



Birmingham City Council Constitution

Part D – Finance, Procurement and Contract Governance Rules
February 2025



Contents

Birmingham City Council Constitution	1
D1. FINANCIAL REGULATIONS	4
1.1 Financial Regulations	4
1.2 Financial Accountability Arrangements to Deliver Sound Financial Management	6
THE ROLE OF MEMBERS	6
EXECUTIVE DIRECTOR, FINANCE (S151 Officer)	8
ROLE OF DIRECTORS	10
Appendix A: Financial Approval Framework	12
D2. PROCUREMENT AND CONTRACT GOVERNANCE RULES	20
Section 1 - Introduction	20
Introduction and Purpose	20
Principles to be applied	20
Scope	21
Out of Scope	21
Compliance	22
Waiver of the Rules	23
Breach Procedure	23
Emergency Process	24
Conduct and Conflict of Interest (Procurement)	25
Section 2 - Roles and Responsibilities	26
Roles and Responsibilities	26
Specific	26
Section 3 - Thresholds	29
Thresholds	29
Estimated Contract Values	29
Section 4 - Process	46
Processes	46
Pre-Procurement Stage	46
Make or Buy Considerations	46
Route to Market	46
Prior information and Public Reports	47
Planned Procurement Activities Report (PPAR)	47
Procurement Strategy Report	48
Competitive Procurement Stage	49
Drafting Quotation and Tender Documents	49

Submission and opening of Quotations and Tenders	49
Evaluation and Award	49
Contract Award Report (including modifications and extensions where conditions 4.38 i or ii do not apply)	49
Contract Extension and Modifications	50
Contract Management	50
Other considerations	51
Due Diligence	51
Clarifications	51
Frameworks	52
Direct Awards	52
Decision Making and Tolerances	54
Record of decisions	55
Equalities Impact Assessments	55
Subsidy Control	55
Section 5 – Definitions	55

D1. FINANCIAL REGULATIONS

1.1 Financial Regulations

- i. Financial Regulations set out the key rules for the management of the Council’s Finances that must be observed by all employees and Members and anyone acting for the Council in a consultancy or interim capacity.
- ii. These Financial Regulations link closely to the Financial Arrangements that set out the responsibilities of Members, Executive Director, Finance and Directors to ensure compliance with these regulations.

- FR1. All employees and all Members must at all times when engaged on Council activities act in the interests of the Council as a whole.
- FR2. All employees and all Members must adopt the highest standards of financial probity, including declaring all relevant financial interests to the Monitoring Officer or their Director as appropriate.
- FR3. All employees and all Members have a duty to report any unlawful or potentially unlawful spending or financial irregularity at the earliest opportunity.
- FR4. All employees and all Members must comply with the Financial Approval Framework which sets out the parameters for making financial decisions (Appendix A).
- FR5. The Council appoints an Executive Director, Finance under S151 of the Local Government Act 1972, who is responsible for the proper administration of the City Council’s Financial Affairs.
- FR6. All employees and all Members must comply at all times with Financial Regulations and the associated Financial Regulatory Framework established and maintained by the S151 Officer, including: -
- a) Financial Regulations
 - b) Financial Governance Framework
 - c) Financial Procedures
 - d) Financial Management Tool “My Finance”
- FR7. All employees and all Members must act reasonably and within the spirit of the financial regulatory framework.
- FR8. Financial Regulations and the Financial Governance Framework will be reviewed annually by the Executive Director, Finance and approved by Council. The Executive Director, Finance is responsible for setting Financial Procedures and the Financial Management Tool “My Finance” and ensuring that these remain up to date.
- FR9. All activities must be in accordance with:
- a) Legislation.

- b) Approved Council strategies.
 - c) Approved revenue budgets and capital programmes.
 - d) Relevant Council policies.
 - e) All appropriate professional codes of practice (e.g. CIPFA codes).
- FR10. Best value and value for money must be sought in all activities, including the procurement and commissioning of goods and services and the acquisition and disposal of assets.
- FR11. All employees and all Members have a duty to maintain the security of Council assets and computer systems that contain financial, commercial, and personal information.
- FR12. All managers have a duty to identify, assess and mitigate existing and emerging risks facing the Council and ensure that there are appropriate insurance arrangements in place to manage those unmitigated risks.
- FR13. The Council, assisted by the Cabinet, will maintain financial oversight of all financial activities in line with the Financial Accountability Framework supported by the Executive Director, Finance, who delivers appropriate transparency and reporting on the delivery of this framework.
- FR14. The Council will appoint an Audit Committee to keep under review its risk management and internal control processes and advise it on any changes that need to be made to strengthen governance arrangements.
- FR15. The Executive Director, Finance will fulfil their statutory responsibility in line with the Executive Director, Finance Protocol at Appendix B to ensure there are appropriate and adequate systems and procedures within the Council to:
- a) Ensure that financial plans are realistic and affordable.
 - b) Report to the Council if they consider that it no longer has sufficient resources to deliver its financial plans (S114 report).
 - c) Account for all income and expenditure.
 - d) Protect assets from loss, waste, theft, or fraud.
- FR16. The Executive Director, Finance, or their representative, has the right to be present and give appropriate advice, at all meetings, where the Council's financial arrangements are discussed.
- FR17. Directors, under the Financial Accountability Framework are responsible for the control and management of all resources of all kinds, including capital and revenue budgets made available to them and must ensure that they and all of their staff comply with all relevant financial guidance and controls in managing those resources.
- FR18. Directors must provide an annual assurance statement to the Executive Director, Finance, in the format prescribed by the Executive Director, Finance, to confirm that their

Directorate has complied with Financial Regulations and Financial Procedure rules. This will set out clearly how they have gained this assurance.

- FR19 All references within this document to employees include consultants or anyone acting on a temporary or interim basis for the Council.
- FR20 These regulations also apply to all Council bodies, trading bodies or associated organisations unless the Executive Director, Finance specifically agrees that other arrangements will be followed. The Financial Regulations exclude schools for which separate regulations apply.
- FR21 Failure to comply with Financial Regulations, or instructions issued under them, may constitute misconduct.

1.2 Financial Accountability Arrangements to Deliver Sound Financial Management

- i. Financial Accountability Arrangements set out the role of Members, the Executive Director Finance and Directors in delivering sound financial management across the Council.

THE ROLE OF MEMBERS

- ii. The [Constitution](#) sets out the specific roles of Council and Cabinet and the extent to which Cabinet will fulfil the roles set out below.

FA1 Financial Planning & Control

The Council sets the spending plans for Birmingham City Council on an annual basis, advised by the S151 Officer, to conform with all necessary legislation and will: -

- (i) approve the Annual Financial Plan (including the revenue and capital budget) for each financial year before the preceding 10 March.
 - a. Medium Term Financial Plan
 - b. Reserves Strategy and Policy
 - c. Charging Policy and associated fees & charges
 - d. Capital Strategy and associated five-year capital programme
 - e. Treasury Management Strategy
- (ii) approve the level of Council Tax in accordance with the Local Government Finance Act 1992.

FA2 Financial Management

The Council or Cabinet will approve significant in-year variations to the Revenue Budget or the Capital Programme, in line with the agreed thresholds set out in Annex A. This includes:

- (i) Virement of significant sums of money between budget headings.
- (ii) Substantial new additional spending not included within revenue budget plans.
- (iii) Significant variations to the Capital Programme.

- (iv) The creation or unplanned use of reserves not included within the approved Revenue Budget or Capital Programme.
- (v) The carry-forward of unspent revenue or capital budgets at the year end.

FA3 Financial Assurance and Oversight

The Council gains assurance that its financial plans are being delivered effectively and within available resources by:

- (i) Quarterly Monitoring Reports on the Revenue Budget and Capital Programme.
- (ii) Half-yearly reports on the implementation of the Treasury Management Strategy.
- (iii) The out-turn report.
- (iv) The Annual Statement of Accounts, including the Annual Governance Statement.
- (v) The Annual report of the Audit Committee.

FA4 Financial Governance

The Council will appoint an Audit Committee to oversee financial governance

- (i) The Audit Committee agrees the annual audit plan and internal audit protocol.
- (ii) The Assistant Director Internal Audit & Risk Management reports to the Audit Committee on at least a quarterly basis on the implementation of the Audit Plan and key recommendations.
- (iii) The Audit Committee approves the Annual Governance Statement, prior to sign off and receives the report of the External Auditor on their audit of the City Council's accounts.

FA5 Core Strategies that support Sound Financial Management

The Council agrees core strategies that support Sound Financial Management including:

- (i) Anti-Fraud & Corruption Strategy.
- (ii) Anti - Money Laundering Policy.
- (iii) Whistle-blowing Strategy.
- (iv) Risk Management Strategy.
- (v) Insurance Strategy.
- (vi) Contracts and Procurement Regulations.

FA6 Delivery and adherence to Core Strategies

The Council monitors the delivery and adherence to core strategies by receiving reports on at least an annual basis on their implementation.

EXECUTIVE DIRECTOR, FINANCE (S151 Officer)

- iii. The Executive Director, Finance has a statutory responsibility for the proper administration of the Council’s financial affairs. CIPFA, the public sector professional finance body have set out five principles that define core activities and behaviours that belong to the role of the Executive Director, Finance:
- a. The Executive Director, Finance should be a key member of the Leadership Team, helping the organisation to develop and implement strategy and to resource and deliver the organisation’s strategic objectives sustainably and in the public interest.
 - b. The Executive Director, Finance must be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer-term implications, opportunities and risks are fully considered, and aligned with the organisation’s financial strategy.
 - c. The Executive Director, Finance must lead the promotion and delivery by the whole organisation of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently, and effectively.
 - d. To deliver these responsibilities the Executive Director, Finance must lead and direct a finance function that is resourced to be fit for purpose; and
 - e. The Executive Director, Finance must be professionally qualified and suitably experienced.

FB1 Financial Planning

- (i) Advising on the completeness of financial estimates.
- (ii) Assessing the robustness of reserves to support the revenue budget.
- (iii) Preparing a reserves strategy to support the revenue budget and capital programme.
- (iv) Preparing and keeping under review a medium-term financial plan.
- (v) Ensuring that the financial implications of the Capital Strategy and Capital Programme are affordable as measured by Prudential Indicators.
- (vi) Preparing an annual Treasury Management Strategy.
- (vii) Ensuring that all Council tax calculations accord with statutory requirements.

FB2 Financial Management & Control

- (i) Overseeing the delivery of the budget and capital programme within the parameters set by the Council.
- (ii) Establishing processes to ensure that any spending or virement that exceeds the set parameters is brought to the appropriate Cabinet/Council for decision.
- (iii) Establishing processes to prioritise capital and revenue spending against key Council aims and objectives.
- (iv) Establishing a business case process for capital and revenue funding bids.
- (v) Establishing a gateway process for all new capital schemes to ensure that they align with core council aims and objectives and its capital strategy.
- (vi) Advising, developing, and leading on plans to achieve a balanced budget and manage projected medium-term budget deficits.

