
Bath & North East Somerset Council

Contract Standing Orders

Draft September 15

Table of Contents

Section A Statement of Principles

Section B Developing the Commissioning Plan

Section C Developing the Procurement Plan

Section D Undertake the Procurement Process

Section E Contract Award and Implementation

Section F Post Contract Award

Appendices

1. Glossary
2. Document Owners & Delegated Authority
3. Exemptions
4. Specifications
5. Business Ethics
6. Confidentiality, Intellectual Property, Data Protection & Transparency
7. Social Value
8. Contract Register
9. Framework Agreements
10. Procurement Options
11. Asset Leasing
12. Contract Forms
13. Scheme of Delegations
14. Evaluation Criteria & Debriefing
15. Capability & Financial Checks
16. Minimum Requirements for Procurement
17. EU Thresholds and Timescales
18. Document Retention
19. Contract Variations, Extensions & Termination
20. Procurements above EU Thresholds – options and procedures

A Statement of Principles

1. Mandatory Compliance

1. Council Officers **MUST** comply with these Contract Standing Orders in all instances when buying goods, services and works on behalf of the Council and failure to comply may result in disciplinary procedures.

2. General Principles

- 2.1 These Contract Standing Orders (“**CSOs**”) provide the framework that governs the Council’s commissioning and procurement of Contracts for works, services and goods / supplies. Following these CSOs helps the Council to demonstrate:

- 2.1.1 good internal governance;
- 2.1.2 stewardship and the proper spending of public monies;
- 2.1.3 Value for Money in the Council’s Contracts;
- 2.1.4 compliance with relevant law.

- 2.2 The purpose of all contracting activity is to:

- 2.2.1 seek continuous improvement of the Council’s functions having regard to the optimum combination of economy, efficiency and effectiveness in keeping with the Council’s duty to seek Best Value (and Value for Money);
- 2.2.2 achieve Value for Money for the Council and the Residents, with reference to the economic, social and environmental value of each Contract;
- 2.2.3 promote the well-being of the Council’s Residents and Area through the effective functioning of the Council, the efficient use of the Council’s resources, and a universal concentration on the Social Value that can be achieved.

- 2.3 Every Contract and official order made by the Council (or any part of it) shall be for the purpose of achieving fulfilment of the Council’s statutory functions or the furtherance of the Council’s strategic or policy goals.

- 2.4 The Appendices to these CSOs provide further detail and form part of these CSOs as if they were drafted as one document. The Head of Legal and Democratic Services has the delegated authority to alter these CSOs accordingly. Any questions about the application of these CSOs should be

directed to the Head of Legal and Democratic Services and/or the Head of Strategic Procurement & Commissioning.

2.5 All figures in these CSOs are **exclusive** of VAT unless stated otherwise.

2.6 Directors will:

2.6.1 ensure that the appropriate member, Cabinet or full Council (as appropriate given the Scheme of Delegations) is consulted on any procurement activity prior to its publications in the Council's Forward Plan;

2.6.2 ensure that audit trails are in place for all procurement activity in accordance with these CSOs.

3. What these CSOs Cover

3.1 These CSOs apply:

3.1.1 whenever the Council intends to spend money (or provide other payments in kind) under Contracts for goods (supplies), works or services;

3.1.2 to expenditure from either capital or revenue sources;

3.1.3 concessions (see [Guide to Concessions.docx](#))

3.1.4 to grants (see [Guidance on Grant Agreements](#))

3.1.5 to both Officers and Members.

3.2 These CSOs **do not** apply:

3.2.1 to contracts of employment;

3.2.2 to acquisitions and disposals of land or buildings (these are covered by the **Financial Regulations**) – unless related to a Contract for works, services or goods;

3.2.3 to the seeking of offers in relation to financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments, in particular transactions by the Council to raise money or capital;

3.2.4 to internal “contracts” between departments within the Council.

3.2.5 In the case of civil contingencies

3.3 The following entities have their own rules and are not bound by these CSOs, except where they participate in joint purchasing with the Council:

- 3.3.1 maintained schools within the Area;
 - 3.3.2 companies in which the Council has an interest **except for** Local Housing Development Vehicles and situations where there is a Local Authority Controlled Company;
 - 3.3.3 **[any others]**.
- 3.4 In exceptional circumstances only, certain exemptions can be approved by following the process set out at **Appendix 2 (CSO Exemptions)**. The persons who are authorised to approve the exemptions are set out in **Appendix 12 (Scheme of Delegations)**. Seeking an exemption of these CSOs **does not** exempt the Council from complying with the General Principles or with general law.
- 3.5 These CSOs can only be amended by the Head of Legal and Democratic Services in consultation with the Head of Strategic Procurement.

4. Other Key Documents

- 4.1 These CSOs should be read alongside the following:
- 4.1.1 the Council's Procurement Strategy [Procurement Strategy Final](#)
 - 4.1.2 the Council's Financial Regulations which can be found at ; <http://intranet/financial-regulations>
 - 4.1.3 the Council's procurement guide [Selling to the Council Guide.docx](#);
 - 4.1.4 the Council's Social Value in Procurement Policy [Social Value Policy](#) and Toolkit [Social Value Toolkit.pdf](#).
 - 4.1.5 Transparency Code [Transparency Code .docx](#)
 - 4.1.6 Pro-Contract Guidance [Contracts Finder Guidance.pdf](#)
 - 4.1.7 Any other guidance provided by the Strategic Procurement & Commissioning Team including:
 - (see Appendix 3 - Business Ethics)
 - (see Appendix 4- Confidentiality, Intellectual Property, Data Protection, Transparency & Redaction)
- 4.2 Anyone undertaking purchasing activity on behalf of the Council (but especially in the context of purchasing value above the EU Thresholds) **MUST** refer to the following documents, where appropriate:
- 4.2.1 the Public Contracts Regulations 2015, and Directive 2014/24/EU on public procurement;

- 4.2.2 the Public Services (Social Value) Act 2012;
- 4.2.3 the Bribery Act 2010;
- 4.2.4 the Small Business, Employment and Enterprise Act 2015;
- 4.2.5 the Equalities Act 2012;
- 4.2.6 the Modern Slavery Act 2015
- 4.2.7 any other relevant legislation.

5. Commissioning Intentions

- 5.1 All procurements over £50k in value **MUST** be entered on the Commissioning Intentions list. This enables the Council to keep track of budgets and plan for future expenditure and it allows suppliers and the local community awareness of upcoming projects.
- 5.2 The Commissioning Intentions list can be found at the B&NES internet site <http://www.bathnes.gov.uk/services/business/selling-council/right-challenge-0> and the document can be found at the right hand bottom of the page.
- 5.3 Applications to make an entry on the Commissioning Intentions list **MUST** be made via the Divisional Directors Group or through Joint Commissioning.

B Developing the Commissioning Plan

6. General

6.1 What is the Commissioning Plan?

Prior to entering into any procurement you **MUST** develop your business case by researching the procurement and speaking to all relevant parties, obtaining all relevant information. The Commissioning Plan falls out of this research and forms the business case that is approved prior to commencing the procurement.

- 6.2 The requirement for goods and/or services **MUST** start with an identifiable need which reflects the Council's overall objectives identified within Directorate, Service and Team Plans. You **MUST** understand the business requirements and how it impacts all levels of the organisation and local community. Consider the relevance of Council policies and procedures and how they have a bearing on the requirement.

