



CONTRACT PROCEDURE RULES

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Introduction

These Contract Procedure Rules (the “Rules”) are part of the Council’s Constitution and must be followed whenever you are buying goods, services, or materials or for the execution of works. It also applies when you are leasing equipment, vehicles, and plant.

Project Leads are required to follow these Rules in all cases.

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. Staff must complete all Mandatory Training that is provided as a condition of their employment.

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 shall be reviewed at least every two years.

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).

Any dispute regarding the interpretation of these Rules shall be referred to the Strategic Procurement Lead/Head of Contracts and the Director - Law & Governance.

Anyone making procurement decisions should be familiar with these Rules and engage with your Service Area Procurement Leads to obtain complete guidance. Project Leads must ensure that any persons and or organisations acting on behalf of the Council fully comply with these Rules.

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.

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 MKCC Code of Conduct, and this could be a disciplinary offence. Failure to comply with these Rules could also result in legal proceedings against the Council. All Project Leads are responsible for reporting any suspected breach of these rules to the Strategic Procurement Lead/Head of Contracts, the Head of Internal Audit, or the Director- Law & Governance.

Part A – Rules and Roles for Procurement

1. Procurement Thresholds

- 1.1. The Council must undertake all of its procurement activity in line with the Public Contract Regulations (PCR) 2015 as amended.

The current Find a Tender Service (FTS) thresholds can be found by clicking on the link below:

<https://www.gov.uk/government/publications/procurement-policy-note-0921-thresholds-and-inclusion-of-vat>

The Council's internal procurement thresholds can be found in the table below and show the rules that must be followed when undertaking any procurement activity.

If the preferred supplier Quotation/Tender obtained exceeds the threshold applicable to the procurement route selected, the Project Lead must consult with the Corporate Procurement /Commissioning team for approval to proceed or restart the procurement.

2. Procurement and Grant Awards

- 2.1. A grant is a financial gift or financial contribution which can be given to an organisation or an individual. It is not intended to be paid back except where the recipient doesn't use it for the given purposes or within the given time in which case claw-back can apply. From a procurement perspective, other than the requirement for the recipient to use the grant for the given purpose and similar provisions such as use by date grants should not usually be accompanied by requirements as would be contained in a contract specification as this would constitute a contract for services and would require an appropriate procurement exercise to be conducted.
- 2.2. Where a Project Lead is considering making a grant payment to another organisation, then advice must be sought from Legal Services and Corporate Procurement or Commissioning, to confirm that the proposed transaction does not constitute a service that should be subject to procurement. If in the opinion of Legal Services, the proposed grant constitutes a service contract then these Rules must be followed. Where legal advice is that the proposed arrangement constitutes a grant, then the procedures and approvals relating to grants as set out in the Council's Financial Regulations must be followed.

3. Procurement Threshold Requirements

Total Contract Value	Requirement
Less than £5,000	<p>One written quotation is sufficient, with a written record kept for 24 months. Where a series of purchases are undertaken with the same supplier and service then the aggregate value of these should be used when applying this limit.</p> <p>The Governance approval to procure is via officer scheme of delegation and recorded on the Council's financial system.</p>
More than £5,000 but does not exceed £25k	<p>Three written quotations to be obtained and records retained for 6 years after the end of the contract period. The Council's terms and conditions must be used.</p> <p>Where 3 written quotations cannot be obtained Corporate Procurement /Commissioning will determine if appropriate to proceed.</p> <p>Where frameworks are being utilised, the rules of the framework will be followed in regard to competition and the use of frameworks own e-tendering portal will only be allowed following approval by Corporate Procurement/Commissioning. The Corporate Procurement Team/Commissioning Team must be notified of all contracts awarded over £5,000 to ensure that they are published on the Council's Contract Register and Contracts Finder. You should do this by sending a signed Report of Officers decision to corporateprocurement@milton-keynes.gov.uk for all Corporate Procurement or NSContracts@milton-keynes.gov.uk for all Commissioning projects.</p> <p>The Governance approval to procure is via relevant officer decision report and recorded on the Council's financial system.</p>
More than £25k and up to £100k	<p>Tenders must be obtained via the e-tendering portal. The opportunity will be made available to all suppliers registered on the E-Tendering portal and all measures will be carried out such as market engagement to encourage competition. The Council's terms and conditions must be used.</p> <p>Where frameworks are being utilised, the rules of the framework will be followed in regard to competition and the use of frameworks own e-tendering portal will only be allowed following approval by Corporate Procurement/Commissioning</p> <p>The Governance approval to procure is via relevant officer decision report and recorded on the Council's financial system.</p> <p>Records must be retained for 6 years after the end of the contract period.</p>

<p>Over £100k up to £500k</p>	<p>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.</p> <p>Where frameworks are being utilised, the rules of the framework will be followed in regard to competition and the use of frameworks own e-tendering portal will only be allowed following approval by Corporate Procurement/Commissioning.</p> <p>The Governance approval to procure is via the Procurement Approach set out in these Contract Procedure Rules.</p> <p>Records must be retained for 6 years after the end of the contract period.</p>
<p>Over £500k</p>	<p>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.</p> <p>Where frameworks are being utilised, the rules of the framework will be followed in regard to competition and the use of frameworks own e-tendering portal will only be allowed following approval by Corporate Procurement/Commissioning</p> <p>The Governance approval to procure is via Delegated Decision or Cabinet.</p> <p>Records must be retained for 6 years after the end of the contract period.</p>

NB: Contract value is the actual or estimated annual sum (excluding VAT) multiplied by the number of years that the contract is to be awarded for including any extension options. For example, if you propose to let a contract for 3 years with an option to extend for 2 years, for procurement purposes, the contract value will be the estimated or actual value over 5 years excluding VAT.

