

CHAPTER 13 – PROCUREMENT AND CONTRACTS RULES AND PROCEDURES

13.1 Purpose and Significance

13.1.1

These Procurement and Contract Rules and Procedures (“PCRPs”) provide a compliance framework for managing the Council’s expenditure on goods, services and works and are, in effect, the instructions of the Council to ALL officers for undertaking expenditure on behalf of the Council. For the avoidance of doubt: responsible individuals (13.2.3.1) must not commit to expenditure unless these PCRPs have been followed.

These procurement rules and procedures are made in accordance with section 135 of the Local Government Act 1972

13.1.2

As money spent by the Council is public money, the purpose of these PCRPs is to ensure that the Council:

- a) purchases goods, services and works of the appropriate quality for its needs
- b) uses resources efficiently and obtains value for money in its purchasing decisions
- c) furthers its corporate objectives, including collaboration with other authorities
- d) is open, fair, transparent and fully compliant with EU public procurement legislation and UK Law, as laid out in the Public Contracts Regulations 2015 (“PCR2015”)
- e) helps to safeguard against fraud, bribery, corruption and dishonesty

13.1.3

Failure to follow these PCRPs for all procurement decisions and processes will undermine the achievement of the objectives in 13.1.2. Additionally, in an increasingly litigious and regulated environment, non-compliance is seen as an increased risk; including the likelihood of greater exposure to claims from suppliers, as well as heavy fines and non-financial penalties from regulatory authorities.

13.1.4

The PCRPs detailed here should guide users through the processes to follow for any procurement. However, they are not intended to be a ‘how to’ guide; they signpost relevant policies, guidance and legislation and whenever specific advice is needed, consult the:

- a) Procurement team (via your Procurement Business Partner) for day-to-day advice in respect of the operation of these rules and procedures
- b) Shared Legal Solutions (“SLS”) team for advice on issues of precedence and the law relating to Council contracts.

13.1.5

There is a series of policies which should be read in conjunction with these PCRPs. They may be updated from time to time but will always constitute a key component of the PCRPs. See Appendix 2 for a list of applicable policies and Section 0 below for an explanation of other associated documentation.

13.2 General Principles

13.2.1 Application and Scope

13.2.1.1

The PCRPs apply to all Council expenditures on goods, services and works. For the avoidance of doubt, 'services' includes:

- a) services of external consultants or temporary workers through external agencies
- b) the purchasing of services for individuals, including social care and children's services, (e.g.: a package of care or a foster placement)
- c) when we increase volume on a spot contract or go beyond a block contract and for extensions, i.e.: existing arrangements (see Section 13.2.2 Estimating Contract Value)
- d) Service Level Agreements ("SLAs"); Memorandums of Understanding ("MoUs"); Grants which are awarded by the Council with certain conditions or outcomes attached

13.2.1.2

The PCRPs do not apply to contracts for:

- a) the appointment of permanent or fixed-term employees
- b) the purchase/rental or sale of any interest in land, existing buildings or other immovable property; these are covered in the Finance Regulations 12.1.5.13
- c) MoUs and Grants which are awarded by the Council without particular conditions or outcomes attached.

13.2.1.3

Maintained schools are required by Section 48 of the School Standards and Framework Act 1998 to comply with the LEA's Financial Scheme; which, in turn, refers to the Council's Finance Regulations and PCRPs. Schools also need to have regard to the current School Governance Regulations.

13.2.1.4

Council owned trading companies are required to use these PCRPs for all procurement activities undertaken; adapting them as required (with advice from Procurement where appropriate) to meet their own governance arrangements. Teckal arrangements have now been codified into PCR2015 but the interpretation can be complex; contact Procurement for advice

13.2.2 Estimating Contract Value

All contract opportunities are required to state a total ascertainable value (or a value range) so that potential suppliers can assess their suitability for the opportunity and the appropriate procurement process can be utilised. The estimate includes both revenue and capital elements of any contract. There are several requirements in PCR2015 (Regulation 6) that specify how the value of the opportunity should be calculated.

Refer to the Estimate of Value document and contact Procurement for advice.

Where no definition of total value is possible, the estimated contract value shall be calculated as 24 x the monthly value.

13.2.3 Responsibilities and Compliance

13.2.3.1

The PCRPs apply to every officer of the Council and anyone acting on its behalf. It is the responsibility of Directors to ensure that the Rules and Procedures are adhered to.

13.2.3.2

Failure to comply with these Rules and Procedures may result in disciplinary action.

13.2.3.3

Breaches of these Rules and Procedures should be reported to the Monitoring Officer; Section 151 officer and the Service Manager – Shared Audit & Investigation Service.

13.2.3.4

Any officer or member of staff who suspects any fraud, corruption or misconduct in relation to any procurement or contract must immediately report that suspicion to the Monitoring Officer, Section 151 Officer and the Service Manager – Shared Audit & Investigation Service.