7. Budget

- 7.1 Before starting the procurement, you **MUST** have budgetary approval. You **MUST** establish the aggregated monetary value of your requirement early, as this identifies the process that you follow, influences the amount of work you do and indicates the level of interest that will be generated.

8. Key stakeholders

- 8.1 You **MUST** identify the key stakeholders for the project including anyone impacted by the requirement. You should consider doing a Communications Plan for larger projects. You **MUST** be mindful of any Conflict of Interest and take necessary precautions to ensure that if there is a conflict, it is mitigated and/or managed. You **MUST** get Legal, Procurement and Financial advice prior to commencing any procurement.

9. Proportionality

- 9.1 You **MUST** provide the suppliers the information they need to understand the requirement but not overload them with unnecessary information.

10. Market Analysis

10.1 Consider talking to suppliers before starting the procurement, trialling products, visiting supplier premises or the premises of a supplier's customer. The Regulations explicitly permit preliminary market consultation. This type of pre-procurement engagement or consultation could focus on:

What is being purchased?

Is the specification realistic? Is it too ambitious? Not ambitious enough?

What will the process look like?

Do potential bidders have any concerns about timescales, for example?

You **MUST** keep adequate records of market research carried out.

10.2 You **MUST** complete [Procurement Business Case Approval](#) for any procurement on ProContract prior to commencing the next stage.

11. Bidders' conflicts of interest

11.1 If a potential candidate has advised the Council or been involved in the preparation of the procurement procedure, the Council is expected to take "appropriate measures" to ensure the resulting competition is not distorted by that candidate's pre-procurement involvement. This might include, for example, communicating relevant information to other candidates / tenderers. The Council cannot exclude a candidate from a procurement unless there is genuinely no other way to ensure that there is equal treatment of tenderers in the procurement process.

C Developing the Procurement Plan

12. Procurement Plan

DO YOU REALLY NEED IT? IF YOU WANT TO SAVE, DON'T SPEND!
Allow plenty of time to draft the specification and the detail it will need
How can Think Local apply to what you are buying? see Think Local One Year On Report.docx
Does the scope include Social Value for Residents or the Area? see Appendix 6 (Social Value)
Does the Council already have in place any Contract or Framework in scope which you should be using? Check the Contract Register see Appendix 7 (Contract Register)
Is there an external Framework or Contract that you should be using? see Appendix 8 (Framework Agreements)
How will you decide on the procurement route? – see Appendix 9 (Procurement Options)
Should we be leasing rather than buying? See Appendix 10 (Asset Leasing)
If buying, what form of Contract are you going to use? see Appendix 11 (Contract Forms and Terms & Conditions)
Who has the delegated authority to agree the purchase/approve the procurement method and process/approve the Contract award? – see Appendix 12 (Scheme of Delegations)
How will you decide who will win the Contract? – see Appendix 13 (Evaluation Criteria & Debriefing)

12.1 Before you commence any Procurement exercise, you **MUST** complete the report **Approval to Procure [Goods, Works, Services]** and obtain authorisation to proceed for all procurements above £50k in value.

D Undertake the Procurement Process

13. Procurement Process

13.1 The flowchart below illustrates the procurement and commissioning process from planning, through contracting with the supplier, performance monitoring and reviews and finally analysis of the outcomes and the market for future needs.



13.2 Summary Financial Thresholds

The table below defines the procurement process run by the procurer, dependent on the Contract value (see **Appendix 15 (Minimum Requirements)** for further details.

If you are purchasing IT Hardware or Software, you **MUST** do so in accordance with the IT Procurement Policy available on the intranet.

1. BELOW £500:
1.1 <i>Have you followed “Developing the Procurement Plan”?</i>
1.2 Consider use of a purchasing card .
1.3 Apply Think Local (Preference will be given to local suppliers where they exist and provided they offer Value for Money)
1.4 Demonstrate Value for Money by testing the market
2. £501 – £5,000:
2.1 <i>Have you followed “Developing the Procurement Plan”?</i>
2.2 Apply Think Local . (Preference will be given to local suppliers where they exist and provided they offer Value for Money)
2.3 Consider the Social Value Policy (and use Toolkit where relevant)
2.4 Demonstrate Value for Money by testing the market
2.5 [Recommended that you] record the new Contract on Contract Register.
3. £5,001 – £50,000:
3.1 <i>Have you followed “Developing the Procurement Plan”?</i>
3.2 Apply Think Local (Preference will be given to local suppliers where they exist and provided they offer Value for Money)

3.3	Consider the Social Value Policy (and use Toolkit where relevant)
3.4	Advertise in Contracts Finder if contract is above £25K (see Appendix 20 Below Threshold Contracts)
3.5	DO NOT use a PQQ. Consider what suitability questions to ask instead (see Appendix 14 (Capability and Financial Checks))
3.6	Obtain at least 3 written Quotes through ProContract
3.7	Award the Contract based on your chosen criteria (price or price and quality).
3.8	You MUST record the new Contract on Contract Register
3.9	Advertise the Contract award via Contracts Finder
4. £50,001 – £100,000:	
4.1	<i>Have you followed “Developing the Procurement Plan”?</i>
4.2	You MUST add to Commissioning Intentions List
4.3	Consider the Social Value Policy (and use Toolkit where relevant)
4.4	Advertise in Contracts Finder (see Appendix 20 Below Threshold Contracts)
4.5	DO NOT use a PQQ. Consider what suitability questions to ask instead (see Appendix 14 (Capability and Financial Checks))
4.6	Obtain at least 3 written Tenders through ProContract
4.7	You MUST take up references for the preferred bidder before award Reference Questionnaire.doc
4.8	Award the Contract based on your chosen criteria (price and quality) and complete the Procurement Evaluation Report.
4.9	You MUST record the new Contract on Contract Register
4.10	Advertise the Contract award via Contracts Finder

5. £100,001 – EU Threshold*:	
5.1	<i>Have you followed “Developing the Procurement Plan”?</i>
5.2	You MUST add to Commissioning Intentions List
5.3	You MUST apply the Social Value Policy (and use Toolkit where relevant)
5.4	Advertise in Contracts Finder (see Appendix 20 Below Threshold Contracts)
5.5	DO NOT use a PQQ. Consider what suitability questions to ask instead (see Appendix 14 (Capability and Financial Checks))
5.6	Obtain at least 3 written Tenders through ProContract
5.7	You MUST take up references for the preferred bidder before award Reference Questionnaire.doc
5.8	Award the Contract based on your chosen criteria (price and quality) and complete the Procurement Evaluation Report.
5.9	You MUST record the new Contract on Contract Register
5.10	You MUST get the Contract sealed
5.11	Advertise the Contract award via Contracts Finder
6. Works contracts between £172,514 and EU Threshold*:	
6.1	<i>Have you followed “Developing the Procurement Plan”?</i>
6.2	You MUST add to Commissioning Intentions List
6.3	You MUST apply the Social Value Policy and Toolkit
6.4	Consider whether to call off from an existing framework
6.5	If not, advertise the Contract and invite tenders through ProContract (no need to follow an OJEU process)
6.6	You MUST evaluate the financial standing of the tenderers (See Appendix