For only determining if a project is above the Find a Tender Service (FTS) threshold the calculation of the estimated contract value must be inclusive of VAT.

4. All Contracts

4.1. All contracts (both procurement and disposals) must:

- Apply the principle of the requirement to aim to achieve Best Value for public money spent.
- be consistent with the highest standards of integrity.
- ensure fairness and transparency in allocating public contracts.
- comply with all legal requirements.
- allow sufficient time for suppliers to prepare detailed and quality tenders and for any clarification to be managed effectively.

- publish and apply objective evaluation criteria.
- support the Council's corporate and departmental aims and policies.
- have an appropriate level of contract monitoring to ensure that the works, goods, and services are being delivered as specified within the tendered price.

4.2. Defining the need (Is a procurement required?)

The options for the delivery of the required supplies, services or works must be considered. The options include but are not limited to:

- not buying the supplies or services or having the works done at all.
- provision of the supplies, services or works internally by the Council.
- providing the supplies, or services in partnership with an existing partner / contractor where that contract permits.
- by commissioning jointly with another public contracting authority, where this aligns with our corporate objectives and provides Best Value.
- shared service delivery with another public contracting Authority, where this aligns with our corporate objectives and provides Best Value.
- procuring a third-party service provider to provide the ongoing supplies, services or works.
- consider whether appropriate and affordable Social Value considerations can be built into the specification.
- consider whether the requirements can be broken down to allow competition from smaller suppliers, whilst remaining compliant with the relevant Public Contract Regulations.
- 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.

5. Tender Process

- 5.1. Where the Estimated Total Cost is less than £5,000, a single written quotation is sufficient, with details kept locally for a 24-month period.
- 5.2. Where the Estimated Total Cost is more than £5,000 but does not exceed £25,000, at least three (3) written quotations shall be sought and the details kept for 6 years following the end of the contract.

- 5.3. The Corporate Procurement Team must be notified of all contracts awarded over £5,000 to ensure that they are published on the Council's Contract Register and Contracts Finder.

You should do this by sending a signed Report of Officers decision to:

CorporateProcurement@milton-keynes.gov.uk or NSContracts@milton-keynes.gov.uk.

- 5.4. Where the Estimated Total Cost is above £25,000, you must seek advice from the Corporate Procurement / Commissioning Team before you commence any procurement activity to confirm the approach to be adopted. Where possible at least three (3) written tenders must be obtained via the E-tendering system and retained with all other financial documentation.

- 5.5. Where the Estimated Total Cost exceeds £100,000 the Project Leads must:

- liaise with the Corporate Procurement/Commissioning team(s) and complete a tender request form with all required information, including budget figures and validation from finance colleagues.
- consult Legal Services and Finance in advance, as to the level of their involvement needed.
- for all tenders and contracts over £100,000 up to £500,000 a procurement approach report must be completed.
- 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.
- manage the procurement process consistent with the MK Approach of project management.
- Undertake a procurement where competition can be run via the Council e-tendering portal.
- tender in a form consistent with these Rules.
- seek the approval to tender and award from the relevant Director for all tenders up to a value of £500,000.
- seek the approval to tender and award from Delegated Decision or Cabinet for all tenders above £500,000 in value.
- facilitate the execution of the contract based on the Council's standard terms and conditions for supply or services, supplies or works or such other form as provided by

Legal Services, where such contract has been awarded by Cabinet or other such nominated Committee or Officers in accordance with the scheme of delegation.

6. Roles and Responsibilities

6.1. Directors

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. To assist with this the Corporate Procurement Team will make available a Dashboard of all current contracts held. Directors must ensure that this is reviewed on at least a quarterly basis, the information held is correct and complete.

6.2. Officers

Any Officer (Project Lead) undertaking these duties must:

- Proactively plan procurements for which they are responsible and to ensure that they seek at the outset the appropriate legal, finance and procurement advice to comply with these rules.
- under proper authority granted under the Leader's Scheme of Delegation or Cabinet resolution
- comply with the processes set out in the Constitution.
- have adequate budgetary provision and authority.
- 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.
- have regard to the guidance available from Corporate Procurement & Commissioning and ensure Value for Money.
- Ensure that appropriate consideration of subsidy control is given. Advice should be sought at the earliest opportunity and followed in timely fashion.
- check whether a suitable corporate contract or other such externally let contract or framework agreement exists before seeking to let another contract.
- 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.
- Ensure that internal accounting procedures are followed in the Council's financial system as set out in Financial Regulations.
- Ensure that performance indicators and contract monitoring arrangements are built into every contract awarded.

