

**SECTION 13**  
**PROCUREMENT and CONTRACT RULES AND PROCEDURES**

<b>Ref</b>	<b>Contents</b>	<b>Page No.</b>
<a href="#">13.1.1</a>	Preamble	<b>1</b>
<a href="#">13.1.2</a>	Application	<b>1</b>
<a href="#">13.1.3</a>	Procurement Governance: Executive and Councillor Engagement	<b>3</b>
<a href="#">13.1.4</a>	Compliance with confidentiality and conflicts of interest requirements	<b>3</b>
<a href="#">13.1.5</a>	Conduct	<b>3</b>
<a href="#">13.1.6</a>	Scope	<b>3</b>
<a href="#">13.1.7</a>	Contract Value Calculation	<b>5</b>
<a href="#">13.1.8</a>	Authorisations	<b>6</b>
<a href="#">13.1.9</a>	Procurement Procedure	<b>6</b>
<a href="#">13.1.10</a>	Concession Contracts	<b>8</b>
<a href="#">13.1.11</a>	Contract Signing and Sealing	<b>8</b>
<a href="#">13.1.12</a>	Contract Management	<b>9</b>
<a href="#">13.1.13</a>	Extensions and Variations	<b>9</b>
<a href="#">13.1.14</a>	Waivers	<b>10</b>
<a href="#">13.1.15</a>	Material Decisions	<b>10</b>
<a href="#">13.1.16</a>	Award Approval	<b>10</b>
<a href="#">Appendix A</a>	Health Care Services	<b>12</b>
<a href="#">Appendix B</a>	UK Procurement Thresholds from January 2024	<b>13</b>
<a href="#">Appendix C</a>	Previous Procurement Contract Rules and Procedures – applicable to Procurements undertaken and Contracts that were entered into on or before 23 <sup>rd</sup> February 2025	<b>17</b>

## **13.1 Procurement and Contract Rules**

### **13.1.1 Preamble**

#### **13.1.1.1**

The Council's Procurement and Contract Rules are designed to ensure that stewardship and probity are maintained within the Council and that Approved Officers carrying out commissioning, procurement or contract management activity must have regard to the importance of:

- delivering value for money, procurement is based on need and meeting the council's priorities;
- maximising public benefit;
- sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions;
- acting, and being seen to act, with integrity;
- and the delivery of Wokingham Borough Council's plan

#### **13.1.1.2**

These Procurement and Contract Rules should be read in conjunction with the Council's Financial Regulations which set out mandatory financial procedures to be followed. These Procurement and Contract Rules are designed to ensure they are legally compliant with:

- Procurement Act 2023
- Procurement Regulations 2024 and Guidance issued by the Cabinet Office
- The Health Care Services (Provider Selection Regime) Regulations 2023
- Public Contracts Regulations 2015 (where contracts were procured under these regulations)
- The Public Services (Social Value) Act 2012
- English law
- Council's Constitution
- Council policies

#### **13.1.1.3**

Councillors and Council employees have a duty to report breaches of the Procurement and Contract Rules to an appropriate senior manager and the Head of Procurement, Contracts and Commercialisation. Noncompliance with the Procurement and Contract Rules will be monitored by the Strategic Procurement Board (SPB).

### **13.1.2 Application**

#### **13.1.2.1**

These Procurement and Contract Rules provide the governance structure for the Council to procure works, goods and services.

#### **13.1.2.2**

These mandatory Procurement and Contract Rules apply to everyone (including external consultants and third-party providers) who are involved in the commissioning, procurement and contract management of all suppliers providing works, goods and services to the Council.

### **13.1.2.3**

Approved Officers (Heads of Service and above) are accountable for all Procurement in their respective area of responsibility including ensuring they and everyone that reports to them, are complying with the Procurement and Contract Rules and Procurement Guidelines (operational procurement guidelines and codes of practice).

### **13.1.2.4**

All Officers must ensure that the Council's approved processes and standards for Procurement, as set out in the Procurement Guidelines are adhered to. All information, governance, insurance, safeguarding, social value policy, low carbon policy, conflict of interest requirements and business continuity requirements must be adhered to in line with the Procurement Guidelines.

### **13.1.2.5**

The Monitoring Officer in consultation with the Head of Procurement, Contracts and Commercialisation is permitted to undertake an annual refresh to this document and the Procurement Guidelines without having to seek Constitution Review Working Group and Council approval. The changes to this document that may be made during the annual refresh include any changes required because of a change in law and/or its interpretation and all non-material changes (e.g. changes to UK Procurement thresholds). This must be done in consultation with the Executive Member with responsibility for Finance and Procurement to inform them of these changes including what impact they have on the Council. The Constitution Review Working Group will be informed of any such changes.

### **13.1.2.6**

The Monitoring Officer in line with section 1.1.6 of the constitution and, in consultation with the individuals listed above, may at any time issue urgent amendments to this document where compliance with these Procurement and Contract Rules would place the Council in breach of its legal duties.