14(<i>Capability and Financial Checks</i>)). You CAN use a PQQ. PQQ (Works).docx	
6.7	You MUST take up references for the preferred bidder before award Reference Questionnaire.doc
6.8	You MUST complete the Procurement Evaluation Report Report - Procurement Evaluation & Approval OJEU.doc
6.9	Award the Contract based on your chosen criteria (price and quality)
6.10	You MUST get the Contract sealed
6.11	You MUST record the new Contract on Contract Register
7. Above EU Threshold:	
7.1	<i>Have you followed “Developing the Procurement Plan”?</i>
7.2	You MUST add to Commissioning Intentions List
7.3	You MUST apply the Social Value Policy and Toolkit
7.4	Follow an EU-compliant procedure – see Appendix 10 (<i>Procurement Options</i>) – through ProContract
7.5	You MUST evaluate the financial standing of the tenderers (Appendix 14 (<i>Capability and Financial Checks</i>)). If using a PQQ, MUST use the Cabinet Office Standard PQQ (Goods and Services).docx or PQQ (Works).docx
7.6	You MUST take up references for the preferred bidder before award Reference Questionnaire.doc
7.7	You MUST complete the Procurement Evaluation Report Report - Procurement Evaluation & Approval OJEU.doc
7.8	Award the Contract based on your chosen criteria (price and quality)
7.9	You MUST get the Contract sealed
7.10	You MUST record the new Contract on Contract Register

*The EU Threshold levels are given in **Appendix 17**. The Light Touch Regime for Health and Social Services type Contracts is explained at **Appendix 9 (Procurement Options)** and has different threshold levels.

Be aware that it is vital that you carefully estimate the value of the contract. If you have issued tenders for a below threshold contract and the tender responses indicate that the value of the successful tender will go above the threshold, you ***MUST*** stop the process and re-tender under OJEU. To avoid this, it is better to consider tendering under OJEU in the first instance.

E Contract Award & Implementation

14. General

- 14.1 It is critical that the Contract award and implementation are carried out effectively. Prior to contract award you **MUST** ensure that your objectives are fully addressed and that all approvals to award issues are covered.

15. Approval to Award

- 15.1 The Procurement Evaluation and Approval Report **MUST** be completed in line with the Public Procurement Regulations [Procurement Evaluation & Approval OJEU](#). The report **MUST** explain in full how you have come to the decision to award to the particular supplier in question for all procurements above £50k.
- 15.2 The report concludes with an approval signatory to award the Contract. You **MUST** have the appropriate sign-off prior to notifying the supplier(s) of your decision. See **Appendix 12 Scheme of Delegations** for further details.

16. Notifying Suppliers

- 16.1 Above the EU Thresholds there are strict rules on how to debrief suppliers including a **Mandatory** 10 day Standstill Period prior to confirming Contract award. **Appendix 14 Contract Award & Debriefing** gives more information.
- 16.2 If the supplier requests a face to face debrief, it is normal and courteous to do this where the Contract is complex, of high value and/or has taken a long time to complete, so long as you do so in a transparent and non-discriminatory way.

17. Publications

- 17.1 For Contracts above the EU Thresholds, you **MUST** submit a Contract Award Notice in the OJEU.
- 17.2 All Contracts above £25K in value **MUST** be published on Contracts Finder. See Appendix 20 (Below Threshold Contracts caught by Part 4 of the Regulations).
- 17.3 You **MUST** update the Contract Register (see **Appendix 7 (The Council's Contract Register)**)
- 17.4 You **MUST** file documents in the Contract Register in line with document retention policies (see **Appendix 17 Document Retention**).

F Post Contract Award

18. General

- 18.1 Once the Contract has been awarded you **MUST** put into place the agreed contract management controls and measures. You **MUST** review the process to ensure the Contract achieves its objectives and future benefits.

19. Contract Management

- 19.1 You **MUST** establish processes for recording the receipt of goods and progress of work, reviewing performance reports etc.
- 19.2 You **MUST** put in place both formal and informal communications to manage the relationship, as appropriate.
- 19.3 You **MUST** put in place a method of capturing the views of the service users/interested stakeholders including feedback to them on the service performance

20. Reviews

- 20.1 You **MUST** review the commissioning plan (against any changes in priorities/ objectives)
- 20.2 You **MUST** review the risk assessments and make any amendments to resource assumptions
- 20.3 You **MUST** review procurement plans to identify any changes or improvements to methodology for next time [Lessons Learned Log.xls](#)
- 20.4 All answers to above **MUST** be used to inform future commissions

21. Continuous Improvement

- 21.1 You should review your success against your original plans, i.e. did you achieve the outcomes you set out to achieve and do you understand what contributed to or prevented success?
- 21.2 You should share your learning with colleagues, service users and stakeholders to ensure you are continuously improving your processes and skills
- 21.3 Reflect on the views of service users/stakeholders when reviewing whether the Commissioning and Procurement Plans were successful

22. Contract Extensions

- 22.1 Extending a Contract ***MUST*** only happen in particular circumstances (see **Appendix 18 Contract Variations and Extensions**).

If an extension clause has been included in the Contract, then it is permissible to extend but this should only be done if it represents value for money to extend and if the performance of the supplier warrants it.

DRAFT

Appendix 1. Glossary

Appendices	The appendices to these CSOs
Area	The administrative area of Bath & North East Somerset Council
Best Value	The Council's duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness in accordance with section 3(1) of the Local Government Act 1999 and associated statutory guidance
Buying	Purchasing goods, services or works through an external supplier or contractor
Commissioning Intentions	The Council's published list of future procurement and commissioning activities above £50,000 found on the B&NES website. The intention is to highlight to potential suppliers the forthcoming opportunities for tendering. This is a statutory requirement under Localism Act.
Conflict of Interests	A set of circumstances that creates a risk that an individual's ability to apply judgement or act in one role is or could be, impaired or influenced by a secondary interest.
Contract	An agreement to supply Goods/Services/Works formed when there is an offer by one party and an acceptance of that offer by a second party. A Contract can be formed verbally as well as in writing.
Contract Award Notice	An advertisement entered by a buyer in the OJEU to advise interested parties that a Contract has been awarded by the buyer to a named supplier.
Contract Notice	An advertisement entered by a buyer in the OJEU to advise interested parties of the intention of the buyer to go to market to buy goods/services/works. It gives details of the requirements of the buyer.
Contract Register	The Council's repository for all its current Contracts and Framework Agreements, located on ProContract.
Contracts Finder	The Government's website on which all opportunities that are advertised for Contracts and Framework Agreements

	(and call-offs from Framework Agreements) for goods services and works above £25,000 MUST be published. You advertise on Contracts Finder via the ProContract system.
Council Executive	The body of local Councillors elected by the community to decide on how the Council will carry out its various activities.
Council Members	The elected councillors who sit on the Council Executive.
CSOs	These Contract Standing Orders (including the Appendices)
EU Thresholds	The financial thresholds above which a procurement via OJEU will normally be required, as set out at Appendix 15 (Minimum Requirements and Thresholds)
Financial Regulations	The Council's Financial Regulations, which can be found on the intranet.
FOIA	The Freedom of Information Act 2000 and the Environmental Information Regulations 2004
Forward Plan	The Council's Forward Plan, which can be found on the intranet.
Framework Agreement	An 'umbrella' agreement that sets out the prices, service levels, and terms and conditions for subsequent call-off orders. Guidance on Framework Agreements can be found at Guide for Framework Agreements.docx .
General Principles	The General Principles set out at A – Statement of Principles.
Grant	An arrangement will be a grant when the Council gives a donation to an organisation without receiving a benefit in return. The organisation is not obliged to provide the service, It can decide not to provide the service but would then have to repay the donation.
Invitation to Tender or	The invitation to tender is sent at the stage of the