13.2.4 Conflicts of Interest

13.2.4.1

Where a tenderer has provided advice during a preliminary market consultation or has had any involvement in the preparation of a tender document (“Prior Involvement”) the following measures must be taken to ensure that competition is not distorted by the participation of that tenderer in the subsequent procurement process:

- a) Details of the Prior Involvement of a tenderer in a particular procurement process must be communicated to all tenderers taking part in that procurement process; including details of relevant information exchanged between the Council and the tenderer as part of the Prior Involvement
- b) The time limit for the receipt of tenders must be adequate (so that the tenderers who have not benefitted from Prior Involvement have sufficient time to properly formulate their responses)

What is considered “relevant information” and “adequate” timescales will vary case-by-case. It is the responsibility of the Officer involved to make a considered judgement of what these mean for their particular instance.

13.2.4.2

Any tenderer who has had Prior Involvement in a particular procurement can only be excluded from the procurement process where the Council has documented a decision (Material Decision) that there are no means available to prevent distortion of competition. The Council shall give the excluded tenderer an opportunity to prove how the Prior Involvement will not distort competition before it makes that decision.

13.2.4.3

Any Council Officer or other person acting on the Council’s behalf who has, directly or indirectly, a financial, economic or other personal interest, which might be perceived to compromise their impartiality and independence in the context of any procurement process, shall disclose such interest and shall not take part in that procurement process.

Disclosure of the interest should be made via the standard, annual self-declaration procedure.

13.2.4.4

The Localism Act includes rules covering any disclosable pecuniary interest in a procurement activity by Members. The Local Government Association has produced an informative guide: “A councillor's guide to procurement”.

13.3 The Procurement and Contract Rules

13.3.1 Pre-Procurement Approvals

The Pre-Procurement Approval steps indicated below must be completed before a formal procurement procedure is started; that is, before the publication of any Prior Information Notice or advertisement requesting Expression of Interest, Request for Participation, Invitation to Tender or similar.

13.3.1.1 Procurement Business Case (including options appraisal)

A formal business case is required for any procurement with a total value above £50k (refer to section 13.2.2 for estimating value) with the varying levels of approval shown in the table below:

	No formal business case required	Head of Service & Director Approval	Executive Approval
Goods and Services	< £50k	£50k - £500k	> £500k
Schedule 3 Services	< £50k	£50k – OJEU threshold ¹	> OJEU threshold ¹
Works	< £50k	£50k – OJEU threshold ¹	> OJEU threshold ¹

All Business cases should include the following elements in an appropriate form:

- a) A brief justification linked to service or corporate objectives
- b) Vision and description of objectives to be achieved / specific need to be addressed
- c) Appraisal of options
- d) Statement of benefits and justification of expenditure, including financial costs and benefits, where relevant over the life of the contract.
(Works business cases should include a financial feasibility assessment in terms of investment payback, return on investment or discounted cash flow value).
- e) Timetable
- f) Procurement Approach and Commentary
- g) Source and approval of funding and whether it is revenue or capital.
- h) Overall approvals as indicated in table above

The exact nature of any Business Case will vary depending on the requirements of the services being procured but all should consider the elements listed above to an appropriate degree. In consultation with Procurement, Directorates may design their own

(1) OJEU thresholds for all types of procurement are defined in Appendix 1

templates and requirements for Business Cases, in particular where regularly recurring or rapid procurements are required.

Further guidance on the production of a Business Case is available from Procurement.

A Business Case must also be produced for ALL direct award waivers, adhering to the same approval levels. They must be supported with the Suppliers proposal, including terms and conditions and full quotation details in line with the Waiver Policy (see Appendix 2).

13.3.1.2 Budget Approvals

In addition to an approved business case, where required, for the procurement, there must be budget available before procurement can commence.

If/ once a budget has been allocated for the expenditure, the following levels of approval are required in order to begin the procurement process. These represent the minimum levels of approval that are required; in specific circumstances, such as a new, unusual or particularly risky procurement, higher levels of consultation and approval may be appropriate.

The approval of the Director is sufficient for any budget approval within their Service remit. The Director may choose to consult more widely as appropriate to the nature of the particular procurement.

13.3.1.3 Legal Approval

As soon as the Business Case and Budget have been approved, the likely nature of the contractual Terms & Conditions (“T&Cs”) should be determined (see Table 13.3.3.1 below) and, as appropriate, SLS should be engaged prior to the commencement of the procurement.

SLS needs to be formally instructed to engage in the procurement process; but, in specific circumstances, a waiver may be in place that allows the use of pre-approved documentation. Check with your Service Manager to verify if any such waiver exists.

13.3.2 Overview of Required Procurement Procedures

ALL procedures in the PCR2015 (including Schedule 3 Services) are subject to “the principles of transparency and equal treatment of economic operators [*tenderers*]”. Accordingly, there is no mechanism for negotiation with any individual tenderer, at any stage of a procurement procedure.

Procedures are available to allow for negotiation, dialogue and innovation but they may only be used in specific circumstances and involving all parties equally. These procedures are difficult to manage effectively and should generally be avoided.

For procurements exceeding £50k, the default procedures are the Open or Restricted procedures only; in order to use another procedure, officers need to consult with Procurement and raise a waiver. For Services that need to manage urgent requirements (e.g.: emergency placements), a blanket waiver (clearly specifying the circumstances in which such a procedure is appropriate) may be available.

Check with your Service Manager to verify if any such waiver exists.