FB3 Financial Oversight

- (i) Preparing at a minimum *quarterly* monitoring reports on the revenue budget and capital programme, including an update on the medium-term financial plan on a half yearly basis.
- (ii) Bringing to the prompt attention of Members any significant overspending or potentially unlawful spending.
- (iii) Preparing a half-yearly report on the implementation of the Treasury Management Strategy.
- (iv) Preparing annual accounts, including the Annual Governance Statement in accordance with all necessary statutory requirements, and within statutory timescales.

FB4 Financial Governance

- (i) Ensuring an appropriate system of internal control exists throughout the Council including issuing financial procedure rules and the “My Finance” financial management toolkit to make all officers aware of their responsibilities regarding sound financial management.
- (ii) Ensuring that appropriate arrangements are in place to deliver an effective internal audit service in line with the Accounts and Audit (England) Regulations 2015.
- (iii) Making appropriate arrangements for external audit in line with Local Audit & Accountability Act.
- (iv) Ensuring open and unfettered access for internal and external auditors throughout the Council.

FB5 Core Strategies that Support the Budget

- (i) In consultation with the Assistant Director (Internal Audit & Risk Management) preparing and keeping under review an Anti-Fraud and corruption strategy.
- (ii) Ensuring that the Risk Management Strategy highlights the financial impact of all risks facing the Council and this informs financial plans.
- (iii) Preparing an Insurance Strategy .
- (iv) Ensuring that contracts and procurement guidelines are followed in the ordering and procurement of goods and services.

FB6 Delivery and Adherence to Core Strategies

- (i) Preparing an annual report on the delivery of the Anti-fraud and corruption strategy
- (ii) Reporting on at least a half-yearly basis to the Audit Committee on the risk management strategy and key risks facing the Council.
- (iii) Preparing an annual report on the implementation of the insurance strategy.
- (iv) Annual report on contracts awarded and tender waivers.
- (v) Reporting annually on the operation of the Anti-Money Laundering Policy.

ROLE OF DIRECTORS

- iv. For the purposes of these regulations this means the Managing Director, Monitoring Officer and All Directors of Birmingham City Council, together with the Chief Executive and Directors of other associated organisations, who adopt the financial regulations of Birmingham City Council. Directors have prime responsibility for their budgets and ultimate responsibility for the financial management of all resources allocated to them.

FC1 Financial Planning & Control

- (i) Ensuring that the Executive Director, Finance is aware of new service and financial pressures that impact on the medium-term financial plan.
- (ii) Preparing financial estimates in accordance with financial guidance.
- (iii) Ensuring that proper and legal budgets have been set that accord with the overall Council budget.
- (iv) Maintaining and collecting sufficient performance information to assess the financial impact of changing demand for the service.
- (v) Preparing Equality Impact Needs Assessments for their areas of responsibility and for any proposals for major change, in a format specified by the Cohesion and Partnerships Manager.
- (vi) Preparing plans and strategies that support the Capital Strategy, including the IT and Digital strategy, Asset Management Plan, Estates Strategy.

FC2 Financial Management

- (i) Ensuring that net expenditure (revenue and capital) in their areas of responsibility does not exceed the annual budgets set for their services and projects.
- (ii) Ensuring that each budget has a designated budget holder and that each capital project has a designated project manager.
- (iii) Ensuring that monitoring and forecasting of in-year spending is realistic and accurately reflects current and future demand and commitments for the service.
- (iv) Complying with all financial guidance concerning the preparation of business cases and the gateway process.
- (v) Ensuring that the financial implications of key decisions are included within any report seeking additional in-year revenue or capital funding.
- (vi) Complying with all financial limits concerning the virement of budgets or the in-year approval of new capital and revenue spending.
- (vii) Developing and implementing plans to contribute to a balanced budget as part of the overall budget management strategy lead by the Executive Director, Finance.
- (viii) Ensuring the identification, reconciliation, recording and security of all income due/received.
- (ix) Ensuring the security, custody, and management of all assets.

FC3 Financial Oversight

- (i) Ensuring that all expenditure is lawful (intra vires), has been properly authorised and all necessary processes have been complied with.
- (ii) Ensuring there are adequate controls and procedures in operation within their department.
- (iii) Each Director must report to the Monitoring Officer and the Executive Director, Finance where there is doubt over the legality of proposed, or already incurred, expenditure and or actions.
- (iv) Complying with all financial procedures and requirements to maintain accurate and comprehensive financial records.
- (v) Observing all year end processes and timetables to prepare financial information to be consolidated within the Council's statement of accounts, including robust and evidence-based forecasting of spend as part of the closedown process.

FC4 Financial Governance

- (i) Co-operating and engaging effectively with their Finance Business Partner to ensure that the Business Partner is involved in all key financial decisions affecting their directorate.
- (ii) Ensuring they have appropriate organisational structures in place to achieve effective financial administration in the fulfilment of their service responsibilities and to comply with the financial regulatory environment.
- (iii) Ensuring they have effective financial systems, processes and procedures in place that meet the requirement of the Executive Director, Finance.
- (iv) Ensuring that all of their employees receive up to date financial and systems training to properly perform their duties.
- (v) Providing open and unfettered access to internal and external auditors.
- (vi) Implementing agreed internal audit recommendations within agreed timescales.

FC5 Core Strategies that Support the Budget

- (i) Ensuring that designated risk owners are appointed for all risks identified and managed within their directorate.
- (ii) *Ensuring that appropriate insurance is arranged in line with the Insurance strategy.*
- (iii) Preparing and keeping under review the Whistle Blowing Policy (Monitoring Officer).

FC6 Delivery and Adherence to Core Strategies

- (i) Directors will maintain appropriate systems to enable the Executive Director, Finance to collect information on the adherence to core strategies.

Appendix A: Financial Approval Framework

		Within Director Delegations (note 1)	Above Director Delegation & below Key Decision	Key Decision
		Below £200,000	£200,000 – up to £500,000	£500,000 (revenue)
1.	Revenue Budget and Resources Approvals			
1.1	Allocation of corporate revenue budgets	Executive Director, Finance (in consultation with the Managing Director and Leader if £100,000 or more)	Cabinet	Cabinet
1.2	Allocation of general revenue Policy Contingency			
1.3	Virement or reallocation of revenue budgets between Directorates			
1.4	Virement or reallocation of revenue budgets held by Directorates.	Relevant Director	Either relevant Cabinet Member or Regulatory Committee	Cabinet
1.5a	Approval to bid for external revenue resources (including any associated Accountable Body Roles) to be included in an Outline Business Case Report.	Relevant Director with Executive Director, Finance	Either relevant Cabinet Member with Executive Director, Finance, or Regulatory Committee	Either relevant Cabinet Member with Executive Director Finance, or Regulatory Committee
1.5b	Approval to accept external revenue resources (including any associated Accountable Body Roles	Relevant Director with Executive Director, Finance	Either relevant Cabinet Member with Executive Director, Finance, or Regulatory Committee	Cabinet
1.6	Approval to incur expenditure funded by accepting external revenue resources (including any associated Accountable Body roles) including where 1.5 is not applicable (e.g. where no bid submission was required). (Specific Government Grants and similar funding are excluded from this and are covered by 1.8) <i>In consultation with the ward members (where applicable)</i>			

1.7	Technical revenue budget reallocations or adjustments (e.g. resulting from reorganisation) (note 3)	Executive Director, Finance	Executive Director, Finance	Executive Director, Finance
1.8	Allocations of Revenue Grant and Ring-Fenced related reserves – resulting expenditure is approved if it is in accordance with the grant conditions or ring-fenced related reserve purpose			
1.9	Allocation of specific revenue Policy Contingency in line with the approved Financial Plan and Budget – resulting expenditure is approved if it is in accordance with the specific policy contingency purpose			
1.10	Allocation of specific revenue Policy Contingency not in line with approved Financial Plan and Budget – resulting expenditure is approved if it is in accordance with the specific policy contingency purpose	Cabinet	Cabinet	Cabinet
1.11	Allocation of General Reserves and Balances, and Earmarked Reserves			
1.12	Creation of Reserves			

Within Director Delegations (note 1)	Above Director Delegation & below Key Decision	Key Decision
Below £200,000	£200,000 up to £1m	from £1m

2.	Capital Budget and Resources Approvals
-----------	-----------------------------------------------

		Within Director Delegations (note 1)	Above Director Delegation & below Key Decision	Key Decision
		Below £200,000	£200,000 up to £1m	from £1m
2.1	Approval to changes to the capital budget, subject to limitations and policies in the Council's Financial Plan. This includes increases funded from capital receipts; revenue budgets; the capital fund; specific resources (note 5); or prudential borrowing - provided the borrowing costs can be funded from additional income, redirection of ongoing revenue budgets, or treasury management budgets for borrowing costs.	Executive Director, Finance	Cabinet	Cabinet
2.2	Allocation of Capital Policy Contingency.			
2.3	Virement or reallocation of capital budgets from one project or programme to another (including use of underspends) (note 6).	Executive Director, Finance	Cabinet	Cabinet
2.4	Allocation of a budget to fund overspends.			
2.5	Resource allocations in kind, e.g. asset swaps, appropriations between HRA and General Fund, and discounted asset sales.			
2.6	Allocation of approved general programme capital budgets to individual projects within the existing policy framework.	Relevant Director	Either relevant Cabinet Member with relevant Director, or Regulatory Committee, Executive Director, Finance	Either relevant Cabinet Member with relevant Director, or Regulatory Committee
2.7a	Approval to bid for external capital resources (including any associated Accountable Body roles) – this should be sought as part of an Outline Business Case Report.	Relevant Director jointly with the Executive Director, Finance	Either relevant Cabinet Member with relevant Director and Executive Director, Finance, or Regulatory Committee	Either relevant Cabinet Member with relevant Director and Executive Director, Finance or Regulatory Committee

		Within Director Delegations (note 1)	Above Director Delegation & below Key Decision	Key Decision
		Below £200,000	£200,000 up to £1m	from £1m
2.7b	Approval to accept external capital resources (including any associated Accountable Body roles) – this should be sought as part of an Outline Business Case Report.	Relevant Director jointly with the Executive Director, Finance	Either relevant Cabinet Member with relevant Director and CFO, or Regulatory Committee	Cabinet
2.8	Approval to incur expenditure funded by accepting external capital resources (including any associated Accountable Body roles) where 2.7 is not applicable (e.g. where no bid submission was required).	Relevant Director jointly with the Executive Director, Finance	Either relevant Cabinet Member with relevant Director and CFO, or Regulatory Committee	Cabinet
2.9	Technical capital budget reallocations or adjustments (e.g. resulting from reorganisation) (note 3).	Executive Director, Finance	Executive Director, Finance	Executive Director, Finance

		Within Director Delegations (note 1)	Above Director Delegation & below Key Decision	Key Decision
		Below £200,000	£200,000 – below £500,000 (Revenue)/up to £1m (Capital)	£500,000 (revenue) / from £1m+ (capital)
3.	“Gateway” Business Case Approvals			
3.1	Outline Business Case and Full Business Case reports based on estimated whole project cost (note 2). (Discretion to Chief Finance Officer to vary Business Case requirements according to circumstances).	Relevant Director (reporting formats to be determined locally)	Either relevant Cabinet Member or Regulatory Committee;	Cabinet
3.2	Post Implementation Review reports where required.			