ITT	procurement process when you invite selected bidders to present their tenders in response to the stated requirements and evaluation criteria.
Light Touch Regime	The Light-Touch Regime is a specific set of rules for Contracts for certain services that tend to be of lower interest to cross-border providers. It includes certain social, health and education services. The list of services to which LTR applies is covered in Appendix 10 .
Local	Within the Area
Local Authority Controlled Company	<p>Where a contracting authority sets up a separate legal entity and then awards contracts to that legal entity. A two part test has to be satisfied, relating to control and activity:</p> <ul style="list-style-type: none"> • Control: the controlling authority has to exercise sufficient control over the controlled body; and • Activity: the controlled body has to carry out the essential part of its activities for its owner authority. <p>In addition there is a requirement that there is no private sector participation in the body which satisfies the two part test.</p>
Most Economically Advantageous Tender or MEAT	Awarding a Contract for works, goods or services based on a combination of both overall cost AND service elements and not just cost alone.
NBO	The Named Buying Officer with responsibility for the procurement process from start to finish
OBC	Outline Business Case
Officer	Employees of the Council
OJEU	The Official Journal of the European Union, where Contracts and Framework Agreements are advertised to potential suppliers across the EU.

OJEU Compliant Process	A procurement exercise that has been carried out in accordance with the rules of the European Union under the Public Contracts Regulations 2015 and the Directive 2014/24/EU on public procurement. See Appendix 20 Procurement Processes for a list of the main types of procurement procedures.
Pre-Qualification Questionnaire or PQQ	A questionnaire which is used in certain procurement procedures which allow procurers to shortlist the number of companies that will be invited to Tender. Above EU Thresholds this MUST reflect the Cabinet Office standard PQQ and associated guidance : A PQQ is NOT permitted for procurements valued between £25k and £172,514 (see Appendix 20 Procurement Processes for more details).
ProContract	The Council's procurement portal
Quote/Quotation	A request for pricing and/or quality bid from a potential supplier for goods/services/works below £50,000. Similar to a Tender but with more limited detail generally required from bidders.
Regulations	The Public Contracts Regulations 2015
Residents	Means residents of the Area
Scheme of Delegations	The scheme of delegations set out at Appendix 12 (Scheme of Delegations)
Select lists	Lists of approved suppliers
Social Value	Described in the Social Value Act as improvements to the economic, social and/or environmental well-being of the Area. So the benefits sought could be in the form of social benefits (for example reducing anti-social behaviour), economic benefits (for example increasing local employment), or environmental benefits (for example reducing local congestion).

Social Value Act	The Public Services (Social Value) Act 2012, which requires the Council to consider, pre-procurement, how what it procures might improve the economic, social and environmental well-being of the Area, and how best to use the procurement process to secure that improvement. There is also a duty to consider whether to undertake any consultation in making its decisions.
Standstill Period	A Mandatory 10 day period (which MUST be applied to above EU Thresholds procurements) between the notification to suppliers of the decision to award the Contract and the date of signing/entering into the Contract. The period is intended to give unsuccessful tenderers the opportunity to challenge the award if they wish. The period is longer if notifications are not sent electronically.
Tender	A request for pricing and/or quality bid from a potential supplier for goods/services/works above £50,000. Similar to a Quote but more detailed proposals are generally required from tenderers..
Think Local	The Council's policy on local purchasing, which can be found at Think Local Procurement Strategy.docx
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006. Legislation which protects employment rights of those whose job will be transferred to a new employer upon change of contractor by award of a Contract.
Value for Money or VfM	the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the goods, works or Services to meet the Council's requirement
VAT	Value Added Tax

Appendix 2 CSO Exemptions

1. Contracts below the EU Thresholds

Specific Officers may approve exemptions to these CSOs (to the extent that it is lawfully able to do so) in genuinely urgent situations and/or where there is a sound legal, financial or Value for Money reason (See **Appendix 12 Scheme of Delegations**). They **MUST**:

- give reasons for doing so on the Exemption Form (and record these in the minutes of the relevant meeting);
- The completed and signed exemption form **MUST** be entered in the Contract Register (see **Appendix 7 Contract Register**). [Exemption Form](#)

The following are considered acceptable reasons for seeking an exemption:

- quantifiable and significant cost and efficiency savings can be achieved through seeking an alternative route;
- reasons of extreme urgency mean that normal time limits cannot be met, including as a result of unforeseen emergency or disruption to Council services;
- the Council would otherwise be exposed to immediate and significant financial, legal or reputational risk that has been identified in the relevant risk register; [Risk_Register.xls](#)
- only one Contractor is objectively able to provide the works, services or supplies in question (in which case the exemption **MUST** be to the number of Quotes / Tenders that are sought);
- additional or new services, supplies or works are required which, through unforeseen circumstances, were not included in an existing Council Contract and are necessary for the completion of the Contract and/or cannot be carried out separately.
- new works or services/supplies are required which are a repetition of works, services/supplies carried out under the original Contract, provided they are required within 1 year of the original Contract.
- goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another source would result in incompatibility or disproportional technical difficulties in operation or maintenance.
- the Council has the benefit of a “Teckal” relationship with a company under Regulation 12, and exercises over the company concerned a control which

is similar to that which it exercises over its own departments and, at the same time, that company carries out the essential part of its activities with the Council's control.

You are reminded that an exemption will **not** be granted where this means the Council would not be complying with the General Principles or general law.

2. Contracts above the EU Thresholds

You cannot exempt the application of the EU procurement rules. You may need to consider other procurement routes. See **Appendix 19 (Procurement above the EU Thresholds)** for details. If you are having difficulty you **MUST** consult with Corporate Procurement for more information.

Appendix 3 Business Ethics

1. General

Business ethics focuses on what constitutes right or wrong behaviour in the world of business. The following will help you to address ethical dilemmas during your procurement process.

2. Code of Conduct

All procurement exercises **MUST** be carried out with openness and transparency and with integrity and fairness to all suppliers.

Officers of the Council **MUST** conduct themselves in line with the Council's HR Code of Conduct including with regards to the receiving of hospitality and gifts and the giving and receiving of sponsorship.

3. Separation of Roles during Tendering

Council Members and employees involved in the tendering process and dealing with contractors **MUST** be clear on the separation of client and contractor roles within the Council. Senior employees who have both a client and contractor responsibility **MUST** be aware of the need for accountability and openness.

Council Member and employees who are privy to confidential information on Tenders or costs for either internal or external contractors **MUST** not disclose that information to any unauthorised party or organisation. For further information, see the Members' Code of Practice guidance document (LINK).

4. Conflicts of Interest

There **MUST** be no conflict of interest with any suppliers or contractors. Where a conflict is identified, the member of staff concerned **MUST** not take any further part in the tendering process, to preserve the integrity of the process. For further advice, contact the Legal Department or the Procurement team.