13.3.2.1

The following table gives an overview of the Procurement and Contract requirements for expenditure on **Goods** and **Services** (excluding Schedule 3 Services - see below) at

various contract values:

Goods & Services Contract Value	Below OJEU Threshold			Above OJEU
	£0k - £25k	£25k - £50k	£50k - OJEU	> OJEU Threshold
Fully compliant OJEU process – any applicable process may be utilised.				✓
Open (single step) process			✓	
Request for Quotation (RFQ) process, with credit check & references		✓ (min 3 quotes)		
Simple quotation and selection process	Min 3 Quotes			
Approved business case for the procurement at the appropriate level			✓	✓
Legal & Procurement teams to be notified before start of procurement undertaking			✓	✓
Formal specification & evaluation criteria			✓	✓
Simplified specification & evaluation	(if necessary)	✓		
All documents available on the date of publication of notice or advertisement			✓	✓
Publish in OJEU				✓
Advertise in Contracts Finder (within 24 hrs of 1 st advert anywhere else)		if advertised anywhere	✓	✓
Pre-Qualification Questionnaire (PQQ)	prohibited	prohibited	prohibited	✓
Invitation to Tender (ITT)			✓	✓
Formal tender opening process			✓	✓
Formal tender evaluation process			✓	✓
Award notified in OJEU				✓
Award notified in Contracts Finder		✓	✓	✓
Signed contracts lodged with SLS			✓	✓
Standstill period				✓
Service Area to add contract data to central Contracts Register	Contracts > £5k	✓	✓	✓

13.3.2.2

The following table gives an overview of the Procurement and Contract requirements for expenditure on **Schedule 3** services at various contract values. These are for specific services such as health, social care, education, cultural and certain other service contracts as defined by Common Procurement Vocabulary (CPV) codes:

Schedule 3 Services Contract Value	Below OJEU Threshold		Above OJEU
	< £50k	> £50k	> OJEU Threshold
Light Touch Regime (“LTR”)			✓
Any appropriate process may be used		✓	✓
Legal & Procurement teams to be notified before start of procurement undertaking		✓	✓
Formal specification & evaluation criteria	Min 3 Quotes	✓	✓
Advertise in OJEU – contract notice or PIN ALL documents available at date of notice			✓
Advertise in Contracts Finder	> £25k, if advertised anywhere		✓
Pre-Qualification Questionnaire (PQQ) (Restricted Procedure)	prohibited	Optional (but prohibited below the Goods & Services OJEU Threshold)	✓
Invitation to Tender (ITT)		✓	✓
Formal tender opening process		✓	✓
Formal tender evaluation process		✓	✓
Publish contract award notices (can publish notices grouped quarterly)	If > £25k	✓	✓
Standstill period			✓
Service Area to add contract data to central Contracts Register	Contracts > £5k	✓	✓

For ALL procurements, any appropriate process may be used and there is flexibility in the types of award criteria that can be defined but any procedure used must ensure equal treatment of tenderers and transparency. There are no prescribed timescales for procedures but they must be “reasonable and proportionate”.

The procedure can deviate from the LTR as long as there is no breach of equal treatment & transparency and the reasons are documented & communicated.

13.3.2.3

The following table gives an overview of the Procurement and Contract requirements for expenditure on **Works** at various contract values:

Works Contract Value	Below OJEU Threshold		Above OJEU
	£0 - £50k	£50k - OJEU	> OJEU
Full OJEU process			✓
Invitation to Tender (ITT)		✓ (if not Construction Line)	✓
Optional Construction Line “Tender”	✓	✓ (if no ITT)	n/a
Approved business case for the procurement at the appropriate level		✓	✓
Legal & Procurement teams to be notified before start of procurement undertaking		✓	✓
Formal specification & evaluation criteria		✓	✓
Simplified specification & evaluation	✓		
Publish in OJEU. ALL documents to be available prior to issue of the OJEU notice			✓
Advertise in Contracts Finder	if advertised anywhere		✓
Pre-Qualification Questionnaire (PQQ) (Restricted Procedure)	prohibited	Optional (but prohibited below the Goods & Services OJEU Threshold)	
Formal tender evaluation process		✓	✓
Request for Quotation (RFQ), credit check and references for selected supplier	✓ (min 3 quotes)		
Award notified in OJEU			✓
Award notified in Contracts Finder	If > £25k	✓	✓
Signed contracts lodged with SLS		✓	✓
Service Area to add contract data to central Contracts Register	Contracts > £5k	✓	✓

13.3.2.4 Abnormally Low Tenders

The Council has a duty to investigate any tenders that appear to be abnormally low. We are obliged to require tenderers to explain the price or costs proposed in the tender and assess the information provided in consultation with the tenderer. The situation can be complex since PCR2015 regulations lay out specific elements to be considered, conditions to limit when the Council may reject a tender and obligations for when it must reject a tender. Contact Procurement for help in interpreting the specific rules.