3.3	Contract Strategy and Contract Award.	Approvals are set out in the Procurement Governance Arrangements in the Constitution
3.4	Capital Project and Programme overspends compared to the originally approved Full Business Case value.	Amount of overspend to be approved in a revised Full Business Case by the relevant decision maker in line with resource thresholds in 3.1 above. Any additional budget must be approved under 2.4 above (note 12).

4.1 Loans, other investments, guarantees, and underwritings made to Other Organisations (Note 14)

4.1	Budget allocation approval in accordance with Section 2 above.	Executive Director, Finance	Cabinet	Cabinet
4.2	Business Case approval in accordance with Section 3 above. This must include Treasury Management assessment in accordance with the Financial Management Tool and must comply with the Council's investment limit where applicable.	Relevant Director and Executive Director, Finance	Either relevant Cabinet Member with CFO, or Regulatory Committee	Cabinet

5. Property Transactions

Specific delegations relating to property transactions are contained in Birmingham City Council Constitution, Part E Scheme of Delegations, section E3 Delegations to Chief Officers, 3.2 General Delegations, *Managing Director and the Executive Director, Place, Prosperity and Sustainability*

Financial Approval Framework – Supporting Notes

Thresholds

- 1) The Director delegation level is below £200,000. In relation to Emergency Health and Safety works there is an exception to the usual Gateway reporting requirements. Schools have a delegated authority to incur spend up to £500,000 whilst all other directorates can incur less than £200,000 under chief officer delegations (see Part E Scheme of Delegations). Any spend above these levels need to be approved by the relevant decision maker as soon as practicably possible.
- 2) “Whole Project Cost” means the entire gross capital cost of the investment to the City Council, however funded (including for example expenditure funded by capital grants).

Technical budget adjustments

- 3) These may be needed for various reasons including (but not limited to):
 - Restructuring that takes place after the budget has been set and that sees the service being provided with the same budget via a different reporting hierarchy (i.e. the overall budget for the specific service being provided remains in line with that approved by the Council). Virements should only be used when it is not possible to reappoint an entire fund centre within hierarchies.
 - Changing Directorates’ uncontrollable costs such as Central Support Costs (CSC) and asset charges.
 - Savings that have been approved in the budget but have been held corporately and require reallocating.
 - Changes to Direct Schools Grant (DSG) and changes as a result of schools academisation.
 - Adjustments to Traded Services as a result of changes in year to the volume of services provided to schools and / or changes to pricing structures (e.g. Cityserve).
 - Any budget virement required as a result of technical accounting issues.

Corporate and Specific Capital Resources

- 4) Corporate capital resources are those which the Council can use for any purpose or with wide discretion as to their use, including all capital receipts, earmarked capital receipts, ‘service’ and ‘corporate’ prudential borrowing, un-ringfenced capital grants, and other general resources as determined by the Chief Finance Officer; it excludes Specific capital resources. Corporate resources are predominantly allocated in the annual capital budget process. Although Cabinet may approve further allocations at other points during the year, this will not generally be done.

- 5) Specific capital resources are all other resources which have a restricted purpose and include external grants and contributions as well as revenue contributions from a Directorate's own budget. Specific resources may be added to the capital budget by Cabinet during the year when there is reasonable certainty that the resources are available.

Capital budget virements within a project

- 6) Capital virements within a project (e.g. from one Work Breakdown Structure element to another) can be approved by the Project's Board through a documented change control request (an example is in the Major Projects Financial Management Standard in the Financial Management Tool).

Gateway Reports

- 7) The required templates for OBC and FBC reports are included in Financial Management Tool. OBCs and FBCs are an appendix to the normal Executive decision report.
- 8) The report formats for Director approval are determined locally. They must support good decision making and provide adequate justification for the proposal being put forward. It is recommended that the Executive report format is used to ensure all relevant issues are addressed. Decisions made by relevant Cabinet Members and relevant Directors/Regulatory Committees must be made using the Executive Decision Report template and recorded on CMIS.

Scope of Capital Gateway approvals

- 9) 'Capital Gateway' means any capital expenditure, including projects, ongoing programmes, and capital grants to third parties. A programme of capital works (such as an annual programme of repairs or minor works) can be treated as a single project with a business case report to approve the programme before it starts. The approach to these reports should be agreed with the relevant Business Partner, which may include the consideration of wider delegations to officers as appropriate.
- 10) Gateway approvals will also apply to Revenue Projects where the Executive Director, Finance so decides.
- 11) Capital projects where the City Council is the 'accountable body', but the expenditure decision is assessed and approved under the associated governance process of the delegated body, will not require further 'Gateway' Options Appraisal or FBC approvals, as long as the assessment/appraisal process has been reviewed by the Executive Director, Finance and is of a comparable or higher standard than the BCC gateway appraisal process.
- 12) Additional capital budgets (however funded) which are required to fund overspends, must be approved in accordance with section 2.4 above.

Outline Business Cases

- 13) Outline Business Cases will require a recommendation to release development funding. Approval to external funding will also need to be included in these reports in order to comply with 2.9 and 2.10.

Loans, other investments, guarantees and underwritings

- 14) These transactions are not always treated as capital expenditure but are all subject to the approvals in sections 1 and 2 above. This includes investments in Wholly Owned Entities. The decision thresholds apply to the value of the loan, investment, guarantee or underwriting.

Loans and other investments are a technically specialist activity and are subject to CIPFA and MHCLG statutory guidance and Council limits. The Treasury team must be involved in the clearance of all decision reports proposing loans/investments.

D2. PROCUREMENT AND CONTRACT GOVERNANCE RULES

Section 1 - Introduction

Introduction and Purpose

- 1.1 The Procurement and Contract Governance Rules (the “Rules”) shall be regarded as the Procurement and Contract Standing Orders of the Council and form part of the Constitution.
- 1.2 The Rules set out the required approach for procurement and contracting with third parties on behalf of the Council, for the purchase of Supplies, Services and Works.
- 1.3 In addition to the Rules there are supporting guidance and procedures which can be found here: [Procurement Procedures](#).
- 1.4 The Rules as set out in the following sections:
 - i. Section 1: Introduction
 - ii. Section 2: Details the roles and responsibilities that apply to anyone who purchases Supplies, Services or Works on behalf of the Council.
 - iii. Section 3. The Thresholds to be applied related to the different levels of spend and approvals.
 - iv. Section 4: Explains the Rules to be followed throughout the commissioning, procurement and contract management process.
 - v. Section 5: Sets out the defined terms within this document. Defined terms being emphasised by capital letters at the start of each word.

Principles to be applied

- 1.5 Section 135 of the Local Government Act 1972 requires the Council to make standing orders with respect to contracts for the supply of goods or services or for the execution of works which provide for securing competition and regulation of the manner in which tenders are invited. The intention of these Rules is therefore, to ensure the Council:
 - i. Obtains Value for Money and Best Value.
 - ii. Avoids and prevents corruption or the suspicion of it.
 - iii. Is fair and equitable in the treatment of all suppliers.
 - iv. Is transparent in how it conducts its procurement activities.
 - v. Promotes Social Value, including the Council’s Birmingham Business Charter for Social Responsibility, local economy and environmental sustainability, to the extent that it is legally permitted and pertains to the Public Services (Social Value) Act 2012.

Scope

- 1.6 These Rules shall apply to the procurement of the following types of contracts by or on behalf of the Council (e.g. agency staff, agents or consultants):
- i. purchasing of any Supplies (goods or materials).
 - ii. Purchasing of any Services, including professional services.
 - iii. Purchasing/ordering of any Works (such as building and engineering).
 - iv. Contract management of all third party spend.
- 1.7 In application of these Rules the following shall be undertaken:
- i. Observe all applicable legislative requirements related to how public sector organisations undertake procurement activity and / or arrange Concession Contracts.
 - ii. Ensure compliance with the Council's Financial Regulations and Scheme of Delegation.
 - iii. Provide clear and consistent record keeping ensuring audit and accountability in how decisions are taken.
 - iv. Apply proportionality to procurement activity considering value and associated risks.
 - v. Use the Council's standard Terms and Conditions for Contracts entered into with third parties, seeking Legal Services input for all Above Threshold Contracts and on a case by case basis for Below Threshold.
 - vi. Maintain compliance with requirements of the Council's Social Value Policy, including the Real Living Wage Accreditation, Birmingham Business Charter for Social Responsibility and Armed Forces Covenant.
 - vii. Make legitimate efforts to promote local business and Small Medium Enterprises (SME) through our commercial arrangements.
 - viii. Ensure capital funded projects to be considered in line with capital programme.
 - ix. Give due consideration to alignment to the Council's Procurement Strategy.

Out of Scope

- 1.8 These Rules do not apply in the following circumstances:
- i. Procurement activity undertaken by Council maintained schools in accordance with their own delegated budget, and formal procurement and contractual rules as would be set out in the Schools Financial Procedures Manual.
 - ii. Transactions regarding the purchase or lease of property, acquisition, disposal, transfer of land, or any interest in land which includes regulatory licenses (excluding consideration of Concession Contracts).
 - iii. Legal charges, awards and disbursements (including all associated costs and fees) in connection with any and all legal proceedings governed by Civil Procedure rules.

- iv. Contract offers of employment which makes an individual an employee of the Council.
 - v. Settlement of insurance claim compensation.
 - vi. Treasury transactions as outlined within the Council's Treasury Management Strategy.
 - vii. Non-contractual funding arrangements (including Grant agreements under which the Council gives a Grant to third parties) provided that the terms of the funding arrangements do not constitute a contract. Grants are to be awarded in line with the Council's conditions of Grant Aid. However, where the Council is using Grant monies itself or passing it on to a third party, the application of that money is subject to these Rules in addition to grant funding conditions.
 - viii. Specific licencing requirements (such as TV Licence or Public Entertainment Licence) or subscriptions to national organisations (such as the Local Government Association: LGA).
 - ix. Contracts for the execution of either Works (or provision of Supplies or Services) where the Council has no discretion regarding whether Works are required or who must deliver them as in the case of Work to be provided by a Statutory Undertaker, e.g. works to Public telecommunications network.
 - x. Services with a national remit, for example hosting England Illegal Money Lending Team (EIMLT), which may have requirements to comply with purchasing arrangements set out by funding body and as such those would take precedent.
 - xi. Appointment of external auditors outside of the control of the Council.
 - xii. Appointment of barristers, or legal firm where in the opinion of the Director of Legal (or delegate) urgent advice is needed to protect the interests of the Council.
 - xiii. Disposal of Supplies deemed surplus to the Council needs.
- 1.9 The above list is not exhaustive, and advice should always be sought from Commercial and Procurement Services where there is uncertainty.
- 1.10 For Expenditure with Wholly Owned Council Companies with Teckal status that can provide goods, works or services to the Council, advice should be sought from Legal Services and Commercial and Procurement Services as to whether any direct award is out of scope for the purposes of these Rules. Teckal status may apply to both above and below threshold arrangements.
- 1.11 In consideration of the above and where these Rules do apply care must be taken to ensure compliance with the Council Constitution as a whole and applicable legislation is duly considered and applied.