- Ensure that they obtain advice from HR and Legal Services where the tender is expected to result in a TUPE transfer either of Council employees or of a service provider to the Council.
- 6.3. Project Leads must follow all necessary Legal, Financial, Procurement, HR, and any technical advice. Where a director, or a Project Lead does not follow the advice given, then this must be raised with the Director of Law and Governance and /or Director of Finance and Resources.

6.4. Strategic Procurement Lead (Corporate Procurement Team)/Head of Contracts (Commissioning Team)

The Strategic Procurement Lead/Head of Contracts shall:

- Hold acceptance letters entered into by the Council that were let using the Council's E-tendering system.
- Ensure that regular training is offered in relation to procurement processes.
- Ensure that the E-tendering system provides an effective public register of current contracts and upcoming opportunities; and
- Ensure that appropriate support is given to Project Leads undertaking activity under these rules, including instruction on the correct procurement process, market engagement, use of Frameworks, Tender Requirements, Scoring Evaluation and Contract Award.

6.5. Legal Services Contracts, Procurement and Governance Team

The Legal Services Contracts, Procurement and Governance Team shall:

- Provide specific advice to Project Leads on areas of procurement law, contracts law as well as governance advice, subsidy control requirements, contract extensions and variations, pensions and admission agreements, TUPE undertakings, performance bonds, parent company guarantees.
- Provide advice to Project Leads when dealing with unusual issues encountered during a procurement such as late tender submissions, complex clarification issues during tender evaluation and challenges to contract award decisions.
- Provide advice on appropriate form of contract to be used.
- Ensure that appropriate legal support is given to Project Leads undertaking activity under these rules including attendance and advising at project boards as appropriate.
- Determine whether any external legal support is appropriate for a project and if required, commission and instruct such external legal advisers with appropriate oversight and engagement.

- On instructions from relevant Project Leads, prepare and issue contracts for execution by the successful contractor and the Council following tender completion, governance approval and expiry of standstill where applicable.
- Record qualifying subsidies that are granted by the Council on the National Database.

6.6. Senior Finance Managers

The Senior Finance Manager(s) shall:

- Ensure that an appropriate level of financial assessment is carried out to confirm the strength of the organisations and their ability to fulfil the contract prior to award contract.
- Ensure that appropriate finance support is given to Project Leads undertaking activity under these rules including attendance and advising at project boards as appropriate.
- Determine whether any external financial support is appropriate for a project and if required, commission and advise on such external finance advisors with appropriate oversight and engagement.
- Advise on the suitability or financial tender evaluation criteria.
- Assist with the financial evaluation of tenders.
- Advise on the commercial justification and approach to managing potential contract variations and budgetary implications.
- Determine what, if any, level of performance bond, security is required for larger or high-risk contracts based on the Directors risk assessment.
- Support officers with complex procurement issues relating to Pensions, Insurance etc.

7. Legal Advice

- 7.1. Where legal advice is referred to in these Rules, it will be for legal services to determine the level and type of legal engagement that is proportionate to the matter, including costs, length of seeking external legal advice. No external legal advice can be commissioned except via legal services.
- 7.2. Legal advice is required for any change to the Council's standard Terms and Conditions. The Council's standard terms and conditions for supplies, services, ICT, and consultancies as applicable or other form of contract as advised by Legal Services are to be utilised for all procurement activity.
- 7.3. Framework terms and conditions are to be used where the award of contract is made using a framework and any amendments to such terms or additional terms and conditions may only be made or used to the extent permitted by the terms of such framework as approved by legal. This is in order to remain compliant with procurement law.

- 7.4. Project Leads shall obtain legal advice for all contracts (regardless of value) if it involves all or any of the following:
- significant change(s) to a previous service, or provision of a new service for the Council.
 - the potential transfer of Council employees to a contractor.
 - the use or development of Council land or premises.
 - variation to contract including contract extension which are not provided for under the contract.
 - early termination to contract.
- 7.5. Project Leads 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.
- 7.6. If any Project Lead 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.
- 7.7. The Project Lead must obtain the advice of Legal Services:
- where the estimated total cost of the contract equals or exceeds £100,000.
 - for all leasing arrangements.
 - where the Project Lead is proposing to use the contractor's own terms and conditions.
 - for the purchase of application software of an aggregate value of £25,000 or more.

8. Financial Advice

- 8.1. For all contracts with an estimated value equal to or exceeding £100,000, Project Leads must obtain advice from the appropriate Senior Finance Manager at the earliest stage of the procurement process.
- 8.2. Where financial advice is referred to in these Rules, it will be for Finance to determine the level and type of finance engagement that is proportionate to the matter and the seeking of external financial advice. No external financial advice can be commissioned except via Finance.
- 8.3. Project Leads shall obtain finance advice for all contracts (regardless of value) if it involves all or any of the following:

- significant change(s) to a previous service, or provision of a new service for the Council.
 - the potential transfer of Council employees to a contractor.
 - the use or development of Council land or premises.
 - There is a need to confirm the financial strength of the successful contractor due to the level of risk in the event of contractor failure, e.g., service disruption, financial loss, reputational damage etc.
 - All contract variations which have a financial or material impact on the existing contract.
 - All contract extensions which if exercised, would increase the cost to the Authority or impact the level of risk.
 - Where a contract may require a performance bonds, parent company guarantee or specialist insurance.
 - Where the contract involves some form of asset leasing
- 8.4. Project Leads shall obtain advice from finance, for early termination of contracts or expiry of contracts which could potentially trigger a potential transfer of a third-party employee or asset.