13.3.3 Contracting Requirements

13.3.3.1 Overview of Contract Terms & Conditions

Having selected an appropriate supplier, the following sources of T&Cs may be appropriate for various contract values. These represent the minimum requirements for any given contract value; for low value contracts, more stringent T&Cs (e.g. simplified Contract Terms instead of a standard PO) may be relevant in some circumstances:

Contract Value	Duration	Risk	Procurement Cards	Standard Purchase Order Terms	Formal Contract Terms (via SLS)	Suppliers' Terms
<£50k	<12mth	Low	✓	✓		By exception and only with input of Shared Legal Solutions
		Normal	✓	✓		
	>12mth	Low	n/a	✓		
		Normal	n/a	✓		
>£50k	any	any	n/a		✓	

If you have any questions or concerns around contracts that may be high risk, consult SLS and/or Procurement. For example: relatively low value contracts may have risks around sensitive data associated with them, which make the inclusion of a Confidentiality Agreement appropriate in that particular case.

13.3.3.2 Acceptance of Tenders and Signing of Contracts:

Activity	Under £50k	£50k - £100k	£100k - £500k	> £500k
Acceptance of Tenders (prior to contract award)	Head of Service	Director		Director by Material Decision
Contract Signature	None if PO or Purchasing Card. Otherwise 2 Officers named on "List of Authorised Officers..."	Two Officers: 1. Head of Legal Services or Qualified Solicitor or Barrister 2. Any Officer in 1 or Director or Member of Corporate Leadership Team (CLT)		Sealed as deed
		(facilitated by Shared Legal Solutions)		

13.3.3.3 Modification of contracts during their term (including extensions):

Subject always to the availability of an approved budget for the total amount to be committed, the ability to demonstrate ongoing value-for-money and that the modification does not alter the overall nature of the original procurement a contract may be modified within certain, defined limits; contact Procurement for advice.

The primary concern of PCR2015 is to ensure that the scale of the contract opportunity (i.e. its overall value) is not significantly changed. Many contracts (especially Works) will allow for changes to requirements and specifications within their terms, as long as the overall nature and scale of the contract is not substantially altered.

There is no means to extend a contract beyond the term/s defined within the original contract documents (which may include one or more defined extension periods). A Material Decision has no legal basis in this respect; once the maximum allowable term is complete, a new contract must be awarded. This will usually be awarded through a new procurement procedure with a suitable level of competition, as described above. The regulations allow some mechanisms that may be useful in these circumstances but they are specific and quite restrictive; contact Procurement for advice.

13.3.4 Contract management during the contract duration

Good contract management relies on planning, starting with the creation of the contract documents during the initial procurement.

For any particular service requirement we should develop a clear idea of what success looks like – what would we ideally want from the contractor that would deliver a first class service with a minimum of input from ourselves. Clauses and requirements, KPIs, regular reporting of metrics and contract reviews can all be built into the tender pack; setting expectations with potential contractors at the outset. Mechanisms that incentivise good performance and behaviours and the potential to share any benefits that the partnership approach generates can all be valuable approaches.

13.3.4.1 Contract Register

For transparency reporting and audit requirements, as well as to enable effective Council-wide contract management activity, all contracts entered into should be recorded in the central Contracts Register. This is mandatory for contracts with a contract value of over £5,000 (to comply with our transparency obligations). Entering all contracts on to the Register will enable Service teams to leverage the contract management alerts and intelligent functionality built into the system.

The process to add, edit, maintain and manage contract details on the central Contracts Register is documented separately.

13.3.4.2 Key Performance Indicators

Contracts entered into by the Council should contain KPIs, which are agreed with the supplier at the contracting stage of the procurement process. These ensure that both the Council and the supplier can regularly monitor and manage the supplier's performance against the contract, to ensure that what has been contracted for is delivered. KPIs should be a combination of quantitative and qualitative measures which can be readily collected and measured. Procurement has produced a separate brief guide, for typical KPIs to include in a contract.

Having agreed KPIs with suppliers, it is up to the responsible contract manager to agree the process for capturing and reviewing these measures on a regular basis and capturing any deviations to ensure remedial action is taken.

13.3.4.3 Performance Reviews

Good contract management practice requires the establishment of routine and regular contract performance reviews over the lifetime of the contract. The Council's contract managers and suppliers review KPIs, work plans and other performance tools so that deviations from contract can be rectified quickly. It is the responsibility of Directors to ensure that officers, or staff, with contract management responsibilities in their Directorate, undertake such regular performance review activity, as appropriate.

13.3.4.4 Contract end planning

It is also good practice to prepare for the end of a contract well before the contract end date is reached. The responsible contract manager should start planning for contract end, renewal or re-letting 24 months, and no less than 12 months, before contract end. This will be assisted by the contract management alerts from the central Contracts Register, where contract details are on the system.

13.4 Overview of Procurement Process Selection

This section details the processes to be followed for any procurement. The precise process will depend on type and value of procurement as well as any corporately mandated or optional approaches that may be available.