Compliance

- 1.12 Where these Rules apply compliance is deemed mandatory and is an essential part of the overall Constitution of the Council. Those with responsibility for fulfilling their

duties in line with these Rules are required to maintain ongoing knowledge and awareness to ensure compliance.

- 1.13 Where reference is made to, and / or is applicable, to the UK Public Sector Procurement legislation (the “Act”) then the Act needs to be referred to and complied with. The Act is not extracted or transposed into these Rules.
- 1.14 This process shall be consistently applied across the Council and directorates should not need to add any additional processes. The relevant Chief Officer / Director is responsible for ensuring these Rules are followed and all approvals required are in place before any contract is awarded.

Waiver of the Rules

- 1.15 Any requirement of these Rules may be waived by application of the Waiver procedure but only where it is satisfied that it is justified and legal to do so.
- 1.16 Waivers to these Rules must be sought prior to acting and in accordance with the Waiver Procedure. If a Waiver is sought retrospectively to the action being carried out this will be deemed a potential Breach and investigated as such.
- 1.17 Waivers to the Rules are required for all spend over £5,000.
- 1.18 Where a Waiver is approved, officers must:
- i. ensure a formal contract is put in place;
 - ii. undertake appropriate due diligence and proportionate contract management; and
 - iii. ensure there is the necessary authority in place from the decision maker in accordance with the Scheme of Delegation to award the contract.
- 1.19 Any Waiver granted for Above Threshold contracts approves only the anticipated non-compliance with the Council’s Rules, it does not excuse or mitigate the risks associated with non-compliance with the Act.
- 1.20 Use of the Waiver Procedure should not be used to circumvent due process in line with these Rules because of insufficient planning and / or activity resulting in insufficient time to procure the requirements as set out in these Rules.

Breach Procedure

- 1.21 Failure to comply with these Rules will be considered a Breach.
- 1.22 It will be the responsibility of all officers (including those with line management responsibilities) to address non-compliance swiftly and in the most appropriate way according to the circumstances.
- 1.23 Means of reporting concerns can also be raised anonymously in line with the Council’s [Whistleblowing Policy](#).
- 1.24 Officers should remain alert to fraud throughout the procurement life cycle and any concerns of fraud or corruption must be reported to the Corporate Fraud Team within Birmingham Audit, at the earliest opportunity, by emailing FraudHotline@birmingham.gov.uk.

- 1.25 Failure to comply with these Rules may constitute a disciplinary matter that may be pursued as appropriate, in accordance with the relevant Human Resources policy framework.
- 1.26 Officers must follow the Code of Conduct for employees.
- 1.27 Councillors are not permitted to form part of the process once a procurement exercise is active and must ensure that their actions do not compromise or impact on the due process that has been set out.
- 1.28 Concerns related to Councillor intervention may be subject to Standards Board investigation.
- 1.29 Further details regarding investigation of Breaches of the Rules and their consequences can be found in the Procedural Note: Breaches.
- 1.30 Reports on the number of confirmed Breaches to be sent to the Section 151 Officer on a quarterly basis.

Emergency Process

- 1.31 The use of the emergency process shall only be carried out where a genuine emergency exists and a Contract cannot be awarded based on a competitive Tender or following the Rules, and the reasons are not attributable to any act or omission by the Council.
- 1.32 A genuine emergency would be considered as having to deal with an immediate and extreme risk which could not have reasonably been foreseen, including but not limited to:
 - i. Major disaster or genuine emergency involving immediate risk to persons, property, and / or
 - ii. An event or occurrence which is creating serious disruption to Council services and / or
 - iii. An event or occurrence resulting in significant financial loss to the Council,
- 1.33 Where such a situation presents, then the Rules can be set aside to deal with the immediate response.
- 1.34 Once the immediate risks of that genuine emergency or major disaster have been duly mitigated, any follow up actions (which would be required to follow the Rules) must be implemented as soon as possible following the emergency actions taken.
- 1.35 The use of the emergency process shall be used for proportional period to remedy the immediate and present situation.
- 1.36 To act in line with the emergency process the Chief Officer shall in consultation with the relevant Cabinet Member issue instruction that the emergency process has been enabled.
- 1.37 As soon as reasonably possible post the emergency a report shall be taken to update Cabinet, with the report including:
 - i. A record of the actions taken to deal with the genuine emergency.

- ii. The justification to the reasons behind enabling the emergency process.
- iii. Any related implications because of the actions taken.

Conduct and Conflict of Interest (Procurement)

- 1.38 A Councillor or Officer must not seek or receive any bribe, gift, or inducement of any kind in respect of any award or performance of any Contract. Any Councillor or Officer who has either been offered a bribe, gift, or inducement, or is aware or suspects that another Councillor or Officer has been, shall report it to the Assistant Director (Audit & Risk Management) and / or Monitoring Officer.
- 1.39 If an Officer is or could be in a position where they have a family, personal or financial relationship with an organisation bidding for a Contract, they must not be involved in any way in the procurement exercise or seek to influence it.
- 1.40 Officers and Councillors shall be aware of the requirements of the appropriate codes of conduct and must declare any direct or indirect interest in accordance with Bribery Act 2010.
- 1.41 For all Above Threshold Tenders, Conflict of Interest Forms shall be completed by all directly involved in the Tender and for Quotations / Tenders Below Threshold only where there is a positive declaration to be made.
- 1.42 Conflict of Interest Forms shall be completed prior to any involvement in a procurement process, including those involved in the development specifications through to being part of an evaluation team. If changes to any potential conflicts occur during the process, then these must be updated as soon as they become known.
- 1.43 Conflict of Interest Forms shall be maintained by Corporate Procurement Services for record and accounting purposes in line with the Council's Corporate Retention Schedule, typically 6 years.
- 1.44 In all cases it will be the responsibility of the individual involved to make the declaration as set out above and that the declaration is in their belief true and accurate.

Section 2 - Roles and Responsibilities

Roles and Responsibilities

2.1 In carrying out their duties officers shall ensure:

- i. They comply with these Rules.
- ii. Procurement activity which they undertake supports all relevant Council plans, priorities and objectives.
- iii. Suitable records are maintained for audit, accountability and reporting purposes in line with the document retention policy, the Act and any external funding arrangements.
- iv. Relevant and proportional due diligence and assurance is undertaken and, where required, advice sought in a timely manner.
- v. They have provided an up to date Conflict of Interest form to CPS in accordance with these Rules.
- vi. Compliance with the Scheme of Delegation and the Council’s formal decision-making requirements.

Specific

2.2 Specific responsibilities can be found in Table A below:

TABLE A – Specific responsibilities

ROLE	AREA OF RESPONSIBILITY
Chief Officer	<p>Chief Officers must ensure the following arrangements are in place within their Directorate to:</p> <ul style="list-style-type: none"> • Ensure their staff comply with the Rules. • Ensure adherence to the application of supporting guidance in their role as a signatory for Waivers and Emergency process where required. • Approvals of the commercial business case, route to market strategy and contract management arrangements subject to compliance with the corresponding assurance requirements under these Rules. • Ensure that contract award decisions are made in accordance with the Council’s Constitution and Scheme of Delegation. • Ensure active and timely engagement with the Commercial and Procurement Service in development of forward work plan of procurement activity and the maintenance of a contracts register, to include identifying a named contract manager for each Contract awarded.
Director (Procurement)	<ul style="list-style-type: none"> • Overall ownership of these Rules and ensuring that the overall governance and assurance framework for commercial considerations is complied with robustly and effectively.

ROLE	AREA OF RESPONSIBILITY
Authorised Officer	<p>Authorised Officer is the individual with responsibilities in respect to the service area requiring application of spend in line with these Rules:</p> <ul style="list-style-type: none"> • Ensuring projects (Quotations, Tenders or contract extensions and/ or renewals) are appropriately planned to ensure the Rules are applied. • Ensuring there is a genuine and legitimate business requirement for the spend and an approved budget. • Ensuring that the appropriate approvals have been received in respect to committing spend. • Drafting a fit for purpose specification that includes appropriate contract management arrangements. • Supporting the definition of an appropriate route to market for each contract is followed and justification for any deviation from the approved approach. • Genuine estimating the total contract value prior to any procurement activity. • Conducting procurement and contract modifications / extensions under £30k total contract value. • Mandatory engagement with Commercial and Procurement Service for all Above Threshold procurements and any necessary proportional engagement with Commercial and Procurement Services on application of the Rules for processes over £30k up to Above Threshold. • Where required undertake, appropriate application of the Waiver Procedure. • Meeting the requirements of the Contract Management Framework. • Engaging with the Commercial and Procurement Services as required. • Having authority to act, for example be the Budget Holder, or acting with the authority of the Budget Holder including seeking spend authorisations as appropriate.
Councillors (Cabinet Members)	<ul style="list-style-type: none"> • Make strategic decisions in line with the Constitution including overall budgetary and policy framework within which procurement plans are developed and implemented. • Approve Decisions in line with Authorisations process and Constitution. • Where they have specific responsibilities in the procedural aspects, comply with these Rules and follow supporting guidance. • Ensuring compliance with the Members’ Code of Conduct, including in relation to any interests they may have.

ROLE	AREA OF RESPONSIBILITY
<p>Commercial and Procurement Service</p>	<p>On behalf of the Council provide overall strategic ownership of procurement and commercial activity. Officers working within Commercial and Procurement Services must ensure the following arrangements are in place to:</p> <ul style="list-style-type: none"> • Proactively engage with Directorates to determine the forward plan of procurement activity and how this is enabled in a proportional and timely manner, in particular for engagement of activity above £30k. • Support Directorates in assessing the commercial considerations at the design stage, drafting of the route to market strategy for procurement activity and putting the contract management arrangements in place in accordance with the contract management framework. • Work with Directorates to develop proportional and informed category strategies. • Explore options for using pre-existing Public Sector compliant contractual arrangements that allow the Council’s participation and compliantly use where this is the best value option. • Explore options for collaboration with other contracting authorities where appropriate. • Ensure the compliance of all procurement processes over £30k with the Rules and the Act, and monitoring and intervention as appropriate below £30k. • Through category management seek to develop strategic opportunities for synergy between contracts to enable the Council to get better value.

Section 3 - Thresholds

Thresholds

- 3.1 This section sets out the details in relation to financial Thresholds, the activities to be applied in procurements and authorisations in respect of related procurement activities.
- 3.2 Reference should also be taken in respect of Section 4 – Process and whether a procurement process is required or not, for example consideration of make or buy.

