined in accordance with the contract terms where the Estimated Total Cost of the variation is less than £50,000 or 15% of the original annual contract value (whichever is the lesser) Legal advice must always be sought to ensure compliance with the Public Contracts Regulations 2015.
- 17.3 All extensions and variations to an existing contract must be checked to confirm that they represent Best Value and they are not being instigated solely to avoid or delay the requirement to conduct procurement.
- 17.4 All extensions and variations to a contract awarded under the EU Procurement Regulations must be authorised by the Head of Strategic Procurement and Director(Law and Governance).
- 17.5 All extensions and variations must be documented and signed by an authorised signatory on behalf of the Council and counter-signed by the supplier.
- 17.6 All extensions of contract over £100,000 in value must be approved by the relevant Officer or Cabinet, as appropriate.
- 17.7 Where a request is received from a contractor to assign or novate a contract, or where an Officer intends to novate or assign a contract, advice must be sought from legal and financial services to ensure the proposed assignment or novation is compliant with the requirements of the Public Contracts Regulations 2015 and meets the financial requirements. This includes instances of where the proposal to novate or assign is as a result of an event of change of control, insolvency, bankruptcy, receivership or liquidation the Officer.

18 Performance Bonds and Parent Company Indemnity

- 18.1 The Procurement Handbook shall determine the circumstances under which a contractor shall be required to furnish a performance bond, guarantee or other appropriate risk management approach. Only the approaches provided in the Procurement Handbook or those approved by the Section 151 Officer and the Director - Law & Governance can be utilised.
- 18.2 The Officer must obtain a parent company guarantee when the successful bidder is a subsidiary of a parent company and:
- a. the Estimated Total Cost exceeds £250,000, or
 - b. award is based on evaluation of the parent company, or
 - c. there is some concern about the stability of the bidder.
- 18.3 The parent company guarantee will be subject to such tests and validation as required for the value of the contract as decided by Strategic Finance.
- 18.4 The Officer must consult the Director - Law & Governance and Director – Finance and Resources about whether a performance bond is needed:
- a. where the Estimated Total Cost exceeds £1,000,000, or
 - b. where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and/or there is

concern about the stability of the Candidate.

18A Social Impact Bonds (SIBs)

Social Impact Bonds (SIBs) are a commissioning tool that can enable organisations to deliver outcome contracts and make funding for services conditional on achieving results. Social Investors pay for the project at the start, and then receive payments based on the results achieved by the project. The Officer should discuss with the Section 151 Officer at the earliest possibility if they wish to use a SIB. A business case (Feasibility Study) would need to be conducted by the Officer, to ensure a SIB is a financially viable option. Approval of Section 151 Officer must be given to use a SIB.

19 Disclosures of interest

- 19.1 Staff must give immediate written notice to their Director or to the Chief Executive Officer (as appropriate) where it comes to their knowledge that they have a potential conflict of interest with any MKC contract. Staff are reminded at every appraisal to record such interests but must highlight potential conflicts of interest immediately they become aware of them. Failure to do so may result in disciplinary proceedings and/or criminal prosecution.
- 19.2 Councillors must declare any Disclosable Pecuniary Interest or other personal interest in any letting or management of contracts, and must act accordingly as defined or required by the Council's Members' Code of Conduct. Failure to do so may result in a finding of a breach of the Code or a criminal offence.
- 19.3 Persons working on behalf of the Council or invited representatives of bodies other than the Council (including community representatives) who fulfil a role that may give them influence over any aspect of the Council's procurement process or access to associated commercially sensitive information must disclose in writing to the relevant Director or the Chief Executive Officer any direct or indirect interests that may conflict in any way with the interests of the Council or the nature of the role or work to which they have been appointed by the Council. Failure to do so may result in a termination of the relevant agreement or appropriate action against the individual concerned. This disclosure must be noted in any report before a committee of the Council.
- 19.4 All parties, internal or external third parties, engaged with a procurement project will be issued with the Council's paper on conflict of interest to ensure full understanding of the requirement to notify potential conflicts and the steps needed to rectify this.
- 19.5 Relevant Chief Officers will ensure that a Register of Interests record is maintained for all Officers (including consultants) involved in the letting and management of contracts.
- 19.6 Chief Officers will keep completed staff disclosures in accordance with the Council's Code of Conduct for Employees. The Client Officer shall keep any contracted staff, consultants' or other bodies' representatives' declarations on the contract file.
- 19.7 Where potential conflict of interest is identified, the relevant Director or Director shall liaise with the Director - Law & Governance and Audit & Risk Management to agree and formally record the action to be taken.
- 19.8 No gifts or hospitality should be accepted from any bidders to any contract being let by the Council. Acceptance of gifts or hospitality may be a disciplinary

offence. Every Officer (whether of the Council or Procurement Services or Property Services) managing a procurement, letting a contract or managing a contract for the Council must inform the Head of Strategic Procurement of any offers of gifts or hospitality. Reference should be made to the Council's policy on Gifts and Hospitality in place at such time.