9. Prevention of Corruption

- 9.1. All Officers 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.
- 9.2. An Officer or Councillor must disclose any offer made by an existing or bidding supplier to their Director.
- 9.3. Directors shall maintain a record of such offers, inform the Director - Law & Governance and Audit & Risk Management and agree such action as appropriate.

10. Disclosures of interest

- 10.1. Officers 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 MKCC quote/tender or contract.

- 10.2. Officers 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.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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.
- 10.6. Relevant Directors will ensure that a Register of Interests record is maintained for all Officers (including consultants) involved in the letting and management of contracts.
- 10.7. Directors will keep completed staff disclosures in accordance with the Council's Code of Conduct for Employees. The Project Lead shall keep any contracted staff, consultants, or other bodies' representatives' declarations on the contract file.
- 10.8. Where potential conflict of interest is identified, the relevant Director shall liaise with the Director - Law & Governance to agree and formally record the action to be taken.
- 10.9. No gifts or hospitality should be accepted by Officers 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.

11. Tendering Procedure

Tenders over £25,000 shall be administered by the Corporate Procurement/Commissioning Team using the E-tendering system.

- 11.1. All Invitations to tender shall include the following:
 - An invitation to tender including all relevant information.

- A specification including all relevant supporting documentation that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- A pricing schedule for completion.
- 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).
- A full breakdown of the Most Advantageous Tender (MAT) criteria and any sub criteria to be applied to all tenders including the evaluation methodology.
- A description of the award procedure including the definition of the award criteria covering quality and price.
- 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.
- Save for commercially confidential information, all suppliers invited to tender 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.

12. Late Tender /Submission

- 12.1. No tender 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 Council's E-tendering system.

13. Selection of Tendering Procedure

- 13.1. Subject to the provisions of Part II of the Local Government Act 1988, as well as of the Public Contracts Regulations 2015, the most appropriate procurement procedure should be selected to deliver best value and the objectives of the requirement.
- 13.2. Where procurement is particularly complex, the Project Lead must work with Corporate Procurement/Commissioning Team(s) and Legal to understand and agree upon the Procurement procedure to utilise.

- 13.3. For services falling under the Light Touch Regime (LTR) the appropriate procedure may be used with modification as required or other procedures may be used subject to compliance with the Public Contracts Regulations 2015.
- 13.4. Project Leads shall work with Finance, Corporate Procurement/Commissioning and Legal Services to ensure that the relevant and sufficient Supplier Selection Questionnaire (SSQ)/PAS91 template is adapted for use on all FTS procurements and that the thresholds set within are proportionate to the requirement.
- 13.5. All goods, services and works with a procurement Total Value in excess of the Public Contract Regulation 2015 threshold are regulated by Public Contracts Regulations 2015, (PCR) 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. Project Leads must comply with the detail and principles of the Regulations at all times.

14. Advertising Requirements

- 14.1. All contract opportunities above £25,000 in value must be advertised and run via the Council's E-tendering system. If using a framework, and if suitable to do so, the framework E-tendering portal may be used to run the competition. Any use of a framework E-tendering portal must comply with the Council approach to E-tendering and the PCR's.
- 14.2. Where the estimated total cost exceeds the FTS Threshold then the contract shall be advertised in accordance with the Public Contracts Regulations 2015.
- 14.3. All contracts above £100,000 should wherever practicable allow for a meet-the-buyer day or other wide market engagement sessions to warm the market and seek feedback on our proposals before the formal commencement of the tender process.

15. Selection Criteria, Publication and Award of Contracts

- 15.1. 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:
- issuing an invitation to quote/tender; and
 - awarding a contract
- 15.2. 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 Delegated Decision, Cabinet Decision, Service Director or Cabinet Member as appropriate.

- 15.3. All procurement must consider the use of the most advantageous tender (MAT) shall be selected. Guidance on the MAT criteria will be provided by Corporate Procurement/Commissioning team dependant on the requirement.
- 15.4. Corporate Procurement/Commissioning will work with the Project Lead to determine the appropriate award criteria in advance of the publication of any opportunity. Appropriate details of the award criteria are to be provided within the procurement documentation.
- 15.5. The Project Lead, with advice from Corporate Procurement/Commissioning, shall ensure that the evaluation criteria (MAT) considers the inclusion of Social Value (More for MK).
- 15.6. The Corporate Procurement/Commissioning Team must be informed of all contract awards for inclusion on the contract register.

16. Notification of Tender Outcome

- 16.1. All awards over the threshold value of £25,000 must be made in writing via the E-Tendering portal. The Corporate Procurement/Commissioning team are responsible for providing guidance and advice on the award procedure(s) with regards to feedback.
- 16.2. Feedback to unsuccessful bidders for contracts up to the relevant FTS threshold will be provided upon request.
- 16.3. For contracts about the relevant FTS threshold written feedback is mandatory for all unsuccessful bidders
- 16.4. All projects that are run within the FTS thresholds will follow the requirements of the Public Contract Regulations with respect to feedback and debriefs.
- 16.5. Corporate Procurement/Commissioning will notify the Project Lead and Legal Services if during any contract award a legal challenge is received from an unsuccessful bidder. Project Leads must otherwise notify their director and engage with Legal Services 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.
- 16.6. If there is a formal legal challenge to the award of contract, then this must be managed by the relevant Director in conjunction with Legal Services and the Strategic Procurement Lead/Head of Contracts.