Estimated Contract Values

- 3.3 No contract shall be subdivided into smaller contracts so as to avoid compliance with these Rules.
- 3.4 For the purposes of the Financial Thresholds as set out in Table 1, calculation of estimated Contract value shall consider the whole life value or estimated whole life value (in pounds sterling or equivalent value) for any purchase (including any extensions or potential variations available) calculated as follows:
- i. For a fixed term Contract, by taking the total price to be paid or which might be paid during the whole of the fixed term period.
 - ii. For purchases that involve recurrent transactions for the same type of item, across the Council as a whole, by aggregating the estimated value of those transactions over the life expectancy of the Contract.
 - iii. In accordance with the Act and where the Contract is for an uncertain duration, by multiplying the monthly payment by the number of months in the proposed new contract.
- 3.5 The value for a proposed Contract must be a genuine pre-estimate with due consideration given to all associated costs (for example consideration to be given to repair, maintenance, spare parts etc.).
- 3.6 Where there is a requirement for similar Supplies, Services or Works, this spend should be aggregated. There shall be no disaggregation of requirements from across the Council to avoid the Thresholds.
- 3.7 All figures in Standing Orders are exclusive of VAT.
- 3.8 When calculating the estimated Contract values to determine which process to follow and whether the Act applies, the contract value estimation should be inclusive of VAT (where applicable).
- 3.9 For the purposes of advertising Above Threshold Tenders, the related Act's Thresholds include VAT (where applicable).
- 3.10 The default for calculating VAT to be against the prevailing current standard rate of VAT. Where a purchase is exempt from VAT, or is zero rated VAT, no allowance needs to be made for VAT.

Table 1a – Process and Transparency Notices (non Health-related services¹)

The following sets out the procurement process, including the required transparency notices to be published. Additionally, officers must be aware of the obligations for further notices as set out in Table 1b below as required by the Regulations.

Thresholds (excluding VAT)	Minimum Tender Process²	Advertising opportunity on Central Digital Platform	Contract Award Stage Central Digital Platform	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales³
Up to £5k	Proceed to purchase	Not required	Not required	Not required	Not required	Not applicable
Low Value Quotation £5k to <£30k	Preference of three quotations (two from local suppliers or SMEs where available in the market), with a minimum of one quotation (local supplier or SME where available in the market)	Optional	Not required	Yes	Optional	5 to 7 working days but preferred 15 working days
Supplies and Services: £30k to Below Threshold ("Notifiable Below Threshold Contracts") (inc. For Light Touch (LT) / Concessions / Utilities contracts)	Three quotations have been invited (to include a minimum of two local suppliers or SMEs where available in the market) ⁴	Below Threshold Tender Notice ⁵ (excluding Concessions and Utility contracts)	Below Threshold Contract Details Notice (excluding Concessions and Utility contracts)	Yes	Yes	15 working days

Thresholds (excluding VAT)	Minimum Tender Process	Advertising opportunity on Find a Tender / Central Digital Platform	Contract Award Stage	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales
Works Contracts: Low Value Quotation ("Notifiable Below-threshold contracts") £30k - £250k	Three quotations have been invited (to include a minimum of two local suppliers or SMEs where available in the market) ⁴	Below Threshold Tender Notice[UK4] ⁵ (excluding Concessions and Utility contracts)	Below Threshold Contract Details Notice[UK7] (excluding Concessions and Utility contracts)	Yes	Yes	15 working days
Works Contracts: Over £250k but below 5m (or Concessions / Utilities Contracts)	Formal tender procedure compliant with the Rules and Regulations	Below Threshold Tender Notice[UK4] (excluding Concessions and Utility contracts)	Below Threshold Contract Details Notice[UK7] (excluding Concessions and Utility contracts)	Yes	Yes	20 working days
Works Contracts: above £5m – Works threshold (or Concessions / Utilities Contracts)	Formal tender procedure compliant with the Rules and Regulations	Below Threshold Tender Notice[UK4] (excluding Concessions and Utility contracts)	Contract Award Notice[UK6]; followed by Contract Details Notice[UK7]	Yes	Yes	As per Regulations

Thresholds (excluding VAT)	Minimum Tender Process	Advertising opportunity on Find a Tender / Central Digital Platform	Contract Award Stage	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales
<p>Works Contracts:- above Works threshold - £10m (or Concessions / Utilities Contracts)</p>	<p>Formal tender procedure compliant with the Rules and Regulations</p>	<p>Tender Notice[UK4]*</p>	<p>Contract Award Notice[UK6]; followed by Contract Details Notice[UK7] Followed by Copy of the contract must be published within 90 days (of the public contract being entered into)* (i)</p>	<p>Yes</p>	<p>Yes</p>	<p>As per Regulations</p>

Thresholds (excluding VAT)	Minimum Tender Process	Advertising opportunity on Find a Tender / Central Digital Platform	Contract Award Stage	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales
Above Threshold Supplies, Services, Works to £5m (or Light Touch or Concessions or Utilities Contracts)	Formal tender procedure compliant with the Rules and Regulations	Tender Notice[UK4] ⁶	Contract Award Notice[UK6]; followed by Contract Details Notice[UK7]	Yes	Yes	As per Regulations

Thresholds (excluding VAT)	Minimum Tender Process	Advertising opportunity on Find a Tender / Central Digital Platform	Contract Award Stage	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales
<p>Above Threshold Supplies, Services, Works to £5m - £10m (note relevant thresholds for , Light Touch or Utilities Contracts) Concession contracts between £5m and the threshold for concession contracts (£5.3m) also covered here.</p>	<p>Formal tender procedure compliant with the Rules and Regulations</p>	<p>Tender Notice[UK4]⁶</p>	<p>Contract Award Notice[UK6]; followed by Contract Details Notice[UK7] Followed by Copy of the contract must be published within 90 days (of the public contract being entered into)⁶</p>	<p>Yes</p>	<p>Yes</p>	<p>As per Regulations</p>

Thresholds (excluding VAT)	Minimum Tender Process	Advertising opportunity on Find a Tender / Central Digital Platform	Contract Award Stage	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales
Over £10m	Formal tender procedure compliant with the Rules and Regulations	Tender Notice[UK4] ⁶	Contract Award Notice[UK6]; followed by Contract Details Notice[UK7]; followed by Copy of the contract must be published within 90 days (of the public contract being entered into) ⁷	Yes	Yes	As per Regulations

Thresholds (excluding VAT)	Minimum Tender Process	Advertising opportunity on Find a Tender / Central Digital Platform	Contract Award Stage	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales
Direct Award £30k - £5m (without competitive procedure) as Schedule 5 of the Regs	Appropriate Due diligence on supplier	Transparency Notice[UK5]	Contract Award Notice[UK6] Followed by Contract Details Notice[UK7]	Yes	Not Applicable	Not applicable
Direct Award Over £5m (without competitive procedure) as per Schedule 5 of the Regs	Appropriate Due diligence on supplier	Transparency Notice[UK5]	Contract Award Notice[UK6]; followed by Contract Details Notice[UK7]; followed by Copy of the contract must be published within 90 days (of the public contract being entered into) ⁸	Yes	Not applicable	Not applicable

¹ Health related services are those as defined by NHS England's Provider Selection Regime

² In establishing the Council's own Framework then the Thresholds would apply as established within Table 1a, subsequent call offs from such Frameworks would be deemed in line with the spend as authorised. For specific procurement activities requiring call-offs from compliant Frameworks, not all activities would be required, in particular the requirement for advertising the opportunity or the use of the Council's electronic tendering system. However, the subsequent award of contracts off a framework will require the publication of a Contract award Notice and Contract Details Notice. Timescales may be variable.

³ When setting the time limit for bidding due regard should be given to allowing sufficient timescales for suppliers to bid, including any Regulatory stipulations, consideration of the complexity of the proposed contract and the time required for drafting a tender response (including supplier's own sign off timescales); plus any impediments which may limit suppliers ability to respond such as peak holiday periods and likely reduced resources.

⁴ If the Authorised Officer is unable to secure the submission of three written quotations, then the Authorised Officer shall record, the reasons for audit purposes and proceed with a single quotation. For Light Touch, Concessions and Utilities contracts above the threshold value applicable to Supplies and Services, a formal tender procedure should be followed.

⁵ A Below Threshold Tender Notice is only required where the Council chooses to openly advertise the opportunity. The requirement to publish A Below Threshold Tender Notice does not apply if the Council only invites bids from particular (e.g. SME's, Local suppliers) or pre-selected suppliers (i.e. suppliers on a framework).

⁶ Where establishing a Dynamic Market, a Dynamic Market Notice will be issued in lieu of a Tender Notice

⁷ 180 days for Light Touch contracts – (publish contract). Exemptions & Confidentiality apply as per s. 94 (General exemptions from duties to publish or disclose information)

⁸ 180 days for light touch contracts – (publish contract).

Table 1b – Other Transparency Notices for above threshold procurements

Notice (and Section of the Regs)	Requirement and Function
Planned Procurement Notice (Section 15)	A non-mandatory notice announcing the intention to commence a specific procurement in the future. If it is a “qualifying” planned procurement notice it reduces the minimum timeframe for the tendering period to 10 days (subject to the general rules on setting reasonable and proportionate time limits).
Preliminary Market Engagement Notice (s.17)	A notice announcing the Council is planning to conduct, or has conducted, a pre-market engagement exercise. (Mandatory unless a justification for not publishing one is set out in the Tender Notice)
Procurement Termination Notice (s.55)	A mandatory notice setting out that the Council has decided not to award the contract after publishing a tender or transparency notice.
Contract Change Notice (s.75)	A mandatory notice setting out that the Council intends to modify a contract. (subject to percentage allowances of the modification of the value or term of the contract)
Contract Termination Notice (s.80)	A mandatory notice setting out that a contract has been terminated, required before the end of the period of 30 days beginning with the day on which a public contract is terminated. Here, ‘termination’ includes a reference to— (a) discharge, (b) expiry, (c) termination by a party, (d) rescission, or (e) set aside by court order
Pipeline Notice (published annually by CPS) (s.93)	Mandatory where the Council anticipates a total spend of over £100m in a financial year, setting out specified information about any proposed public contract with a value of more than £2m.