To direct users to the appropriate process for their procurement, a 'process wizard' is set out below. It works by asking some key sequential questions about the nature of the proposed procurement to arrive at which process should be used:

1	2	3	4	5				
Type	Above/below OJEU	Procurement Size	Available corporate contract	Available Framework Agreement	Default Process	Optional Processes available		
Goods & Services	Above	> OJEU Threshold	Yes	n/a	Corporate Contract			
			No	Yes	Framework Contract			
				No	Full OJEU Process	① ②		
			Below	£50k – OJEU	Yes	n/a	Corporate Contract	
					No	Yes	Framework Contract	
						No	Above £50k Process	① ⑤ [③ ④]
	£25k - £50k	Yes			n/a	Corporate Contract		
		No			Yes	Framework Contract		
					No	Above £25k Process	Table 13.3.2.1	
		£0k - £25k	Yes	n/a	Corporate Contract			
	No		Yes	Framework Contract				
		No	£0-£25k Process	Table 13.3.2.1				

1	2	3	4	5		
Type	Above/below OJEU	Procurement Size	Available corporate contract	Available Framework Agreement	Default Process	Optional Processes available
Schedule 3 Services	Above	> OJEU Threshold	Yes	n/a	Corporate Contract	
			No	Yes	Framework Contract	
				No	Light Touch Regime	
			Below	< OJEU Threshold	Yes	n/a
	No	Yes			Framework Contract	
		No			Tender Process	① ② ③ ④
	Approved Supplier List				⑤	

1	2	3	4	5				
Type	Above/below OJEU	Procurement Size	Available corporate contract	Available Framework Agreement	Default Process	Optional Processes available		
Works	Above	> OJEU Threshold	No	Yes	Framework Contract			
				No	Full OJEU Process	① ② ③ ④		
				Below	£50k – OJEU	Yes	Framework Contract	
						No	Construction Line	① ② ③ ④
	£0 - £50k	No	Yes	Framework Contract				
			No	Construction Line				
			No	Min 3 quotations	①			

No.	Optional Processes
①	Open Procedure
②	Restricted Procedure (above Goods & Services OJEU Threshold only)
③	Competitive Procedure with Negotiation (by exception only)
④	Competitive Dialogue (by exception only)

13.5 Related Policies and obligations

There is a range of policies and additional obligations that support and expand on these PCRPs but they are subject to update from time to time. As such, they do not form part of the core PCRPs and are supplied as appendices, as indicated below. Ensure that you always access a fresh copy of any particular document you need to refer to.

Appendices sit outside of these Regulations and may be updated from time to time without the need for formal approval.

13.5.1 Related Policies & Processes (Appendix 2)

This appendix lists all the Council policies which are relevant to the PCRPs and should be read in conjunction with the information above.

13.5.2 Additional Obligations

The previous Procurement & Contract Rules had been appended over a number of years with obligations that addressed particular issues and experiences. Some are now incorporated in the overall rules but those that are still relevant and require specific mention are referenced below.

The detailed description for each clause can be found in the appendices.

Statutory Obligations (Appendix 3)

WBC Specific Obligations (Appendix 4)

APPENDIX ONE – OJEU THRESHOLD VALUES

Threshold	Euro	GBP (2014 conversion)	Display Value	Bookmark name
Goods & Services	€ 207,000	£ 172,514	£173k	GSthold
Schedule 3	€ 750,000	£ 625,050	£625k	S3thold
Works (Schedule 2)	€ 5,186,000	£ 4,322,012	£4,322k	WORKSthold

The EC procurement thresholds for application of the Public Contracts Regulations 2015 are fixed for a 2 year period (1st January – 31st December); the values are subject to change on the 1st January of every even year (i.e. 2014, 2016, 2018,...).

Note: these thresholds apply to the total ascertainable value of the contract / business opportunity (excluding VAT) and not the annual cost or budget.

NOTE: -

When updating the reference figures in the table above, reassign the correct bookmark name to the newly entered figure. You achieve this by:

- Type in the new figure that you require.
- Highlight the new figure (remember to include the '£' symbol) by holding your left mouse button and dragging the cursor across it.
- From the menu bar select [Insert], then [Bookmark]. A 'Bookmark' dialogue box will pop up.
- Select the correct 'Bookmark name' from the list in the dialogue box and click [Add].
- When you close the document, a dialogue box will open to ask if you wish to save your changes; ALWAYS click [SAVE], even if you have already saved the document beforehand. This will run a macro, which automatically updates all the fields in the document that are linked to your changes.

APPENDIX TWO – Related Council Policies & Processes

Appendix Two signposts general Council policies and specific processes that are relevant to procurement activities undertaken by Council Officers.

All such general policies are available to the public through the Council Website.

These documents are subject to regular review and update. In order to avoid an excessive rate of change to the Constitution, the specific details are not included here.

The working copy of this Appendix Two is available through the internal website – Grapevine – providing Officers with direct links to all the relevant information, including the specific processes.

Alternatively, details about what is included may be obtained from Procurement.

APPENDIX THREE – Additional Obligations, STATUTORY

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 - vii. TUPE (Transfer of Undertakings (Protection of Employment))
-

i) Transparency Reporting

The Council will publish details of current contracts with a description of what is being provided, the duration of the contract, the name of the supplier and data concerning the total value of the contract.

ii) The Social Value Act / Localism

For all:

- a) Service contracts with a value in excess of the EU threshold and
- b) all works contracts over £1m;

the contractor and its supply chain will be required to actively participate in the achievement of social objectives relating to the participation in skills development, employment and training programmes in accordance with Wokingham Borough Council's Employment and Skills Guidance for Tenders, which can be found on the Council's website.

iii) Safeguarding – DBS (Disclosure & Barring Service)

Wherever a contract or tender involves working regularly with children or vulnerable adults, or wherever required as appropriate to the nature of the contract, DBS checks must be included as a requirement at the outset within the tender specification and the terms and conditions document.