5. Corruption

Council Members and employees **MUST** be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If an allegation is made, it is for the individual to demonstrate that any such rewards have not been corruptly obtained. For further guidance, see the B&NES Gifts and Hospitality policy on the intranet.

6. Use of Financial Resources

Council Members and Officers **MUST** ensure that they use public funds entrusted to them in a responsible and lawful manner and in accordance with the Council's Financial Regulations. They should strive to ensure Value for Money to the Area and to avoid legal challenge to the Council.

7. Lobbying

It is recognised that lobbying is a normal and perfectly legitimate element of the process of local governance however it is important that Members protect their impartiality and integrity when dealing with external contractors and suppliers.

Members **MUST NOT** breach the Bath & North East Somerset Code of Conduct by listening to or receiving viewpoints from contractors and suppliers or other interested parties unless they make it clear that they are keeping an open mind. Indicating a bias toward a particular product, supplier or contractor would prejudice impartiality and could lead to a legal challenge against the Council.

8. Former Council Employees

Council Members and employees should endeavour to ensure that where they contract with a supplier to provide services or works to the Council, that the supplier does not employ a former Council employee when producing and submitting the response to the tender. This will ensure that all suppliers in the tendering process are treated fairly and that no one supplier is given a tendering advantage and respects Council confidentiality.

Appendix 4 Confidentiality, Intellectual Property, Data Protection, Transparency and Redaction

1. Confidentiality

- 1.1 The Council has a responsibility to ensure that information provided to suppliers and provided by suppliers is treated confidentially. This is not only good practice but also gives the suppliers confidence that they are being treated fairly and without discrimination. Information provided by the Council is given to suppliers in confidence and only to those whom they need to consult for the purpose of preparing the Tender, such as professional advisors or joint bidders.
- 1.2 If a Conflict of Interest arises or if at any time during the procurement it is discovered that the tenderer has not acted confidentially, the Council has the right to eliminate them from the procurement exercise.
- 1.3 Tenderers have the right to state what elements of their Tender response they want to remain confidential however under the Freedom of Information Act the Council **MUST** provide information requested with some exceptions such as commercially confidential items (pricing, intellectual property etc.) which can be redacted from the version published in the public domain. Contractors' cooperation may be needed to ensure the Council complies with requests for information.

2. Intellectual Property

- 2.1 "Intellectual Property Rights" includes patents, inventions, trade-marks, service marks, logos, design rights, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations.
- 2.2 Generally speaking, all intellectual property rights in all works or supplies provided under a Contract which are written or produced on a bespoke or customized basis would be owned by the Council and the contractor should be required to ensure that it allows such ownership.
- 2.3 However, where the supplier provides existing intellectual property right protected material to the Council under a Contract, it has to warrant it has the right to do so and it fully indemnifies the Council against all loss or

liability arising from any third party intellectual property rights claims arising both from such existing material and in relation to any such bespoke work.

3. Data Protection

- 3.1 The Data Protection Act 1998 (DPA) is an Act of Parliament which defines UK law on the processing of data on **identifiable living people**. It is the main piece of legislation that governs the protection of personal data in the UK. All Officers are legally obliged to comply with the Act.
- 3.2 The Council's Terms and Conditions of Contract contain a data protection clause which states what contractors can and can't do with any personal data provided to them under a Contract.
- 3.3 In certain Contracts where a supplier is required to process personal data or hold personal information for the purpose of executing the Contract, then Officers should include a questionnaire relating to Information Governance issues and evaluate the responses. Guidance can be obtained from the Information Governance Manager.

4. Transparency

4.1 Under the Local Government Transparency Code [Local Government Transparency code 2015.pdf](#) the following items **MUST** be published.

- all individual items of expenditure above £500;
- every transaction made using a Government Procurement Card;
- a list of all Invitations to Tender for goods and services exceeding £5000;
- a list of all contracts, Framework Agreements, purchase orders and commissioned activity in excess of £5000.

The Corporate Procurement department arrange for this information to be published on the Council website and www.gov.uk.

5. Redaction of Data

- 5.1 It is the responsibility of the service department to ensure that the information provided for publication under the transparency code has been cleansed and any personal or sensitive information has been redacted prior to publication. No responsibility for this redaction exercise will be taken by the Corporate Procurement Team.

DRAFT

Appendix 5 Specifications

For a compliant OJEU procurement process, the Council **MUST** draft the technical specifications for a Contract upfront, before starting the procurement process. This is good practice even when you do not have to comply with the Regulations.

What the technical specifications look like will vary widely depending on the nature of the Contract. If you are having difficulty drafting a specification for the Contract, please see the guidance document at [Guide for How to Write a Specification.docx](#).

The attached links give guidance on TUPE, Health & Safety and Insurance when related to specification drafting.

[Guide on Health and Safety Issues.docx](#)

[TUPE Guide.pdf](#)

[Guide on Insurance](#)

Appendix 6 Social Value

The Social Value Act requires the procurer to consider securing economic, social, or environmental benefits when buying services above the EU Thresholds through what is being bought, and how it is procured.

This duty relates to:

- **all** service Contracts to which the Regulations apply (including those under the Light Touch Regime;
- services Contracts with a works / supplies element that is so incidental that the Contract would ordinarily be considered a services Contract under the Regulations; and
- Frameworks Agreements for such Contracts.

The Council **MUST** also think about whether **consultation** on Social Value matters is needed.

The Council has a Social Value Policy and Toolkit which can be found here: [Social Value Policy](#) and [BANES Social Value Toolkit](#) . You **MUST** apply the Social Value Policy and Toolkit to:

- **all** works Contracts (including Contracts for a mixture of works and services or supplies) where the value of the Contract is expected to exceed **£500,000**;
- **all** services Contracts and supplies Contracts (including Contracts for a mixture of works and supplies or services, and regardless of whether the full EU procurement regime applies) where the value of the Contract is expected to exceed **£100,000**;
- **all** Framework Agreements where the anticipated spend in any financial year is expected to exceed £500,000 for works and £100,000 for goods and services;
- **all** joint Contracts with other purchasers where the value of the Council expenditure is expected to exceed £500,000 for works and £100,000 for goods and services.

The Social Value Policy focuses on achieving targeted recruitment and training through Contracts as the Council's priority, but where other aspects of Social Value are relevant to a Contract they should of course be considered.

Appendix 7 The Council's Contract Register

The Council's Contract Register is the section of ProContract which records and stores information on the Council's Contracts. It:

- provides key information to Council Members and Officers on existing current and expired Contracts;
- provides limited information to the general public (including start and end dates, Contract value, and key contact details);
- interacts with the rest of ProContract, and so can help to ensure Contracts are renewed or re-procured in good time.

When should I put something on Contract Register?

Recording of Contracts on Contract Register is **Mandatory** for all Contracts valued above **£5,000**. However, it is recommended for Contracts of any value.

Any agreed exemptions **MUST** be placed on Contract Register.

You **MUST** also try to keep the information on Contract Register up to date, for example if:

- a Contract is extended;
- the key contact for a Contract changes (e.g. if an Officer leaves).