Table 1c – Process and Transparency Notices – Contracts for Health-related services¹

Provider Selection Regime Route (regardless of value)	Minimum Tender Process	Advertising opportunity on Find a Tender Service	Contract Award Stage	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales
Direct Award – A	Appropriate Due-diligence on supplier	Not applicable	Contract Award Notice	Award details captured in publication of Annual Summary	Not Applicable	Not applicable
Direct Award – B	Set qualifying criteria for expressions of interest. Appropriate Due diligence on suppliers	Not applicable	Contract Award Notice; followed by Copy of the contract must be published within 90 days (of the public contract being entered into)*	Award details captured in publication of Annual Summary	Optional	Not applicable

Provider Selection Regime Route (regardless of value)	Minimum Tender Process	Advertising opportunity on Find a Tender Service	Contract Award Stage	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales
Direct Award – C	Satisfy requirements of incumbent’s performance and nature of contract Due diligence on supplier	Not applicable	Intention to Award Notice; followed by Contract Award Notice	Award details captured in publication of Annual Summary	Not applicable	Not applicable
Most Suitable Provider	Pre-market engagement to confirm comprehensive knowledge of market Due diligence on supplier	Notice of Intention to follow Most Suitable Provider process	Intention to Award Notice; followed by Contract Award Notice	Award details captured in publication of Annual Summary	Yes	Proportionate to requirement
Competitive Process	Formal tender process	Notice inviting Offers	Intention to Award Notice; followed by Contract Award Notice	Award details captured in publication of Annual Summary	Yes	Proportionate to requirement

¹ Health related services are those as defined by NHS England’s Provider Selection Regime

Table 2: Authorisations and Approvals (for both Procurement Act 2023 and Provider Selection Regime)

Thresholds (excluding VAT)	Pre-procurement (Authorising procurement activity)	Post-procurement (Awarding of procurement activity) ⁻¹	Contract (as a minimum)
Up to £5k	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails.	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails.	Purchase Order
£5k up to £30k	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails.	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails.	Purchase Order and where relevant agreed terms and conditions pertinent to the Quotation / Tender process.
Supplies and Services: £30k to Below Threshold relevant Act (inc. For Light Touch / Concessions / Utilities Contracts) ⁻⁴	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails. Where 3 quotations are not invited (for Notifiable Below Threshold Contracts), prior approval by means of a Delegated Procurement Report (DPR) is required.	Contract Award Report ⁻²⁻³ Chief Officer (in accordance with Directorate Scheme of Delegation approval level).	Purchase Order and where relevant agreed terms and conditions pertinent to the Quotation / Tender process.

Thresholds (excluding VAT)	Pre-procurement (Authorising procurement activity)	Post-procurement (Awarding of procurement activity) ⁻¹	Contract (as a minimum)
<p>Works Contracts: Low Value Quotation (£30k - £250k) or to relevant Threshold (Concessions / Utilities Contracts) ⁻⁴</p>	<p>Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails. Where 3 quotations are not invited (for Notifiable Below Threshold Contracts), prior approval by means of a Delegated Procurement Report (DPR) is required.</p>	<p>Contract Award Report ⁻²⁻³ Chief Officer (in accordance with Directorate Scheme of Delegation approval level)</p> <p>Concessions / Utilities Contracts – In accordance with the Directorate Scheme of Delegation approval level.</p>	<p>Purchase Order and where relevant agreed terms and conditions pertinent to the Quotation / Tender process.</p>
<p>Works Contracts: Over £250k but Below Threshold (or Concessions / Utilities Contracts) ⁻⁴</p>	<p>Planned Procurement Activity Report (PPAR) for Cabinet approval then Strategy Report by means of Delegated Procurement Report (DPR).</p>	<p>Contract Award Report ⁻²⁻³ by means of Delegated Procurement Report (DPR) subject to Cabinet confirming delegated approval permitted at pre-procurement stage.</p>	<p>Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus Works Contract which exceeds £250,000 in value, shall be sealed with the Common Seal ⁻⁵ of the Council and shall be executed as a Deed.</p>

Thresholds (excluding VAT)	Pre-procurement (Authorising procurement activity)	Post-procurement (Awarding of procurement activity) ⁻¹	Contract (as a minimum)
Above Threshold Supplies, Services, Works to £10m (see thresholds for Concessions and Light Touch or Concessions or Utilities Contracts) ⁻⁴	Planned Procurement Activity Report (PPAR) for Cabinet approval then Strategy Report by means of Delegated Procurement Report (DPR).	Contract Award Report ⁻²⁻³ by means of Delegated Procurement Report (DPR) subject to Cabinet confirming delegated approval permitted at pre-procurement stage.	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus every contract (and all Framework agreements) for Supplies or Services which exceeds £1,000,000 in value, shall be sealed with the Common Seal ⁻⁵ of the Council and shall be executed as a Deed.
Over £10m	Consultation with Cabinet Member(s) and relevant Scrutiny Chair(s) 3 months prior to Cabinet. Inclusion on Forward Plan, Formal Cabinet Report including the Procurement Strategy.	Contract Award Report for Cabinet approval (where the decision to award has not been delegated).	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus it shall be sealed with the Common Seal ⁻⁵ of the Council and shall be executed as a Deed.
Direct Awards - £25k to £200k (revenue or capital)	Direct Award Report by sign off by Chief Officer (in accordance with Directorate Scheme of Delegation approval level) and the Assistant Director (Procurement).	Further signature of the Section 151 Officer (or their delegate) is required on the Direct Award Report.	Purchase Order and where relevant agreed terms and conditions pertinent to the Contract Negotiations.
Direct Awards - £200k to £500k (revenue) £200k to £1million (capital)	Direct Award Report submitted as an appendix for Cabinet approval by way of a Directorate led Formal Cabinet Report.	Contract Award Report ⁻² by means of Delegated Procurement Report (DPR) subject to Cabinet confirming delegated approval permitted at pre-procurement stage.	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus for Works Contract which exceeds £250,000 and over £1m for Supplies and Service in value, shall be sealed with the Common Seal ⁻⁵ of the Council and shall be executed as a Deed.

Thresholds (excluding VAT)	Pre-procurement (Authorising procurement activity)	Post-procurement (Awarding of procurement activity) ⁻¹	Contract (as a minimum)
Direct Award Contracts – above £500k (revenue) or above £1million (capital)	Consultation with Cabinet Member(s) and relevant Scrutiny Chair(s) prior to Cabinet. Inclusion on Forward Plan, Formal Cabinet Report including the Procurement Strategy.	Contract Award Report for Cabinet approval .	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus it shall be sealed with the Common Seal ⁵ of the Council and shall be executed as a Deed.

1 - Where the estimated value of a contract is under £10,000,000, the contract award decision shall normally be delegated to Chief Officer / Director in accordance with the Scheme of Delegation; provided that the tolerances in the Decision Making and Tolerances section of this document are not exceeded, in which case such contract award decision will be made by the Cabinet Member, Finance and Resources on a report of the relevant Chief Officer.

2 - Where it is likely that the award of the contract will result in staff employed by the Council transferring to the successful contractor under TUPE the decision must be made by Cabinet.

3 - Frameworks Where the rules of the Framework Agreement require opening up competition between the Framework suppliers, then a report shall be issued to the Decision Maker under the Evaluation and Award section setting out the reason for the award to the particular contractor and how the price payable by the Council has been reached.

4 - In accordance with 4.37 where a Quotation or Tender is a “call off” from a compliant Framework the Contract Award Report can be combined with the Strategy Report.

5 - Execution of Contracts

5.1 – Sealing

Every works Contract which exceeds £250,000 in value and every Contract for supplies or services which exceeds £1,000,000 in value shall be sealed with the Common Seal of the Council and shall be executed by the Contractor as a Deed.

5.2 - Signing

Subject to Footnote 5.1 (Table 2) every Contract shall be signed on behalf of the Council either by a senior lawyer who is duly authorised by the Council or an authorised officer.

5.3 - Members

No member of the Council shall enter either orally or in writing into any Contract on the Council's behalf.

Section 4 - Process

Processes

- 4.1. This Section sets out details as to the procurement processes to be followed, which will vary depending on the respective spend Thresholds as set out elsewhere in these Rules.

Pre-Procurement Stage

Make or Buy Considerations

- 4.2. Before undertaking a new procurement, the following approaches should be used in the first instance where these options are deemed fit for purpose, available for use and able to demonstrate Best Value:
- i. Use of internal Council service(s) or establishment of such service(s) where they don't currently exist.
 - ii. Use of an existing compliant Council Framework.
 - iii. Award of a Contract to the Council's wholly owned Company with Teckal status or in establishing, or implementing a public contract with another public sector entity, or using another public sector entities Framework or Contract.
- 4.3. Proceeding to undertake a formal Quotation or Tender process shall only be permitted where the following conditions are met:
- i. Make or Buy process should ensure the In-house Preferred Test has been followed and can be demonstrated conditions as set out do not apply.
 - ii. Best Value can be demonstrated.
 - iii. Sufficient time has been allowed to ensure required outcomes are achieved.

Route to Market

- 4.4. Where relevant and proportionate to do so, preliminary market engagement is permitted and encouraged with the intention of informing the procurement process and potential suppliers. Where such consultation takes place, care shall be taken it is in line with the Act. Where preliminary market engagement is carried out, a Preliminary Market Engagement Notice must be published before publishing a Tender Notice, or provide reasons for not doing so in the Tender Notice.
- 4.5. A procurement process should not be commenced unless:
- i. A genuine and timely pre-estimate of the Contract value has been completed.
 - ii. In the case of a Contract for the execution of any Works, a business case has been prepared and includes an estimate of the annual running costs of the works after completion.
 - iii. There is an approved budget, or relevant approval by Chief Officer.
 - iv. Strategy report (where applicable) has been approved.
 - v. A contract manager for the Contract has been identified.

- 4.6. A Tender Notice should not be published unless:
The use of Lots has been considered.
- 4.7. A Tender Notice, Transparency Notice or Dynamic Market Notice must not be published unless:
A conflict of interests assessment has been prepared in relation to the procurement in accordance with the Act and maintained during the life of the contract.
- 4.8. Consideration of route to market shall include options for the Council to undertake its own procurement process or consider awarding Contracts in line with the conditions of a compliant Framework available to the Council to use.
- 4.9. The route to market consideration shall consider the procurement procedures available to the Council with due regard to the Act. Where Above Threshold, strict accordance to the Act shall be followed in application of the chosen route to market.
- 4.10. For audit and transparency purposes proportional details and records on justification of the chosen route to market should be kept, along with the record-keeping obligations set out in the Act during the award of an above-threshold contract.

Prior information and Public Reports

- 4.11. To aid transparency and market readiness for all upcoming Tenders above £2m the Council shall publish on the Council website a pipeline notice of upcoming Tender opportunities in accordance with the Act.
- 4.12. In addition, and where reasonably possible, the Council will also seek to publish all Above Threshold Tender pipeline opportunities as a minimum on the Council website.
- 4.13. In line with the Act the Council is not required to publish or otherwise disclose information which would undermine the safeguarding of national security or which information is commercially sensitive.

Planned Procurement Activities Report (PPAR)

- 4.14. For all spend above the Threshold for Supplies and Services or £250k and above for Works (see Table 1) then the Director – Procurement shall present a monthly Planned Procurement Activities Report (PPAR) to Cabinet and copy to the Resources Overview and Scrutiny Committee.
- 4.15. All relevant planned procurement activity (“Planned Procurement Activities Report”) over the following quarter. The report shall include:
- i. Details of the Supplies, Services or Works required with a suitable brief description.
 - ii. Estimated timescales.
 - iii. Estimated contract values (noting some may be exempt from public disclosure subject to the public interest test in accordance with Schedule 12A of the Local Government Act 1972).