These must also clearly state that all costs relating to DBS checks shall be borne by the contractor.

DBS checks should be repeated at 3-yearly intervals for those who remain in post. Contractors should be asked to provide evidence that DBS checks are monitored and kept up to date.

Contractors should be asked to confirm that they are aware that:

- a) An organisation which knowingly employs, in a relevant role, someone who is barred to work with children or vulnerable adults is breaking the law.

- b) They must inform the Independent Safeguarding Authority if they dismiss or remove a member of staff because they have harmed a child or vulnerable adult, or they would have dismissed or removed them had they not left.

iv) Supported Organisations

In the case of a supported business, supported employment programme or sheltered workshops as defined in Regulation 20 of the PCR2015 (essentially establishments where more than 30% of the workers are disabled or disadvantaged); the Council may restrict the scope of invitations to tender to those types of organisations. This is termed a “Reserved Contract” and the call for competition shall make reference to Article 20 of the Public Contracts Directive. Other relevant procurement rules and procedures continue to apply.

This should not be confused with the completely separate arrangement (Regulation 77) for reserved contracts to support mutual and social enterprises – Appendix Three (v) – Social Enterprises

v) Social Enterprises (VCSE)

PCR2015 includes a significant alteration in the treatment of Social Enterprises, mutuals, charities and other similar organisations (or VCSEs).

Covered under the Schedule 3 regulations (specifically Regulation 77); contracts may be reserved for qualifying organisations ONLY if they are exclusively for one or more services covered by a specific sub-set of the Schedule 3 CPV codes.

The relevant codes are highlighted in yellow in the list of Schedule 3 CPV codes.

A “qualifying organisation” is one that fulfils all of the following conditions: -

- a) its objective is the pursuit of a public service mission linked to the delivery of those services;
- b) profits are reinvested with a view to achieving the organisation’s objective, and any distribution of profits is based on participatory considerations;
- c) the structures of management or ownership of the organisation are (or will be, if and when it performs the contract):
 - i. based on employee ownership or participatory principles, or
 - ii. require the active participation of employees, users or stakeholders;
- d) the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned, by the contracting authority concerned, within the past 3 years.

The contract may only be awarded for a maximum of 3 years.

The call for competition shall make reference to Article 77 of the Public Contracts Directive.

This regulation is designed to promote opportunities to qualifying social enterprises by protecting them from full EU competition for the first 3-years of a particular type of contract.

They are expected to be able to develop their services during that initial period and will then be subject to full competition.

This should not be confused with the completely separate arrangement (Regulation 20) for reserved contracts for Supported Organisations – Appendix Three (iv).

vi) Contracts involving Council Assets

In order to comply with the International Finance Reporting Standard (IFRS), wherever a contract is proposed which includes use of a defined asset (i.e. an item of property, plant or equipment) or conveys the right to use a specific asset, prior to the agreement of such a contract the permission of the Chief Financial Officer should be sought.

The contract agreement should split the payment between those elements applicable for the asset and those elements applicable for the service.

vii) TUPE (Transfer of Undertakings (Protection of Employment))

If existing employees are associated with the contract opportunity (either internally or externally) the Transfer of Undertakings (Protection of Employment) Regulations 2006 must be observed. For example: a contract for services is retendered as it has come to the end of its term and the existing supplier employs staff specifically to provide us with those services. Those staff would be covered by TUPE regulations should the new contract be awarded to a different supplier.

If in any doubt, the Contract must be checked with the Service Manager – Shared Legal Solutions or the Service Manager - Human Resources.

A Confidentiality Undertaking form must be used as part of the tender process where TUPE applies.

APPENDIX FOUR – Additional Obligations, WBC SPECIFIC

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i) Assets & Security

For guidance on assets & security, see Finance Regulations 12.1.5 – Assets and Security.

ii) Loans, Leases & Guarantees

For general guidance, see Finance Regulations 12.1.13 – Investments, Borrowing, Treasury Management, Leasing and Trust Funds.

Clauses that are directly relevant to loans, leases & guarantees may be found in Finance Regulations 12.1.13.7 – Loans, Leases and Guarantees and the subsequent sections.

iii) Sponsorship & Grant Monies

Council income from sponsorship or grants is covered by the Financial Regulations: 12.1.14 – External Funding.