Before you Purchase Anything

You **MUST** check the Contract Register before you start any procurement activity, in case there is an existing Council Contract which covers your need that you could be using. Saving Officer time and Council expense by using an existing Contract will almost always represent Value for Money.

Appendix 8 Framework Agreements and Dynamic Purchasing Systems

Framework Agreements

A Framework Agreement is an ‘umbrella’ agreement negotiated with suppliers whereby at the start of the agreement the exact quantity of goods or services required over the period of the agreement cannot be determined.

1. For example, when you put together an agreement with a supplier to buy stationery, you won’t know exactly how many pens, pencils, rulers etc. you will need over the period of the agreement, or when you will place the orders.
2. The intention behind a framework is to streamline the competitive process by enabling one OJEU process to set up the protocol by which multiple Contracts can be called off. They can be created so that one, or many, purchasers are able to benefit from the arrangements. Equally they can be created with one provider, or a number (in which case often a “mini-competition” is used to decide which provider is used each time there is a call-off.
3. Frameworks are therefore useful when you anticipate that you are likely to need the same – or similar- provision on a number of occasions over time. They are normally limited to four years in length.
4. There is no obligation to buy anything from a Framework Agreement and you are not committing the Council to any spend. However every time you place an order from a Framework Agreement, you are entering into a legally binding Contract.

For more information on Framework Agreements, see [Guide for Framework Agreements.docx](#)

Dynamic Purchasing Systems

A DPS is similar to a framework agreement however whereas a framework is set once the award has been made and no new suppliers can be added to it, a DPS will allow new suppliers to be added, PROVIDED that they meet the objective selection criteria laid out in the original contract notice or advertisement. For further information, see the link [Guide for Dynamic purchasing systems.docx](#)

Appendix 9 Procurement Options

1. Below the EU Thresholds

Below the EU Thresholds, the procurement process is more flexible. See the main body of the CSOs, and **Appendix 15 (Minimum Requirements)** for details of the requirements for different values of spend.

However before you commence any Procurement exercise, you **MUST** complete the report [Approval to Procure \[Goods, Works, Services\]](#) and obtain authorisation to proceed for all procurements above £50k.

Firstly you **MUST** consider if there is an existing Contract or Framework you could use, either one established by the Council, or one procured by a central purchasing body.

Use of ProContract is **Mandatory** for Contracts above £5000, and it steers you through the process including:

- Advertising the Contract
- Tender stage
- Contract award.

In the absence of an existing agreement, all opportunities for Contracts and Framework Agreements above £25,000 that are advertised **MUST** be advertised on Contracts Finder and an Award Notice published within 30 days of the Contract award date. See Appendix 20 for further details.

2. Above the EU Thresholds

Please see **Appendix 19 (Procurement above the EU Thresholds)**.

3. Health and “Social” Services - (Light Touch Regime)

This section applies to Contracts for the following Services:

- Health, social and related Services
- Administrative, social, education, healthcare and cultural Services
- Compulsory Social Security Services
- Benefit Services
- School Meals and Catering Services

- Other community, social and personal Services including Services furnished by trade unions, political organisations, youth associations and other membership organisation Services
- Religious Services
- Hotel and Restaurant Services
- Legal Services
- Other administrative and government Services
- Provision of Services to the community
- Prison related Services, public security and rescue Services to the extent not excluded pursuant to point (h) of Article 10
- Investigation and security Services
- International Services
- Postal Services
- Miscellaneous Services

When you are buying these sorts of services, the “Light Touch Regime” will apply if the Contract is valued above the EU Threshold. The Threshold for LTR is 750,000 euros (currently £625,050) which is approximately £156,000 per year assuming a four year Contract. The Light Touch Regime requires you to:

- issue a Contract Notice or Prior Information Notice in OJEU
- follow a transparent and fair procedure which treats potential service providers equally; and
- issue a Contract Award Notice (as for any “full” OJEU procedure).

The Regulations require the Council to:

- give information in the Contract Notice about:
 - any conditions for participating in the competition (e.g. “prequalification” criteria);
 - any time limits for contacting the Council;
 - the award procedure that the Council will apply.
- ensure that any time limits imposed on interested providers are reasonable and proportionate.

The Council can choose to apply a procedure that looks similar to one of the “main” EU procurement procedures (see **Appendix 19 (Procurement above the EU Thresholds)**), but does not have to.

The Council **MUST** apply the Guidance of the new Light Touch Regime for Health, Social Education and certain other Service Contracts published by Crown Commercial Service.

Appendix 10 Asset Leasing

1. General

1.1 The implementation of the Prudential Code in April 2004 introduced new freedoms for local authorities to pursue various capital and revenue options for the funding of asset acquisitions. It is therefore important to ensure the most cost effective form of funding is sourced for each acquisition.

1.2 Objectives of controlling

Asset leases are to ensure-:

- (a) compliance with the Prudential Code
- (b) terms and conditions of leases are appropriate.
- (c) the lease is correctly recorded in the Council's accounts.
- (d) compliance with the Regulations.

1.3 Implications if the above objectives are not achieved:

- (a) non-compliance with the Prudential Code Value for Money requirements.
- (b) the cost of leasing the asset is greater than alternative finance options.
- (c) the Council's accounts are incorrectly stated.
- (d) legal challenge as a result of a breach of the Regulations.

1.4 Key Responsibilities for Members and Officers:

- (a) every Strategic and Divisional Director **MUST** refer all proposed leasing arrangements, within their Services, to the Chief Finance Officer-: and
- (b) approval **MUST** be obtained from the Chief Finance Officer for all asset leases.

1.5 More information on the Prudential Code can be obtained from www.cipfa.org

1.6 Asset leases are treated as supplies Contracts for the purpose of the Regulations and so the Regulations will apply in the normal way.

Appendix 11 Contract Forms and Terms & Conditions

1. General

The Regulations require the Council to make its procurement documents available electronically from the published date of the Contract Notice (Regulation 53). Procurement documents include the proposed Terms and Conditions of Contract (T&Cs) as well as PQQs and ITTs. This means that the PQQ, ITT and T&Cs, for any EU procurement process ***MUST*** be drafted **before the Contract Notice is issued**.

The Council considers it good practice to apply this rule to all Contracts, whether or not the Regulations are followed. It is therefore the expectation that the Contract form will have been decided on before the procurement / tendering process starts.

2. Contracts below the EU Thresholds

For the majority of Contracts under the EU Thresholds it will normally be appropriate to use the Council's standard Terms and Conditions, which can be found here: [\[link\]](#).

3. Contracts above the EU Thresholds

For Contracts valued above the EU Thresholds you can use the Council's standard Terms and Conditions [\[link\]](#) or it may be more suitable to use an industry standard form of Contract, or a bespoke Contract drafted for the particular Contract in question.