20 Prevention of Corruption

- 20.1 The Client Officer must comply with the Council's Code of Conduct for Employees and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is also a criminal offence which may lead to prosecution.
- 20.2 An Officer or Councillor must disclose any offer made by an existing or bidding supplier to their Director.
- 20.3 Directors shall maintain a record of such offers, inform the Director - Law & Governance and Audit & Risk Management and agree such action as appropriate.

21 Exemption

- 21.1 In exceptional circumstances it may not be possible to comply with these Rules. Variation from these rules is permitted where:

21.1.1 Written report

A written report will be prepared by the relevant Head of Service or Director or and submitted to the Head of Strategic Procurement specifying the special circumstances justifying the exemption. Without limitation, special circumstances are where there is:

- a. an unforeseen and real risk of harm to individuals ; or
- b. excessive and significant damage to the Council's services, finances or reputation has occurred or could potentially occur.

For the avoidance of any doubt the failure to properly plan timescales to comply with Rules and / or EU Procurement Regulations is not special circumstances.

The written report will detail the specific provisions within the Rules, from which exemption is sought, reasons for seeking the exemption and how relevant risks arising from those variations will be mitigated and managed.

21.1.2 Approval

Approval to waive Rules above £100,000 will only be granted with the agreement of the S151 Officer in consultation with the relevant lead Cabinet Member following advice of the Head of Strategic Procurement and where required the Director - Law and Governance. Where the value of the waiver is below £100,000 then the lead Cabinet members shall be advised. The final decision rests with the S151 Officer.

21.2 Waivers over the Council's Key Decision Threshold

- 21.2.1 Waiver requests cannot be sought for Waivers equal to or above the Council's Key Decision threshold.
- 21.2.2 The single exception is in circumstances where a minimum of three bids cannot be obtained following a competitive procurement process (excluding a Framework Agreement etc.) and the total value is equal to or above the Key Decision threshold. Prior written approval must be obtained from the S151 Officer in consultation with the relevant lead Cabinet Member following advice of the Head of Strategic Procurement and where required the Director - Law and Governance.
- 21.2.3 The approval must be obtained prior to notifying any bidders of an intention to award. This would neither alter the Officer's requirement to notify Cabinet that it intends to procure over the key decision limit nor to seek approval to award (unless delegated earlier at Cabinet).

21.3 Repeat Waivers

- 21.3.1 In instances where a repeat waiver is requested, then the Total Value of the requested waiver will be added to previous waivers and a decision will be made which reflects the appropriate rule/ regulation relating to the total value.
- 21.3.2 Previous Cabinet papers where a Waiver has been sought through must also be included as a previous waiver and included when calculating total value of the repeat Waiver.

21.4 Retrospective Waivers

- 21.4.1 An Officer may procure goods, works or services procured in a genuine Emergency (e.g. natural disasters such as flooding or fires, immediate changes to legislation) because of a need to respond to events that were beyond the genuine control of the Council. Any Emergency procurement must be reported to the Head of the Corporate Procurement Team as soon as practical and a retrospective waiver sought. Any such contract entered into by the Council must not be for a term of more than six months. Please note that not allowing enough time to go to Tender is not an Emergency.
- 21.5 As a general rule a Waiver to any of the Rules should never be sought retrospectively but exceptions to this principle will be allowed where:
- a) It has been necessary to act urgently because of an unforeseen emergency which involves immediate risk of injury or damage or to prevent serious disruption to services.
 - b) It is necessary for an Officer in Children's Services or Adult Social Care to act immediately to secure care for any vulnerable person.

21.6 Copies of all waivers and supporting information will be retained by the relevant officer and the Corporate Procurement Team for a period of 6 years. A quarterly report of all waivers granted will be presented to Cabinet by the Head of Strategic Procurement for their information and consideration.

21.7 Council Reports

A formal report will be prepared quarterly to Cabinet. That report will set out the specific rationale for waiving the Rules and will also append a summary of the previous instances where Rules were waived.

22. Light Touch Regime (Public Contracts Regulations 2015, Regulations 74-76)

22.1 Services falling under Schedule 3 of the Public Contract Regulations (2015) are subject to a Light Touch Regime (LTR)

22.2. There is no requirement to follow the standard procurement routes set out in the Public Contracts Regulations 2015 and the tender procedure described in Paragraph 10 of these Rules.