Grants should be assessed on a case by case basis. The Glossary contains a definition

- a) Where the money is given simply to carry out works or services from which the Council derives no direct benefit this is probably satisfactory and can be considered a grant.
- b) Grants given to benefit the local community and to achieve better financial outcomes should be considered in line with Council priorities, although, where money is given and the Council receives a benefit intended to be enforceable in return then this is a contract and must follow Procurement rules.
- c) Where the Council gives an organisation money which then enables the organisation to bid/tender for a business opportunity, the Council would be acting anti-competitively and if the contravention affected trade between member states of the EU it would also contravene state aid rules. A procurement process must be followed in line with UK Law and potentially European Regulations. Any such money actually paid by the Council must be returned to the Council prior to the commencement of the tendering process.

iv) Mitigation of Risk (including Performance Bonds)

An appropriate level of security for the due performance of a contract should be

considered in every case. For low value contracts no specific steps may be necessary but as contract value increases, so should the level of safeguards that are put in place. For all contracts, appropriate performance safeguards should be agreed and formally recorded in the contract documents.

Continuity is critical for many of the services that the Council provides. It is therefore essential that appropriate steps are taken to ensure that we can continue to deliver the service, even if the current contractor runs into difficulties or defaults on their deliverables. To that end, suitable clauses should be included in the contractual terms and conditions in order to mitigate the risk of any default.

There are many different ways of achieving the required safeguards; the method (or methods) selected depend on the nature and value of the specific contract and the state of the market. The following lists the typical key factors to consider: -

a) Maturity of the market

Where there are many capable suppliers available (especially if several are locally based), who could potentially step in to cover any urgent issues, the need for other forms of protection is diminished.

b) Length of contract/Payment Schedule

A long-term contract with regular monthly payments, in arrears, should be quite stable and can, in practice, supply immediate funds by withholding payment for the most recent period/s, if necessary.

c) Nature of contract

If the service can tolerate a short lapse in provision without major difficulties the Council will have time to secure alternatives, should the incumbent contractor fail. Statutory service provision, with significant immediate consequences of failure, will need a much more secure approach.

d) Nature of Risk

Are the real risks in the contract focussed around potential default or are localised failures and issues more likely, where appropriate insurance may be more effective. Clearly, multiple risk factors are present in all contracts and combined safeguards may be required. A balanced assessment of the likelihood and consequences of each risk factor is needed to establish the right controls and mitigation.

e) Financial Standing

If the contractor is large and financially stable, especially when compared to the contract value, there may be no need for additional safeguards. Alternatively, the Contractor may be a subsidiary of a larger parent company/group, which is a real entity (as opposed to a holding company name) that can draw on real resources. In these cases, a parent company guarantee can be an effective, generally cost free, safeguard. The Council has a standard Form of Parent Company Guarantee.

f) Contract Management

The effective use of Performance Measures and Key Performance Indicators as part of an active contract management scheme can be the best safeguard. This is most effective when implemented as an integral part of the contract tender with planned development throughout the contract term.

Not only can well planned and executed contract management provide advanced

warning but it can also prevent potential issues from developing into major concerns, through early intervention and a stronger relationship between Council and Contractor.

g) Performance Bond

A performance bond (or other suitable security) may be an appropriate safeguard for the specific circumstances of the contract opportunity. This will be provided by the contractor, through a Bank or leading Insurance Company.

You need to consider the practicality of a bond to secure the contract. Whilst it is designed to provide a fund for alternative provision, the likelihood of being able to release those funds quickly is low. In addition, the contractual details surrounding a Performance Bond are becoming increasingly complex and any release of funds is typically subject to Legal scrutiny.

The cost of the bond may be relatively high in relation to the level of benefit it secures. The contractor may be willing to set aside funds directly with us to cover the same liability; a pragmatic and low cost alternative.

The amount of the bond shall not normally exceed 10% of the contract sum (or 15% of the annual value of a contract exceeding 12 months duration), unless otherwise agreed with Director of Finance & Resources (Chief Finance Officer) (Section 151 Officer). Where a bond is used, the following documents must be included (as Appendices) and referred to in the tender pack: -

- i. Council's Form of Guarantee Bond
- ii. Bond Letter

The cost of a Performance Bond, where provided, shall be clearly itemised in the tender submission.

v) Insurance

Insurance is necessary to help protect the Council against the financial consequences of claims arising from the activities of contractors. It is essential that 'relevant' and adequate insurance details of everyone who enters into a contract with the Council are obtained before the contract commences.

'Relevant' generally refers to Public Liability cover and Employer's Liability cover, but might include Professional Indemnity insurance, and possibly others (e.g. Products Liability or Motor). Reference should be made to the Insurance summary document for more details of what is required and the procedures that are to be followed. Questions regarding the insurance requirements for a contract may be referred to the Head of Governance and Improvement Services.

It is the responsibility of the contractor to maintain adequate insurance and, where applicable, for adequate insurance to be in place for any subcontractor they have instructed to work on their behalf. This requirement must be stated within the terms and conditions of the contract.

Where Professional Indemnity insurance is required, it must be stated within the conditions of the contract that cover remains in place for a reasonable period after the expiry of the contract.

The Officer, or team, entering into the contract on behalf of the Council, must carry out the monitoring of the insurance during the contract period.
Further details and a suggested template letter are available.

vi) Receipt of Tenders

Safeguards must be in place to avoid any potential maladministration in the receipt of tenders.

The day, date and time by which tenders must be returned shall be clearly indicated in the ITT documents. Democratic Services must be notified of the title (or reference number) of the tender, its return deadline and the contact details of the relevant Authorised Officer at: democratic.services@wokingham.gov.uk

An appropriate date for the tender opening meeting will then be agreed with the Authorised Officer and advised to Democratic Services.