When considering which type of Contract to use, you should consider the points in the guidance document attached, and if appropriate discuss with the Head of Strategic Procurement

[Guide for Contract Forms and Terms & Conditions](#)

Appendix 12 Scheme of Delegations

The following people / positions / committees have delegated authority to agree or approve expenditure:

Contract Value	Authority For OBC	Authority To Agree Procurement Process	Place On Forward Plan (Y/N)	Approval Docs Required	Authority To Award The Contract	Authority To Sign An Exemption	Authority For Signing/Sealing
Up to £500	n/a	Cost Centre Manager	N	Bid Evaluation	Cost Centre Manager	Cost Centre Manager	Cost Centre Manager (signing)
£501 to £5,000	n/a	Cost Centre Manager	N	Bid Evaluation	Cost Centre Manager	Cost Centre Manager	Cost Centre Manager (signing)
£5,001 to £50,000	n/a	Cost Centre Manager	N	Bid Evaluation	Cost Centre Manager	Divisional Director	Cost Centre Manager (Signing)
£50,001 to £100,000	Divisional Director	Service Area Manager	Y	Tender Evaluation Document	Divisional Director	Divisional Director	Divisional Director (Signing) and Head of Legal (Sealing)
£100,001 to EU	Strategic Director	Divisional Director	Y	Tender Evaluation	Strategic Director with	Strategic Director with	Strategic Director with

Thresholds				Document	Cabinet Member approval	Cabinet Member approval	Cabinet Member Approval (Signing) and Head of Legal (Sealing)
Above EU Thresholds/ Emergency Purchases	Strategic Director	Divisional Director	Y (but not emergency purchases)	Single Member Decision	Cabinet Member	NOT ALLOWED above EU threshold	Head of Legal

Appendix 13 Evaluation Criteria & Debriefing

1. General

The Council **MUST** make its “procurement documents” available electronically from the date of the Contract Notice. The evaluation criteria and the weightings **MUST** be included in either the Contract Notice itself, or in the procurement documents. This means that you **MUST** have agreed the evaluation criteria for the Tender before the Contract Notice is issued.

2. Most Economically Advantageous Tender

Evaluation criteria **MUST** be based on the “Most Economically Advantageous Tender”. This can be identified by:

- price or cost (using life-cycle costing)
- the best price-quality ratio (taking into account qualitative, environmental and/or social aspects linked to the subject matter of the Contract), including:
 - quality: technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
 - organisation, qualification and experience of staff assigned to performing the Contract (where this can have a significant impact on the level of the performance of the Contract);
 - after-sales service and technical assistance, delivery conditions such as delivery date, process and period, or period of completion.

If a Contract is for a fixed price, you can use just quality criteria.

Template evaluation criteria and scoring matrix is available at [Scoring Methodology - OJEU.xlsx](#) for above threshold procurements or [Scoring Methodology - Non OJEU.xlsx](#) for below-OJEU.

3. Debriefing

The guidance document at the attached link details what you **MUST** do when debriefing suppliers following the Tender/Quote exercise. [Guide on Debriefing Suppliers.docx](#)

Appendix 14 Capability & Financial Checks

1. General

You **MUST** ensure that any supplier interested in doing business with the Council has both the technical capability and the financial capacity to be able to perform the Contract.

2. Below EU Thresholds

Below £172,514 you **MUST** NOT use a PQQ to shortlist tenderers. You can ask “suitability assessment questions” that are relevant to the subject matter of the contract and are proportionate. These can relate to minimum standards of suitability, capability, legal status or financial standing.

3. These **MUST** be checked by the Service Area Finance Manager and any concerns addressed with the supplier prior to commencing any award of contract.

3.

3. Above EU Thresholds

Procurements above the EU Thresholds using one of the procedures described in **Appendix 19 Procurements above the EU Threshold – Options and Procedures**. This includes procedures which use a Pre-Qualification Questionnaire to shortlist candidates before inviting Tenders.

When using a PQQ stage, you **MUST** use the Cabinet Office standard PQQ. This includes standard questions on financial standing:

- (a) a minimum yearly turnover which does not exceed twice the estimated Contract value;
- (b) information on their annual accounts showing the ratios, for example, between assets and liabilities; and
- (c) appropriate levels of insurance.

These **MUST** be checked by the Service Area Finance Manager and any concerns addressed with the supplier prior to commencing any award of contract.

4. Framework Agreements and Lots

There are specific rules that **MUST** be applied for Framework Agreements and lots. See the guidance in the link for frameworks. [Guide for Framework Agreements.docx](#)

Appendix 15 Minimum Requirements

1. Contracts Minimum Requirements

VALUE OF CONTRACT	MINIMUM PURCHASING REQUIREMENTS	MINIMUM CONTRACT REQUIREMENTS	ENTER ON COMMISSIONING INTENTIONS Y/N	USE OF PROCONTRACT	ENTER CONTRACT ON CONTRACT REGISTER
£1 - £500	<ul style="list-style-type: none"> - Use purchasing card if accepted by supplier - Demonstrate VfM by testing the market - Think Local 	Ensure written record of purchase	No	Recommended	n/a
£501 - £5,000	<ul style="list-style-type: none"> - Demonstrate VfM by testing the market - Think Local - Consider the Social Value Policy & Toolkit 	Ensure written record of purchase	No	Recommended	Recommended
£5,001 - £50,000	<ul style="list-style-type: none"> - Think Local - 3 written Quotes via ProContract - Consider the Social Value Policy & Toolkit - Do NOT use a PQQ but 	Council's Standard Contract Terms (unless agreed with the Legal or Procurement departments)	No	Mandatory	Yes

	can ask suitability questions – Advertise on Contracts Finder if >£25K – State award criteria – Award Contract on Contracts Finder if >£25K				
£50,001 – £100,000	– Think Local – 3 written Tenders via ProContract – Consider the Social Value Policy & Toolkit – Advertise on Contracts Finder – Do NOT use a PQQ but can ask suitability questions – Advertise on Contracts Finder – State award criteria – Award Contract on Contracts Finder	Council's Standard Contract Terms (unless agreed with the Legal or Procurement departments)	Yes	Mandatory	Yes
£100,001 – EU Threshold (£172,514)	– 3 written Tenders via ProContract – Apply the Social Value	Follow guidance at Appendix 11 (Contract Forms)	Yes	Mandatory	Yes

goods and services or £4.3m works)	<ul style="list-style-type: none"> Policy and Toolkit – Advertise on Contracts Finder – Works can use a PQQ but NOT for Goods and Services below the threshold – State award criteria – Award Contract on Contracts Finder – Contract must be sealed 	and Terms & Conditions)			
Above EU Threshold (£172,514 goods and services or £4.3m works)	<ul style="list-style-type: none"> – Follow an EU compliant procedure (see Appendix 9 (Procurement Options), Appendix 5 (Drafting Specifications) and Appendix 13 (Evaluation Criteria) and Appendix 20 (Procurement above the EU Thresholds - Options)) – Apply the Social Value Policy and Toolkit 	Follow guidance at Appendix 11 (Contract Forms and Terms & Conditions)	Yes	Mandatory	Yes

	<ul style="list-style-type: none"> – Advertise on Contracts Finder and in OJEU – Contract MUST be sealed – Award Contract in OJEU 				
Light Touch Regime – Below threshold (£625,050)	<ul style="list-style-type: none"> – Think Local – 3 written Tenders via ProContract (above £50k) – Apply the Social Value Policy and Toolkit – Advertise on Contracts Finder if >£25k – State award criteria 	Council’s Standard Contract Terms (unless agreed by the Legal or Procurement Departments)	Yes (above £50K)	Mandatory	Yes
Light Touch Regime – above threshold (£625,050)	<ul style="list-style-type: none"> – Follow a procedure compliant with EU procurement rules for LTR (see Appendix 7 Procurement Options) – Apply the Social Value Policy and Toolkit – Advertise on Contracts Finder – Award Contract in OJEU – Contract MUST be sealed 	Follow guidance at Appendix 11 (Contract Forms and Terms & Conditions)	Yes	Mandatory	Yes