Part B – Advice on Specific Contract Procurement Matters

17. Execution

- 17.1. The law prescribes formalities for a body corporate such as the Council and companies to validly execute a document as a deed. This can be by a corporate seal of the company or by prescribed signatures.
- 17.2. Where a contract is validly executed as a deed, the Council can enforce any rights and obligations that arose under the contract for up to 12 years even where the contract may have expired much earlier. This is different to a contract which is signed under hand (not as a deed) in which such rights and obligations can only be enforced for up to 6 years.
- 17.3. Every Council contract with a value of £100,000 and above 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 one director in the presence of a witness. Legal advice should be sought as appropriate.
- 17.4. Construction contracts with a value below £100,000 may be executed as a deed where the nature of the works is such that it would be prudent to have a longer liability period exceeding six years.
- 17.5. 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.
- 17.6. Electronic execution by Contractors is permissible provided that the execution is validly done and witnessed (where witnessing is a requirement). This does not preclude the use of wet ink signatures where it is the agreed form of execution or where it is a requirement of any public registry such as land registry.
- 17.7. For all relevant contracts with a value in excess £25,000 Project Leads shall use the standard contract terms and conditions issued by Legal Service unless such variation is agreed by the Director -Law & Governance.

18. Contracts Register

- 18.1. All contracts awarded between the value of £5,000 and £25,000 must be reported to the Corporate Procurement/Commissioning team (dependant on the nature of the goods/services/works) via providing a completed and signed by relevant authority Report of Officer's decision to enable the contract to be added to the contract register and contracts finder. It is the responsibility of Corporate Procurement and the Commissioning Team to add the information to the contract register.

- 18.2. The Strategic Procurement Lead and Head of Contracts must maintain a register of all approved and current contracts and framework agreements for their respective areas where the estimated total value is £25,000 or over. The register is published on the Council website and is a live representation of all contracts that the Council has.

19. Report of Non-Compliance

- 19.1. In exceptional circumstances it may not be possible to comply with the Public Contract Regulations, or these Rules or it may be discovered that the Council has failed to adhere to these Rules.
- 19.2. Directors can within their level of delegation, determine that part or parts of these Rules cannot be complied with, where they have completed a full risk assessment and consider that complying with these Rules is not possible for the exceptional emergency circumstances as set out in Paragraph 20, or other any other non-compliance.
- 19.3. For the avoidance of any doubt the failure to properly plan timescales to comply with these Rules and / or Procurement Regulations does not lead to exceptional circumstances.
- 19.4. A written Officer Report must be prepared by the relevant Project Lead on behalf of their Director and submitted to the Strategic Procurement Lead/Head of Contracts, Legal Services, and relevant Head of Finance to consider.
- 19.5. The written report will detail the specific provisions within these Rules, which will not be complied with, reasons for taking this course of action, alternative options considered and how relevant risks arising from those variations will be mitigated and managed.
- 19.6. The decision rests with the relevant Director, who must in all circumstances consult with the relevant Cabinet Member(s), Director of Law and Governance and Director of Finance and Resources before proceeding with the decision.
- 19.7. Where the Director of Law and Governance or Director of Finance and Resources is not satisfied that sufficient alternatives have been considered or the assessment does not demonstrate that a clear and material impact on the Council would arise if the Rules were not followed, then this will be recorded in the Officer Decision Report. In these instances, the Officer's Report will be automatically referred to the Audit Committee by the Chief Internal Auditor every 6 months.

20. Emergency Procurement Authorisation

- 20.1. 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 Corporate Procurement/Commissioning Team as soon as practical. The Director must record the action taken

through an Officers Decision Report. Any such contract entered into by the Council must not be for a term of more than six months, except for spot contracts.

Spot contracts must be approved by the relevant Director before they are awarded and this approval recorded by the Director in a quarterly Officers Decision report.

20.2. As a general rule, authorisation to set aside these procurement Rules should never be sought retrospectively but exceptions to this principle will be allowed where 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.
- real risk of significant harm to individuals which was not foreseeable.
- the occurrence of or potential occurrence of excessive and significant damage to the Council's services, finances or reputation which was not foreseeable, acting diligently.

20.3. Copies of all emergency procurement authorisations exceptions and supporting information will be retained by the relevant Director and the Corporate Procurement/Commissioning team for a period of 6 years following the end of the contract. These will be shared with the Internal Audit Service who will report all such instances on a six-monthly basis to Audit Committee.

21. External Framework Agreements

21.1. Public Sector and Local Authority accessible framework agreements are permissible as a means of procuring goods, works or services. Prior advice from the Corporate Procurement/Commissioning team must be sought, and suitable due diligence will be undertaken by Corporate Procurement/Commissioning team as to the proposed use of any framework.