- 4.16. This purpose of the PPAR report is:
- i. To notify Cabinet and the Resources Overview & Scrutiny Committee of planned procurement activities over the following quarter with reference to Key Decisions, seeking any recommended decisions.
 - ii. To act as a sounding for Members for the planned activities where decisions are delegated to Chief Officers;
 - iii. For Cabinet to identify any sensitivities or requirements that necessitate a procurement report to be presented to Cabinet for an Executive Decision prior to starting the procurement rather than delegating the decision to Chief Officers.
- 4.17. Any planned procurements can, at the discretion of Cabinet, be brought back to Cabinet for an Executive Decision.
- 4.18. Where possible, any Tender which is required to be included on the PPAR report should be included at a suitable practical early stage to provide genuine insight as to planned tendering activity.
- 4.19. The requirement for the inclusion of Tender on a Planned Procurement Activity Report should not limit any necessary early engagement or feasibility work prior to the submission of the PPAR, for example to determine route to market.
- 4.20. Any deviation from this PPAR process will require approval via the Waiver Procedure.
- 4.21. Where an agreed procurement process has commenced in line with such an approval this must be included on the next available PPAR report and highlighted to identify that a procurement process has commenced.
- 4.22. No Contract or commitment to form a contract shall be permitted prior to the PPAR being signed off by Cabinet.

Procurement Strategy Report

- 4.23. In line with Table 2, prior to commencing a procurement process and the commencement of a Tender, a Procurement Strategy Report briefly outlining the proposed activity will be prepared by the relevant Directorate Chief Officer(s), seeking approval from:
- i. Finance – to validate that the anticipated benefits including savings can be realised and to confirm the budget is available; and
 - ii. Commissioning and Procurement Services – to confirm that the strategy demonstrates the best form of procurement / route to market, is likely to secure effective competition, deliver best value and approve the market engagement strategy and, where relevant, seeks to maximise Social Value outcomes.
 - iii. The Contract Owner shall gain approval to the content of the Strategy Report from Section 151 Officer and Director (Procurement), or their delegates.
- 4.24. Where appropriate, Executive Decision on awarding of a Contract as a result of a compliant Quotation or Tender will be delegated to the relevant Chief Officer.

Competitive Procurement Stage

Drafting Quotation and Tender Documents

- 4.25. All above threshold tenders must be undertaken in accordance with the Act for competitive tendering procedures. All Quotation or Tender invitations shall clearly set out the procurement process for suppliers to follow for submitting bids, with bids required to be submitted in accordance with those requirements.
- 4.26. All Quotation and Tender documents shall be based on the Council's approved templates and include the Council's terms and conditions relevant to the nature of the contract, along with the mandatory clauses.

Submission and opening of Quotations and Tenders

- 4.27. Those undertaking the opening / unlocking of Quotation or Tender on the Council's E-tendering System shall be responsible for ensuring that there is an accurate record of the receipt for accounting purposes.
- 4.28. Opening of Quotations or Tenders is not permitted until after the deadline has passed for the receipt of the Quotation or Tender.
- 4.29. If a Quotation or Tender is received after the specified date and time or where information is felt to be missing or omitted then reference should be made to the Late, Missing or Omitted Materials procedure.
- 4.30. Where use of the Council's electronic tendering system is optional (See Table 1 above) quotations may be received by email according to the terms of the Quotation Document. The same rigour applies for the opening and recording of quotations as above.

Evaluation and Award

- 4.31. All invitations for Quotations or Tenders shall specify the conditions for participation or selection criteria (where used) and award criteria at the time of advertising or publishing to the market, and the evaluation of Quotation or Tenders must take place in accordance with the published criteria.

Contract Award Report (including modifications and extensions where conditions 4.38 i or ii do not apply)

- 4.32. Where applicable and in line with Table 2 – Authorisations and Approvals for Contract Value, at the end of the Quotation or Tender a Contract Award Report shall be produced in accordance with the Act, for authorisation by the relevant Authorised Officer.
- 4.33. The Contract Award Report should make clear where authorisation is being sought to delegate to the appropriate Chief Officer the taking up of the option to extend, in whole or in part, or Contract modifications by written notice to the contractor(s), subject to satisfactory performance and funding availability.
- 4.34. The Contract Award Report shall be in line with Table 2: Authorisations and Approvals and in the same final version of the Contract Award Report having been seen and authorised by all parties.

- 4.35. The Contract Award Report shall set out the timing and format of the mandatory Contract Review Gate as required by the Procurement Gateway Process.
- 4.36. Following the authorisation of the Contract Award Report, all tenderers shall be notified in writing of the outcome, subject to the requirements of the Act e.g. assessment summaries, standstill periods etc., Notices shall be issued in accordance with Table 1 a-c above.
- 4.37. Where a Quotation or Tender is a “call off” from a compliant Framework the Contract Award Report can be combined with the Strategy Report in accordance with Table 2 above.

Contract Extension and Modifications

- 4.38. Contracts shall only be amended or extended where:
 - i. The Contract permits the amendment and/or extension;
 - ii. It is in accordance with the Act (as amended and/or any successor legislation);
or
 - iii. Approval is sought in accordance with the Scheme of Delegation.
- 4.39. Approvals to extend or modify a Contract must be formally recorded as part of accountability and transparency and recorded on the Contract Register as appropriate.
- 4.40. Contract extensions and modifications will be subject to the Act applicable at the time their procurement was commenced, except in the case of Health-related contracts which will be subject to the Regulations applicable at the time.
- 4.41. Before implementing any contract modification a Contract Change Notice must be published where it is required by the Act, or in the case of Health-related contracts – a Modification Notice within 30 days of the modification.
- 4.42. Where a contract extension is required that does not comply with 4.38, then this will need to follow the Rules applicable to waivers and breaches. Actions should be taken to put in place a new compliant process which will need to follow the governance set out in Table 2 above, having due regard for the Act.
- 4.43. Where a contract extension is required that was not provided for in the original contract, then this will need to follow the governance set out in Table 2 above, having due regard for the Act.
- 4.44. In line with the rules applicable to waivers and breaches, due consideration should be taken on whether a formal report to Cabinet is required outlining the circumstances relating to the Contract and what actions are to be taken to mitigate and remedy the Breach.

Contract Management

- 4.45. Proportionate contract management, taking into account risks to the Council, must be an integral part of the consideration when seeking to award a new Contract. This will

include establishing dedicated contract managers and contract management systems, including a detailed knowledge of the provisions of the Contract.

- 4.46. Contract managers must be familiar with the requirements of the Act in respect of letting and managing contracts, the identification of Key Performance Indicators (KPIs) and the transparency requirements in respect of the publication of KPIs and their monitoring; together with the transparency requirements in respect of the award of call-off contracts.
- 4.47. Payments to suppliers, and where applicable, their sub-contractors, shall be made in accordance with the Contract terms and the Act and done in a timely manner to avoid the payment of any interest charges.
- 4.48. During the life of a Contract, the contract manager must monitor the Contract in line with any approved Contract Management Framework
- 4.49. If a contractor fails to comply with any of the provisions of a Contract, the contract manager must try to secure compliance in accordance with the Contract. Proper records must be kept regarding Contract failings and any corrective measures put forward.
- 4.50. If this is not successful, the matter should be referred promptly to Commercial and Procurement Service and their advice sought as to what action should be taken to protect the Council's interests.
- 4.51. If there is contract dispute, the contract manager must follow the dispute resolution provisions contained in the Contract and seek legal advice from Legal Services where necessary. Advice should also be sought from the Section 151 Officer (as delegated) for advice about the financial implications.

Other considerations

- 4.52. In addition to the above processes the following considerations should apply:

Due Diligence

- 4.53. Relevant subject matter experts (e.g. service area teams, Legal Services, Finance, IT&D, HR (People Services), Property, Information Security, Data Protection, etc.) are to be consulted at appropriate times during the procurement process, with the respective services to engage as appropriate.

Clarifications

- 4.54. Where Quotations or Tenders are placed via the Council's e-Tendering System, clarifications on the procurement are only permitted via that system in order to ensure a full audit trail and details that may form part of the resulting Contract(s).
- 4.55. Discussions with tenderers after submission of a Tender and before the award of a Contract, with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) is generally not permitted. If this is considered necessary, then advice must be sought from Commercial and Procurement Service.
- 4.56. Planned and structured supplier contact in the form of a Bidder's Day or dialogue / negotiation as part of a prescribed procedure are permitted.

Frameworks

- 4.57. Where the Council has established the award of a Framework Agreement which has been approved by a Cabinet Member or by a Chief Officer (in accordance with the Scheme of Delegation), then Chief Officers (or as delegated) may issue further orders under the Framework agreement provided that they comply with the scope of the agreement and Framework conditions and this is noted in the framework award report.
- 4.58. Where calling off from a single contractor Framework the issuing of individual orders for supplies, services or works within the scope of that Contract shall be permitted up to the agreed levels of spend and authorisations.
- 4.59. When more than one contractor is on the Framework Agreement then the issuing of individual call off orders from Frameworks shall be in accordance with the Framework call off conditions.
- 4.60. All Framework Agreements, Open Framework Agreements and Dynamic Markets must be awarded, set up and managed strictly in accordance with the Act, where applicable.
- 4.61. In looking to establish a Framework , Open Framework or Dynamic Market , due consideration must be given to sub-dividing the Contract into lots and the reasoning provided where it is decided that this is not appropriate.
- 4.62. Frameworks are to be monitored to ensure that spend does not exceed what is permitted under the framework.
- 4.63. Contracts to be concluded by a call off from a Framework Agreement established by another Contracting Authority shall be carried out in accordance with the rules for the operation of that Framework Agreement; ensuring that the scope covers the Council as an eligible participant to which the Framework is open.
- 4.64. Framework Awards – The further award of contracts under frameworks (either Council-owned or other legally compliant framework), needs to comply with the requirements for Contract Award Notices and Contract Details Notices as set out in Table 1a above and required by the Act. Frameworks awards for below-threshold call-offs require a Contracts Details Notice whilst framework awards for above-threshold call-offs require both a Contract Award Notice and Contract Details Notice.

Direct Awards

- 4.65. The criteria for directly awarding a contract without competition shall only be deemed appropriate for the execution of supply of Supplies or Services or the execution of Works under the following circumstances:
 - i. The public contract concerns the production of a prototype, or supply of other novel goods or services, for the purpose of testing the suitability of the goods or services, researching the viability of producing or supplying the goods or services at scale and developing them for that purpose, or other research, experiment, study or development.
 - ii. The public contract concerns the creation or acquisition of a unique work of art or artistic performance.

- iii. The following conditions are met in relation to the public contract—
due to a particular supplier having intellectual property rights or other exclusive rights, only that supplier can supply the goods, services or works required, and there are no reasonable alternatives to those goods, services or works.
- iv. The following conditions are met in relation to the public contract—
due to an absence of competition for technical reasons, only a particular supplier can supply the goods, services or works required, and there are no reasonable alternatives to those goods, services or works.