Appendix 16 EU Procurement Thresholds & Timescales 2015 (subject to review 1/1/2016)

TYPE OF CONTRACT	THRESHOLD (€)	THRESHOLD (£)
Works	€5,186,000	£4,322,012
Supplies and/or (most) Services (for Local Government)	€207,000	£172,514
Social and other specific Services (Light Touch regime applies)	€750,000	£625,050

	SELECTION STAGE	TENDER STAGE	IF ELECTRONIC TENDER ACCEPTED	TENDER FOLLOWING PIN	TENDER BY AGREEMENT	URGENCY
Open Procedure	n/a	35 days	30 days	15 days	n/a	15 days
Restricted Procedure	30 days	30 days	25 days	10 days	At least 10 days	15/10 days
Competitive Procedure with Negotiation	30 days	30 days	25 days	10 days	At least 10 days	15/10 days
Competitive Dialogue	30 days	n/a	n/a	n/a	n/a	n/a
Innovation Partnership	30 days	n/a	n/a	n/a	n/a	n/a

The timeframes above are MINIMUM number of days from date the notice is sent.
It is recommended you allow 3 extra days to allow for notice publication

Appendix 17 Document Retention

Retention Classification	Retention Period
Contracts under seal (above OJEU Threshold)	12 years from Contract end This includes all Contract documents (specifications, drawings, certificates, Contract instructions and all relevant correspondence
Contracts not under seal	6 years from Contract end This includes all Contract documents (specifications, drawings, certificates, Contract instructions and all relevant correspondence
Unsuccessful Tenders and Quotes	4 years from the award of Contract
Abandoned Tenders and Quotes	4 years from the date of abandonment
Purchase files	MUST be kept up to date at all times within the Council's e-tendering system and Contract Register
Hard copies of Contracts	Store locally for 6 years after date of purchase then archive 12 years after purchase, review for possible destruction/recycling

For more information about the sealing process, please refer to the [Guide to Sealing contracts.docx](#)

Appendix 18 Tender and Contract Variations, Extensions & Termination

1. Tender Variations/Variant Bids

You can request tenderers to submit variant bids linked to the subject matter of the bid, however you **MUST** indicate in the Contract Notice or the ITT the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where a Tender which is not a variant has also been submitted.

You **MUST** ensure that the award criteria can be applied to variants meeting those minimum requirements as well as to conforming “core” Tenders which are not variants. Only variants meeting the minimum requirements laid down by the Council shall be taken into consideration.

2. Contract Extensions

When you award a Contract/Framework, you **MUST** state the start and end dates and whether there is an option to extend beyond the ‘initial term’. If an extension clause has been included in the Contract, then it is permissible to extend but this should only be done if it represents value for money to extend and if the performance of the supplier warrants it.

3. For further details on extensions and for a template letter that can be used please see [Guide on Extending a Contract or Framework Agreement.docx](#) and [Letter - Contract Extension](#)

3. Contract Variation

Contract variations should be treated with caution because of the risk that they can trigger the need for a new procurement exercise. The Regulations set out the changes that can be made to a Contract or Framework Agreement. You **MUST** read the guidance note and seek advice from either the Legal Department or the Procurement Department before making any Contract variation that could fall foul of the Regulations. [Guide to Contract Variations.docx](#)

4. Contract Termination

For any Contract above the EU Thresholds, early termination ***MUST*** be approved by the Head of Strategic Procurement. Contracts of a lesser value may be terminated early by agreement prior to the expiry date of the Contract or in accordance with the termination provisions set out in the Contract following consultation with the Head of Strategic Procurement.

DRAFT

Appendix 19 Procurement above the EU Thresholds – Options & Procedures

This Appendix lists the main choices of procurement procedure and the other routes available. You **MUST** seek the support of Procurement and Legal when you undertake any “OJEU” procurement. However, below are set out in brief some of the options available to the Council.

The link provides more detail for each of these. [Guide to the EU Procurement Procedures.docx](#)

Main Choices of Procedure

Open Procedure

Restricted Procedure

Other Routes

Competitive Procedure with Negotiation

Competitive Dialogue

Innovation Partnership

Negotiation Procedure without Notice

Reserved Contracts

Reserving Contracts to sheltered workshops

Reserving Contracts (for certain Services only) for “public Service bodies”

Concession Contracts

Dynamic purchasing systems

Electronic auction

Electronic catalogue

Lots - if you do not divide the Contract up into lots, you **MUST** explain why in the Contract Notice or procurement documents.

Appendix 20 Below Threshold Contracts (caught by Part 4 of the Regulations)

This appendix applies to Contracts between £25,000 and £172,514.¹

1. Using Contracts Finder to Advertise Contracts

- 1.1 **If** you advertise an opportunity, then you **MUST** place an advert on Contracts Finder (www.contractsfinder.service.gov.uk).
- 1.2 This does **not** include where you call off from a Framework Agreement or another select/approved list.
- 1.3 This **does** include when you issue a Prior Information Notice (PIN) or similar – you **MUST** advertise “*regardless of how specific the opportunity is*”.
- 1.4 Adverts on Contract Finder **MUST** include the following information:
 - (a) the date and time by which an interested supplier **MUST** respond if it wishes to be considered (the time period allowed for responses but be sufficient but proportionate);
 - (b) how a supplier **MUST** respond to the advert, and to whom; and
 - (c) any other requirements for participating in the procurement.
- 1.5 In reality, Contracts Finder requires more information than this, including an (estimated) Contract value.
- 1.6 When you advertise on Contracts Finder, you **MUST** offer unrestricted and full direct internet access free of charge to any relevant Contract and procurement documents, and specify in the notice the internet address where those documents can be accessed.

2. Prequalification Questionnaire

- 2.1 You **MUST not** use a PQQ for Contracts between £25,000 and £172,514 **unless** you are following a full OJEU procurement exercise.
- 2.2 Instead, you **can** ask “suitability assessment” questions that are relevant to the subject matter of the procurement and are proportionate. These questions should relate to information / evidence you need that the candidate meet requirements / minimum standards for:

¹ In this case, this threshold applies to works contracts as well as services and supplies.

- (a) suitability;
- (b) legal status;
- (c) financial standing.

3. Contract Award Notices on Contracts Finder

- 3.1 The following requirements apply when you award a public Contract – ***whether or not*** it was advertised on Contracts Finder. This includes when you call off from a Framework Agreement.
- 3.2 You ***MUST***, within a reasonable time, publish the following information on Contracts Finder:
 - (a) the name of the contractor awarded the Contract;
 - (b) the date on which the Contract was entered into;
 - (c) the value of the Contract;
 - (d) whether the contractor is an “SME” or “VCSE”.
- 3.3 “VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives”.
- 3.4 You can withhold any of this information where its release:
 - (a) would impede law enforcement or would otherwise be contrary to the public interest;
 - (b) would prejudice the legitimate commercial interests of a particular economic operator (whether public or private); or
 - (c) might prejudice fair competition between suppliers.
- 3.5 This is most likely to apply to the value of the Contract awarded.