21.2. The proposed use of any framework agreement as a means of awarding a contract must be approved according to the anticipated award value in line with the below:

- Below £25k Via budget holder (up to £10k) or Head of Service approval
- £25k-£100k Via Head of Service (up to £50k) or Director approval
- £100k-£500k Via a completed procurement approach document and published on Councillor News
- £500k Via the relevant cabinet member through delegated decision or Cabinet

21.3. The governance approval must be in accordance with the Leader's scheme of delegation.

- 21.4. Where approval is granted to use a framework, the rules of any such framework must be followed including the use of direct award or mini competition as a means of award, the length of the contract to be awarded and any amendments or additional terms that can be incorporated into the call off contract. Failure to comply with the terms of a given framework would cause the Council to be non-compliant with procurement rules.
- 21.5. The framework agreement and the call off terms and conditions will need to be reviewed and finalised by Legal Services with input from Officers as necessary prior to entering into the call off contract.

22. Creation of an Internal Framework Agreement or Dynamic Purchasing System (DPS)

- 22.1. Internal Frameworks and DPS are a method of contracting with multiple suppliers, where other procurement methods may not be appropriate.
- 22.2. Should it be considered that the creation of an internal framework agreement or DPS is going to be of benefit to the Council then they will be created in line with their associated rules under the Public Contract Regulations 2015.
- 22.3. The term of a Framework Agreement must not exceed four years save where permitted by the law. A Framework Agreement may be entered into with one provider or multiple providers.
- 22.4. For Dynamic Purchasing System, no maximum term is prescribed but the term must be clear in the approval documents as well as the tender documents.
- 22.5. A DPS shall be operated as a completely electronic process and shall remain open throughout its term to any economic operators that satisfy the selection criteria. All the candidates that satisfy the selection criteria must be admitted to the system, and the number of candidates to be admitted to the system shall not be limited.
- 22.6. It is the responsibility of the Project Lead to carry out due diligence on DPS providers, to ensure that any applications to join the DPS are evaluated in the prescribed timescales, and to conduct mini competitions within the DPS (as per the DPS agreement terms).
- 22.7. Corporate Procurement/Commissioning, Legal Services and Finance must be involved with the process and will advise if this is an appropriate procurement method.

23. Contracts Reserved for Mutuals

- 23.1. For some administrative services in relation to education, healthcare and housing, health and social work services, library and other cultural services, Project Leads may be able to limit competition to mutual organisations. The maximum duration for such contracts is three years.

23.2. A mutual 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.

23.3. Project Leads must contact the Corporate Procurement Team/Commissioning and seek legal advice where they wish to award a contract under this section.

24. Concession Contracts

24.1. Concession contracts are governed by the Concession Contract Regulations 2016 (which mirror the Public Contracts Regulations 2015 but are applicable only to concession contracts).

24.2. A concession contract grants a right to a contractor/concessionaire to exploit the market and payment to the concessionaire or contractor is usually made by income received from third parties or partly by third party income and partly by the Council. For example, where the Council enters into a contract with a party granting that party the right to run a café on the Council's land or to sell ice-cream in a van within the Council's property.

24.3. When estimating the financial value of a concession contract, the calculation must include any payments anticipated to be made by the Council to the concessionaire, and any income anticipated from the market/third parties and VAT.

24.4. To award a concession contract, Officers must ensure that they comply with the Concession Contracts Regulations 2016 including the conduct of an appropriate procurement process where required by these regulations. Award of Concession Contracts must also comply with all applicable provisions of these Rules including governance approvals. Officers should seek advice from corporate procurement or commissioning as appropriate and Legal Services.

25. Contract Management

25.1. The responsibility for the management of a supplier, once awarded a contract, lies with the service area (Project Lead). Project Leads must ensure that the supplier meets the requirement(s) set out in the tender and are responsible for delivering contract management reviews as appropriate throughout the duration of the contract to determine effective performance in terms of quality and cost.

- 25.2. The contract performance reporting should be held locally and provided as part of the e-tendering portal contract management suite that allows reporting of contract performance. The Contract Manager must ensure that there are appropriate KPI's and an appropriate level and frequency of review meetings during the life of the contract.
- 25.3. Should it be determined that a supplier is failing to meet the contract terms and conditions then Legal Services, Corporate Procurement/Commissioning should be contacted for advice.
- 25.4. The Corporate Procurement Team will provide Directors and Contract Managers, with a quarterly dashboard. This will be reviewed to ensure that all contract information held is up to date, complete and a record of contract management activities.

26. Contract Variation

- 26.1. Subject to any statutory restrictions and compliance with these Rules, Directors may, with the approval of Legal Services, the Strategic Procurement Lead/Head of Contracts 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 not more than £500,000. Any variations which have the effect of increasing the contract price by more than £500,000, in line with the Officer Scheme of Delegation, must be approved by the relevant Cabinet Member through delegated decision or by Cabinet. Legal advice must always be sought to ensure compliance with the Public Contracts Regulations 2015. Where a proposed variation has the effect of increasing the contract price, advice must also be obtained from financial services.
- 26.2. Directors may only authorise variations to contract where the proposed variation is permitted in accordance with Regulation 72 of the Public Contracts Regulations 2015 and legal advice has been obtained to this effect. This would include any proposed extension to the contract which was not included as part of the original procurement and also any proposed transfer of contract by novation or similar mechanism.
- 26.3. Legal advice must be obtained for all proposed contract variations to ensure variations remain compliant with procurement law. Where a request is received from a contractor to assign or novate a contract, or where a Project Lead 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 where the proposal to novate or assign is as a result of an event of change of control, insolvency, bankruptcy, receivership or liquidation.