22.3. LTR contracts must, however, follow Regulations 74 to 76 Public Contract Regulations 2015, which require that the procurement procedure used in compliance with the principles of transparency and equal treatment of economic operators regardless of the value of the contract.

22.4 Any Officer looking to procure a contract which falls under the LTR and where the OJEU threshold is met shall ensure that as a minimum, the mandatory requirements as below are followed:

- a) A contract notice or prior information notice must be published in the OJEU for the purpose of making known the intention to award a contract under the LTR. The notice must contain information on the conditions for participation; time limits for contacting the Council and the award procedure to be applied.
- b) Any procurement procedure conducted must conform with the information provided in the contract notice or prior information notice published in the OJEU
- c) Time limits imposed on suppliers for responding to adverts and tenders must be reasonable and proportionate
- d) A contract award notice must be published in the OJEU, following each individual procurement, or published as a group, within 30 days of the end of each quarter.

22.5 All relevant rules contained within these Rules including as to governance approvals and waivers apply to LTR contracts.

22.6 The Directors of Adult Social Care and Children's Services shall provide monthly reports to the relevant Cabinet Member and a quarterly report to the Cabinet detailing the nature, extent and value of any spot contracts entered into in the previous quarter.

23. State Aid

- 23.1 State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union. Note that even if the aid recipient only operates at a local level, the aid may still be considered to have the potential for the requisite market distortion.
- 23.2 Examples of state aid may include grants and loans (including funding given to charities, public authorities and other non-profit making bodies; tax breaks including enhanced capital allowances; Use or sale of a state asset for free or at less than market price.
- 23.3 Officers must consider the application of state aid to any proposals, including in procurement exercises, and must seek legal advice on a case by case basis.

24. Compliance with Regulation 84 Public Contracts Regulations 2015

- 24.1 Regulation 84(1) of the Public Contracts Regulations 2015, creates an obligation to create a report on every over-threshold public contract and framework agreement entered into, and to send a copy of this to the Cabinet Office if requested to do so.
- 24.2 Additional provisions under the Regulation also require the Council to record decisions made throughout a threshold procurement process and the reason for those decisions.
- 24.3 Officers are required to ensure that they comply with these requirements when conducting a procurement exercise and should seek advice from the Corporate Procurement Team and Legal Services if necessary.

25. Concession Contracts

- 25.1 Concession contracts grant a right to a Contractor to exploit the Council's market and payment is usually made to the contractor by third parties or partly by third parties and the Council.
- 25.2 Officers must ensure that they comply with the Concession Contracts Regulations 2016 where awarding a Concession contract.
- 25.3 Officers must also ensure that they consider cross boarder interest and publish the opportunity appropriately regardless of whether the threshold for concession contracts is met. Legal advice should be obtained as appropriate.
- 25.4 All relevant rules contained within these Rules including as to governance approvals and waivers apply to Concession contracts.

26. Contracts Reserved for Mutuals

- 26.1 For some services relating to administrative services in relation to education, healthcare and housing, health and social work services, library and other cultural services, Officers may be able to limit competition to mutual organisations. The maximum duration for such contracts is three years.
- 26.2 A mutual type organisation must meet all of the following requirements;
- The organisation's objective must be the pursuit of a public service mission linked to the services set out in the Public Contracts Regulations 2015
 - The profits of the organisation must be re-invested to achieve the mission;
 - The organisation must be employee owned or require active employee organisation;
 - The organisation must not have been awarded a contract under this process within the last three years.
- 26.3 Officers must contact the Corporate Procurement Team and seek legal advice where they wish to award a contract under this section

27. Contract Monitoring, Evaluation and Review

- 27.1 All contracts shall have a scheduled benefits realisation date where the performance of that contract against the expected outcomes shall be measured. For all contracts with a value of over £100,000 up to £500,000 the outcome of this will be reported to the relevant Director and relevant Cabinet Councillor and for all contracts with a value of over £500,000, the outcome will be reported to Cabinet.
- 27.2 All contracts which have a value higher than the EU Threshold, or which are high-risk, are to be subject to formal reviews between the Contract Manager and the supplier
- 27.3 During the life of the contract, the Officer must monitor in respect of:
- Performance
 - Compliance with specification and contract
 - Cost
 - Any Value for Money requirements
 - User satisfaction and risk management
- in accordance with the Council's Procurement Best Practice Guidance available on the intranet and in compliance with Data Protection requirements
- 27.4 All contracts that are entered into (regardless of value) should have a contract management plan completed for it. The Contract Manager (Officer) is responsible for the completion of the contract management plan and should ensure all updates/changes are included accordingly. The contract management framework should be reviewed for further information. The Corporate Procurement team will provide all further guidance on contract management when required.