Tenders must be returned in plain packaging, securely wrapped, and using the return details provided. The returned envelope should not be marked or franked with the name of the tenderer. The following controls apply: -

- a) Tenders shall be addressed to: -
Democratic Services
TENDER RETURNS – *[title of tender or reference number]*
Wokingham Borough Council, Shute End, Wokingham, Berkshire, RG40 1BN.
- b) Upon return, tenders shall be kept in a locked and secure area until the scheduled tender opening date. The tender opening should be scheduled for the day after the published 'return of tenders' deadline date.
- c) Tenders received after the appointed deadline or which do not strictly comply with the instructions to tender (as issued with the tender documents) shall be disqualified on the basis that they have failed to fulfil the tender criteria.
- d) The following circumstances shall be subject to review by Democratic Services, the resultant decision to accept or reject the tender and the reasons for that decision to be recorded in a Material Decision, authorised by the Head of Governance & Improvement Services: -
 - Any tender opened in error shall be considered to determine if its inclusion would be anti-competitive in any way. The circumstances of the opening shall also be recorded in the Material Decision.
 - Tampered or damaged tenders (i.e. torn, opened envelopes, etc.).
 - Late tenders, where the reason for lateness is beyond the control of the tenderer or there is clear evidence of the tender being sent in adequate time in order to achieve the tender deadline.
- e) The Tender Opening Administrator shall record the late receipt of, or other reason for disqualifying, a tender. The disqualified tender documents shall be retained with all

other tender documentation in accordance with the Council's Records Retention Policy.

vii) Opening of Tenders

Safeguards must be in place to avoid maladministration in the opening of tenders. Any breaches of this Regulation will be reported to the Corporate Leadership Team (CLT). Details of the full procedure and a copy of the Tender Opening Summary sheet are documented separately.

Democratic Services shall be notified in advance of the dates of all tender openings. A Tender Opening Summary sheet and any relevant qualifying documents must be stamped, signed and dated by all present.

All tenders with an estimated value of £50,000 or over shall be opened in the presence of:

- a) the Service Manager Democratic Services or directly authorised representative;
- b) the Director of Finance and Resources (Chief Finance Officer) (Section 151 Officer) or directly authorised representative;
- c) a relevant Service Officer (usually the relevant budget manager, but could also be the relevant Director or the Head of Governance and Improvement Services);
- d) the Project Manager (if not already covered by (c) above);

and the Tender Opening Summary sheet completed.

All such tenders should be notified to the relevant Executive Member as soon as possible after the opening process has been completed.

Tender Opening Summary Sheet

The Director or authorised representative shall complete the top section of the Tender Opening Summary Sheet with the information shown below and take this to the tender opening:-

- a) the date, time and location of the tender opening;
- b) names and signatures of all attending the opening procedure;
- c) budget available and cost centre; and
- d) the name of each tenderer and total amount of tender bid, if ascertainable.

The Democratic Services Officer is required to: -

- a) ensure that the Tender Opening Summary Sheet has been fully completed.
- b) scan the completed Tender Opening Summary sheet and provide a copy to all Officers present

Discrepancies

Special consideration is required in the case of tender discrepancies. Where examination of tenders reveals errors/discrepancies, which would affect an otherwise successful tender, the tenderer shall be allowed to either confirm or withdraw their offer. If the tenderer withdraws, the next tenderer in competitive order is to be selected.

If you have any doubts or questions about how to handle a discrepancy, contact your Procurement Business Partner.

viii) Acceptance of Contracts

Directors can accept a tender providing it complies with all of the following:

- a) it is less than £500,000 in aggregate value, (if over £500,000 then it can be accepted by way of a Material Decision);
- b) it does not exceed the overall approved budget by the lesser of 10% or a maximum of £20,000, providing sufficient budget can be secured;
- c) it is the lowest tender, or the most advantageous, as measured against previously set criteria;
- d) it is the highest tender, (if payment is to be received by the Council), or the most advantageous, as measured against previously set criteria.

Directors may only accept a tender which falls outside these criteria subject to consultation with Director of Finance & Resources (Chief Finance Officer) (Section 151 Officer) and if applicable, the Head of Human Resource Operations with regard to Transfer of Undertakings of Employees (TUPE), as a Material Decision.

ix) Setting up Supplier Details & Recording of Contract/ Tender Information

Supplier Details

It is the responsibility of the relevant Director or Responsible Officer to ensure that all Suppliers to the Council are entered into the Council Purchase-to-Pay (P2P) system (or any replacement system) and that a purchase order is created to allow for the payment of invoices. The process description is available on Grapevine; including the necessary form.

Recording of Contract/Tender Information

Shared Legal Solutions shall retain original copies of contracts valued over £50,000 during the term of the contract. These contracts will be archived for a period of 6 years from the contract end date or 12 years if under seal.

Directors (or a delegated Responsible Officer) shall retain copies of contracts under £50,000, which should be archived at the contract end date, as a guide, for a period of 5 years. Directors are responsible for ensuring that details of all agreed Contracts are entered into the central contracts register.