27. Contract Extension

- 27.1. A contract may be extended on the basis that it has an extension provision written within the terms and conditions and/or the procurement was conducted which included the options to extend. Contract extensions where permitted must be affected before

the expiry of the relevant contract and in accordance with any relevant formalities required by the contract.

- 27.2. Where a contract or its procurement does not include an extension option, any extension to such contract can only be made where legal advice has been obtained which demonstrates that the extension would be compliant with Regulation 72 of the Public Contracts Regulations 2015 and financial advice must also be obtained with regard to budgetary implications of such extension.
- 27.3. The financial value of the extension will determine the governance authorisation process to enact said extension. Where the value of the extension is £500k and below, approval to extend may be granted by the relevant Service Director following Regulation 72 compliance advice by legal services and financial advice on budgetary impact. Where the proposed extension exceeds £500k or the changes to the contract will impact service delivery this should be taken as a key decision and approval of the Cabinet Member or Cabinet will be required.
- 27.4. An extension should only be utilised where the supplier is delivering satisfactory performance and where there is a genuine desire to continue the service rather than undertake a new procurement.
- 27.5. All extensions must be documented and signed by an authorised signatory on behalf of the Council and counter-signed by the supplier. No extension should be agreed without the express approval of Legal Services, who will also advise on the form the variation should take.

28. Social Value (More for MK)

- 28.1. The Public Services (Social Value) Act 2012 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.
- 28.2. Project Leads must consider the following as part of the procurement process with guidance and advice from Corporate Procurement/Commissioning and legal advice as appropriate:
 - 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.
 - When considering this potential improvement, Project Leads must only take into account what is relevant to that procurement and whether or not it is proportionate to do something.
 - Project Leads must consider whether to do any consultation as part of its thinking about whether improvements could be made.

28.3. Corporate Procurement/Commissioning will provide support on the development of Social Value within the tender process. It is the responsibility of the Contract Manager to monitor and report to Corporate Procurement/Commissioning the delivery of Social Value through a contract.

29. Insurance

29.1. The following standard insurance levels are to be utilised on each contract unless expressly advised otherwise by the Council's insurance advisers.

- Public Liability Insurance £5m
- Employers Liability £5m
- Professional Indemnity £1m

29.2. For larger, more complex contracts or where due to the nature of the contract other heads of insurance may be appropriate, higher levels of cover and further types of insurance may be required and advice must be obtained from the Council's insurance advisors. Advice must be sought prior to commencing the formal procurement process from the Council's insurance advisors.

29.3. Any clarification or request for amendment to the required insurances during a quote/tender process must be shared with the Council's insurance advisors for advice.

30. Performance Bonds, Pension Bonds and Parent Company Guarantee

30.1. The Project Lead is required to liaise with Finance, Legal and Procurement to determine the circumstances under which a contractor shall be required to furnish a performance bond, parent guarantee or other appropriate risk management approach.

30.2. Performance Bond

Depending on the nature and type of contract being procured, it may be necessary to ask Bidders to include in their tender submission provision for a performance bond. A performance bond is a financial guarantee that the terms of the contract will be honoured. If the contractor cannot complete their obligations, the bond can be claimed by the Council to compensate for costs incurred. A performance bond will be considered where:

- the estimated total cost exceeds £1,000,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and/or there is concern about the stability of the contractor or supplier.
- For any works, construction or building contract £500,000 and above.

In all cases the Project Lead must provide an appropriate risk assessment to support the decision-making process. The Director of Finance and Resources (or Deputy s151) will determine whether a Bond is required and if so to what financial level, based on the risk assessment.

30.3. Pension Bonds

Where pension bonds may be required, the Project Lead must consult with Financial Regulations paragraph 30.

30.4. Parent Company Guarantee

The Project Lead must obtain a parent company guarantee when the successful bidder is a subsidiary of a parent company and any of the following circumstances apply:

- the Estimated Total Cost exceeds £500,000, or
- award is based on evaluation of the parent company, or
- there is some concern about the stability of the bidder.

The requirements for this must be included in the Invitation to Tender (ITT) to ensure that all bidders are aware of this requirement before any tenders are submitted. The parent company guaranteeing the contract will be subject to such tests and validation as required for the value of the contract as decided by Finance.

31. Leasing

31.1. The Council through its procurement activity will often be involved either directly or indirectly in leasing plant, equipment, or vehicles. Where a proposed procurement involves this, you must consult with Finance before you commence the procurement. Finance will need to consider a number of potential implications that arise through direct and indirect leasing arrangements including:

- Accounting implications for the authority and how costs may need to be treated and funded.
- Value for money – alternative options including direct purchase of assets by the authority.
- Risk transfer – how the proposed leasing arrangement may impact the authority both financially in the future and service continuity implications through any proposed structure.