Additional or repeat goods, services or works

- i. The public contract concerns the supply of goods, services or works by the existing supplier which are intended as an extension to, or partial replacement of, existing goods, services or works in circumstances where—
a change in supplier would result in the contracting authority receiving goods, services or works that are different from, or incompatible with, the existing goods, services or works, and the difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance.
- ii. The public contract concerns the supply of goods, services or works by the existing supplier that are similar to existing goods, services or works where—
the existing goods, services or works were supplied under a public contract that was awarded in accordance with a competitive tendering procedure within the period of five years ending with the day on which the transparency notice is published, and
the tender notice or any tender document in respect of that earlier contract set out—
 - a) the contracting authority's intention to carry out a subsequent procurement of similar goods, services or works in reliance on this direct award justification, and
 - b) any other information specified in regulations under section 95.
- iii. Where, in relation to Health-related services covered by the NHS England Provider Selection Regime, direct-award processes A, B or C, or the Most Suitable Provider process, can be evidenced as being applicable to a particular contract.
- iv. The public contract concerns goods purchased on a commodity market.
- v. The award of the public contract to a particular supplier will ensure terms particularly advantageous to the contracting authority due to the fact that a supplier, whether or not the one to whom the contract is to be awarded, is undergoing insolvency proceedings.
- vi. Where
 - a) the goods, services or works to be supplied under the public

- contract are strictly necessary for reasons of extreme and unavoidable urgency, and
- b) as a result the public contract cannot be awarded on the basis of a competitive tendering procedure.
- vii. The public contract is a contract for the supply of user choice services and the conditions of the Act are met.
- viii. Where the conditions of the Act are met in relation to defence and security contracts
- 4.66. Evidence is to be provided which demonstrates that as a result of a market investigation there is only one contractor that can meet the Council's requirements for that Contract in line with the criteria.
- 4.67. Where use of a Direct Award has been approved a Quotation or Tender will not be applicable.
- 4.68. Where appropriate officers must comply with the need to issue notices in accordance with the Act as set out in Table 1a.
- 4.69. For Direct Awards Above Threshold, two separate reports are required – one for the approval to commence negotiations and then one for the award of contract following the outcome of those negotiations.
- 4.70. For Direct Awards Below Threshold a single report is required for the approval to commence negotiations. Following the conclusion of negotiations, a further signature of the Section 151 Officer (or their delegate) is required for that report to confirm the contract value and allow the award of contract.
- 4.71. For Direct Award reports procedures applicable please refer to Table 2: Authorisations and Approvals.
- 4.72. Where it is deemed negotiations are required with more than one supplier due regard must be given to the Act around what is permitted in respect of negotiations and / direct awards.
- 4.73. Entering into a Direct Award process to award a contract without competition is not to be used as a means to extend contracts that have failed to be re-procured in sufficient time. In such cases these would be investigated as part of the Breach Procedure.
- 4.74. Where an appointment of a Supplier(s) is through the application of a Direct Award a formal Contract must be formed with the Supplier(s) which shall include a formal acceptable quotation from the Supplier and registered on the Council's Contract Register and all necessary due diligence shall be applied to that supplier.

Decision Making and Tolerances

- 4.75. If a project within the Planned Procurement Activity Report is not approved for the Supplies, Services or Works required, then an Executive Decision will need to be made by Cabinet (or the relevant Cabinet Member on a report of the relevant Chief Officer if it is within the appropriate financial limits).
- 4.76. In addition, the following are decisions that must also go to Cabinet where:

- i. Submitted bids are above the estimated total value of the Contract where they exceed the figure stated in the Planned Procurement Activities Report by 20% or £500,000 (whichever is the lower), or exceeds £10,000,000;
- ii. the proposed length of the Contract exceeds by more than 12 months the term stated in the Planned Procurement Activities Report;
- iii. there is a material change to the scope of the contract as set out in the Planned Procurement Activities Report;
- iv. there is a material change to the procurement approach set out in the Planned Procurement Activities Report.

4.77. If the decision within the Cabinet Report was delegated and the submitted bids are above the estimated total value of the Contract by not more than 20% or £500,000 then the DPR award report process may still be applied.

Record of decisions

- 4.78. The Director (Procurement) shall maintain a record of all decisions of the following:
- i. a record of all decisions made by Chief Officers; and a
 - ii. Report on a quarterly basis to Cabinet on all decisions taken by Chief Officers during the previous quarter to which these Rules apply.

Equalities Impact Assessments

4.79. Prior to commencement of a procurement due regard should be given as to whether an Equalities Impact Assessment should be completed.

Subsidy Control

4.80. Subsidy Control rules must be considered in situations or circumstances where the proposed arrangement may provide an advantage through state resources on a selective basis to any organisation(s) that could potentially distort international competition and / or trade.

4.81. All relevant Government guidance should be applied where subsidy control rules may apply. Advice from Legal Services should also be sought in such circumstances.

Section 5 – Definitions

The Act	<p>Means the Procurement Act 2023 (as amended and/or any successor legislation), or, in the case of Health-related services, NHS England's Provider Selection Regime.</p> <p>The Procurement Act 2023 do not apply retrospectively, therefore procurements commenced before their implementation shall be subject to the Public Contracts Regulations 2015 (as amended) applicable at the time of commencement.</p>
---------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Above Threshold	Means spend threshold above the UK Government thresholds for Local Councils setting out requirements to advertise on “Find a Tender” (Find high value contracts in the public sector – GOV.UK (www.gov.uk)).
Authorised Officer	Means the Officer as set out in Roles and Responsibilities – Section 2.
Below Threshold	Means spend falling below the UK Government requirement to advertise on “Find a Tender”.
Best Value	Means the duty placed on the Council to secure Best Value in line with statutory duties.
Birmingham Business Charter	Means the Birmingham Business Charter for Social Responsibility (BBC4SR).
Breach	Means an act or action undertaken which is counter to the requirements as set out in these Rules.
Breach Procedure	Means the procedure to be undertaken to investigate and determine if a Breach to these Rules has occurred.
Budget Holder	Means the Authorised Officer with overall responsibility for the financial budget.
Chief Officer	Means Officers reporting to the Chief Executive including all Strategic Directors and the Director of Strategy, Equality and Partnerships.
Commissioning and Procurement Gateway Process	Means the Gateway process that provides the series of reports that are required by these Governance Rules.
Concession (Contract)	As defined within the Act, typically for granting of rights to operate as a Concession on public services.
Conflict of Interest Forms	Means the form under which Conflicts of Interest Declarations are to be recorded in line.
Contract	Means a formal agreement between the Council and a Supplier that has been set up with the expressed intention of supporting the delivery of Supplies, Services or Works or Concessions arrangements.
Contract Award Report	Means the formal Council defined Award Report in relation to contract awards with third party suppliers.
Contract Register	Means the electronic register for storing and documenting Contract information and associated documents. At the time of drafting these Rules shall mean Oracle.

Contract Standing Orders	Means these Rules which form the Standing Orders in relation to Contract spend In line with section 135 of the Local Government Act 1972.
Council	Means Birmingham City Council.
Council's Corporate Retention Schedule	Means the Council's formal Retention Schedule setting out the relevant time frames for how long certain types of documents and records need to be kept for.
Council's E-Tendering System	Means the Council's preferred electronic system for advertising of contracts and opportunities, i.e. Oracle or its successor.
Decision Maker	Means the Council, Cabinet, Cabinet Member, Committee or Sub-Committee (including any District Committee), or Authorised Officer to whom a function has been delegated in accordance with the Council's Constitution.
Direct Award	Means a negotiated contract awarded without competition – as defined in the Act (Schedule 5 – Direct Award Justifications).
Dynamic Market(s)	Means dynamic arrangements and / systems as set out in the Act.
Financial Regulations	Means the formal Financial Regulations of the Council which form part of the overall Council constitution.
Framework Agreement (including open frameworks)	Means agreements as set out in the Act.
Framework Award	Means a contract awarded via a legally compliant framework, either with or without competition in accordance of that Framework Agreement. A Framework award does not need to satisfy the criteria for a Direct Award as set out in the Act.
Grant	Means a payment made by the Council to help the recipient (e.g. charity) to delivery an agreed outcome but has no contractual basis. Whilst typically provided subject to conditions that state how the Grant shall be used (for example to support the wider objectives of the Council in promoting the social, economic or environmental well-being within their communities) the grant funder (e.g. the Council) gets no direct service delivery in return. Usually preceded for award of a Grant by a call for proposals. The Grant offer letter will be in line with the Grant Policy (Condition of Grant Aid) normally set out general instructions as to how this is to be achieved and any particular conditions in regard to clawback if those wider objectives are not met.

In-house Preferred Test	Means the Council's internal measure for determining if the requirements are best suited to be delivered through internal mechanisms, e.g. internal service area, Council owned company or partnership where the Council is a majority partner versus a competitive process.
Light Touch	Means appropriate Contracts which able to be subject to Light Touch procedure as defined within the Act.
Local	Means within a 30 mile radius of the Council House
PPAR	Planned Procurement Activity Report.
Procurement and Contract Governance Rules	Means this document, also referred to as the Rules.
Rules	Means the defined reference for The Procurement and Contract Governance Rules which form the Council's Procurement and Contract Standing Orders within the constitution, i.e. this document.
Scheme of Delegation	Means the Council's rules in respect of authorisations of spend in line with individual responsibilities of Officers and the elected Members of the Council.
Services	Means the provision spend on Services for the Council as set out in the Act.
Social Value	Means the duty on the Council to consider the Public Services (Social Value) Act 2012 when commissioning a public service to consider how the service that is being procured might bring added economic, environmental and social benefits.
Social Value Policy	Means the Council's formally adopted Social Value Policy setting out the approach to be adopted in applying Social Value in relation to spend with third parties.
Subsidy Control	Means State Subsidy as set out in the Subsidy Control Bill that sets out a legal framework and setting out conditions within which public authorities can provide subsidies to businesses. The Bill places an obligation on public authorities to consider seven subsidy control principles before granting a subsidy - https://www.gov.uk/government/collections/subsidy-control-bill
Supplies	Means the provision spend on Supplier for the Council as set out in the Act.
Teckal	As defined in the Act (as amended and/or any successor legislation).
Terms and Conditions (Council)	Means the Council's formally agreed Terms and Conditions.
Thresholds	Means general spend thresholds related to spend with third parties.
Value for Money	Means optimum combination of whole-life cost and quality (or fitness for purpose) to meet the customer's requirement which includes consideration of Social Value.

Waiver	Means an agreed action to set aside a requirement or requirements as strictly set out within these Rules.
Waiver Procedure	Means the procedure to be undertaken to give consideration to whether a Waiver is granted to set aside a requirement or requirements as set out in these Rules.
Works	Means the provision spend on Works for the Council as set out in the Act.