32. Land transactions

32.1. Generally, land transactions are not caught by procurement law, whether this involves disposal or acquisition by way of freehold transfer, or leases or rights over land. For example, where the Council disposes a freehold or leasehold to a developer without any additional conditions attached to it, the disposal will not be caught by procurement law. Usually, planning conditions that may be imposed on the developer when it obtains planning permission should not suffice to bring such transaction within procurement as these would be imposed separately by the Council as a planning authority.

32.2. However, it is possible for a land transaction to be caught by procurement law where the Council imposes conditions or certain conditions exist. If the transaction involves a works contract or even a service contract, where certain conditions exist or, are imposed by the Council for the disposal or transaction this may apply. For example, where the purchaser of a lease is required to develop the land in accordance with a specification or a scheme approved by the Council; or where the Council is controlling the development; or where the Council is retaining or receiving an economic benefit resulting from the development (there are a number of other such factors). Such transactions would not be pure land transactions that are exempt and are likely to be caught by procurement law. In developing transactions, Project Leads should consider these principles and seek advice from Legal Services, Corporate Procurement and Finance at the earliest opportunity in order to ensure that transactions remain compliant with the Public Contracts Regulations 2015 as well as Subsidy Control legislation. Where procurement law is applicable to a proposed transaction, Project Leads must conduct a compliant procurement exercise in order to enter into and complete the relevant transactions. Non-compliance would lead to a breach of the Public Contracts Regulations 2015.

33. Subsidy Control

33.1. Subsidy Control is governed by the Subsidy Control Act 2022 which replaces the former state aid regime.

33.2. When the Council awards public funds it may be granting a subsidy.

Some examples of what may fall within the definition of a subsidy include direct financial assistance such as cash transfer under grant agreements or a loan or it may be indirect such as foregoing revenue or income that is due to the Council or providing a guarantee in favour of an organisation.

Other examples are the sale or disposal of a Council asset, including land, at a price less than the market value or for deferred payments. Others are, funding for mixed use city centre development, a grant to address viability gaps in a regeneration development, a subsidy to support the immediate and long-term viability of a Community Interest Company which manages several community services and hubs and funding to deliver electric buses and associated infrastructure.

33.3. In order to award public funds that are subsidy control compliant there is a four step legal test:

1. Does it fall within the legal definition of a subsidy which is 'financial assistance that:
 - (a) is given directly or indirectly from public resources by a public authority,
 - (b) confers an economic advantage on one or more enterprises
 - (c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and

(d) has, or is capable of having, an effect on-

(i) competition or investment within the United Kingdom

(ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or

(iii) investment as between the United Kingdom and a country or territory outside the United Kingdom

Where, for example, the Council is assisting a non- economic activity such as a charitable purpose, it is very likely it will not fall within the definition of an enterprise and therefore not be a subsidy.

2. If it is a subsidy, is it automatically unlawful for example if it is an unlimited guarantee, it cannot be granted.
3. Do any exemptions apply or is the subsidy awarded under a scheme or streamlined route?

The most relevant exemption is likely to be where the subsidy represents minimal financial assistance (below £315,000 over any three-year period from April 1 2021. If this is the case, Directors may approve the award of a subsidy after taking legal advice.

4. Does the subsidy comply with subsidy control principles?

To determine this, Project Leads must complete a subsidy control assessment matrix which can be obtained from Legal Services and requires completion by the service and review by legal services and finance.

- 33.4. The subsidy control legal regime is new, and Project Leads must undertake the four part test and then seek legal advice where they propose to give financial assistance to an organisation. Legal services will also advise on the procedural requirements. Time should be built in for the procedural requirements for any decision that may involve the grant of a subsidy. The Project Lead will also be responsible for ensuring that where the value of the subsidy is £100,000 or more, they provide information to legal services for inclusion in the national data base within 1 month from the date of the decision.

Part C – Contract Regulations

34. Compliance with Regulation 84 Public Contracts Regulations 2015

- 34.1. Under Regulation 84 Public Contracts Regulations 2015 any public contracts and framework agreements that are above a monetary threshold must form part of a report which may be requested by the Cabinet office. Project Leads should seek advice from the Corporate Procurement Team to determine whether this is the case for their procurement.

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

- 35.1. The Public Contract Regulations 2015 lists a number of services that are subject to a Light Touch Regime (LTR). These include categories of Health, social and related services, services to the community and benefit services. In these cases, 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 11 of these Rules.
- 35.2. LTR contracts must, however, follow Regulations 74 to 76 Public Contract Regulations 2015, which require that the procurement procedure used in in compliance with the principles of transparency and equal treatment of economic operators regardless of the value of the contract.
- 35.3. Any Project Lead looking to procure a contract which falls under the LTR and where the FTS threshold is met shall ensure that as a minimum, the mandatory requirements as below are followed:
- A contract notice or prior information notice must be published in FTS 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.
 - Any procurement procedure conducted must conform with the information provided in the contract notice or prior information notice published in the FTS.
 - Time limits imposed on suppliers for responding to adverts and tenders must be reasonable and proportionate.
 - A contract award notice must be published in FTS, following each individual procurement, or published as a group, within 30 days of the end of each quarter.
- 35.4. All relevant rules contained within these Rules including as to governance approvals and emergency procurement authorisation apply to LTR contracts.
- 35.5. Directors 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.