### **13.1.2.7**

The Head of Procurement, Contracts and Commercialisation in consultation with the Executive Director of Resources and Assets shall maintain and issue the Procurement and Contract Rules, the Procurement Guidelines and the Procurement Strategy. In the event of any inconsistency between these Procurement and Contract Rules, the Procurement Guidelines and the Procurement Strategy, the following shall apply:

- i. Procurement Act 2023
- ii. Procurement Regulations 2024 and Guidance
- iii. The Health Care Services (Provider Selection Regime) Regulations 2023
- iv. Public Contracts Regulations 2015 (where contracts were procured under these regulations)
- v. The Public Services (Social Value) Act 2012
- vi. English law
- vii. Council's Constitution
- viii. Council policies

### **13.1.3 Procurement Governance: Executive and Councillor Engagement**

#### **13.1.3.1**

Prior to seeking approval by Executive or Council there must be close engagement and consultation at an early stage, with the Lead Councillor for the service and local ward member(s) that are considered to have an interest in the outcome of the tendering exercise. Officers must consider the need for the involvement of Overview and Scrutiny and/or Working Groups at an early stage, to review options, where a contract is valued at over £5m annually or has a total contract value of £25m.

#### **13.1.3.2**

Where approval is being sought from Executive for a programme of procurement, which is a number of co-ordinated and interrelated procurements working towards a common goal in a programme, delegated authority may be given by Executive or Council to the Director in consultation with the Director of Resources and Assets (S151 Officer) and the Lead member or Executive member responsible for the programme, to commence each procurement and award all contracts under the programme. All commencement and award approvals must follow the procurement process set out in the authorisation tables below.

### **13.1.4 Compliance with confidentiality and conflicts of interest requirements**

All officers must take appropriate measures to protect confidentiality and effectively prevent, identify and remedy conflicts of interest arising in the conduct of a Procurement exercise, so as to avoid any distortion of competition and to ensure equal treatment of all suppliers. They should also comply with the Employees Conduct Policy. If a conflict of interest is suspected or identified, such conflict should be immediately notified to the Monitoring Officer.

### **13.1.5 Conduct**

Should an Officer identify any actual or potential breach of the requirements of the Employees Conduct Policy in connection with the formulation, procurement or administration of a contract (whether in relation to that of their own role or that of any other Officer) the Officer shall immediately notify the Monitoring Officer in writing. The Monitoring Officer will investigate the matter and recommend what action should be taken in consequence in connection with the contract concerned.

Where a Supplier or an undertaking related to a Supplier, has advised the Council, or has otherwise been involved in the preparation of the procurement process, the Council must take appropriate measures to ensure that competition is not distorted by the participation of that Supplier in the Procurement.

### **13.1.6 Scope**

- 1) The Procurement and Contract Rules apply to all Procurement activities, including the spending of income or funding received by the Council from external sources, this includes grant funding according to its conditions.

- 2) Where the Council is entering into a Contract as an agent and/or in collaboration with another public body or organisation, these Procurement and Contract Rules will apply.
- 3) The Scheme for Financing Schools 2013 requires maintained schools under Council control to comply with these Procurement and Contract Rules.
- 4) Framework Agreements that have been established by other Public Sector Bodies that are lawfully accessible to the Council should be used in accordance with the terms and conditions of the relevant Framework Agreement and approved by Procurement.
- 5) The following are out of scope of the Procurement and Contract Rules, advice must be sought from Procurement where it is thought that an exclusion applies:
  - a) These Procurement and Contract Rules shall not apply to contracts falling within the Specific Exclusion provisions within the legal framework for public procurement. For the avoidance of doubt, this exclusion applies to (amongst other things) contracts of employment, certain contracts for legal services, certain financial services and debt finance and agreements for the sale or purchase of land (including leases), or other exclusions as amended from time to time.
  - b) The award of grants. However, council officers should always ensure the principles of openness, fairness, non-discrimination, compliance with the public sector equality duty and Value for Money apply.
  - c) These rules do not apply to any acquisition or disposal of any interest in land including any transaction in land under section 75 of the National Health Services Act 2006.
  - d) Partnership arrangements between NHS bodies and the Council under section 75 of the National Health Services Act 2006 are not subject to these Procurement and Contract Rules though procurement activities undertaken under any such arrangements will be subject to these Procurement and Contract Rules.
  - e) Inter-authority and inter-agency payments.
  - f) Subscriptions/memberships to professional organisations.
  - g) Social Care Residential and Nursing Care Spot Placement for an individual with a registered care provider of their choice.
  - h) Supported living services, residential nursing care, domiciliary care sought for an individual with an appropriate care and support provider of their choice under the Care Act 2014 and the Mental Health Act 1983 section 117, including direct payments.
  - i) Spot purchase arrangements for best interest assessors and mental health assessors for purposes of the deprivation of liberty safeguards.

- j) Residential placements sought for an individual under the Shared Lives scheme (or any equivalent scheme).
- k) Where certain needs of an individual (either an adult or a child) require a particular social care or education (in addition to a school placement) package, which is only available from a specific provider.
- l) Individual school placements sought for a child with Special Educational Needs (SEN).
- m) Emergency temporary accommodation for vulnerable Adults and Children.
- n) Individual Apprenticeships.
- o) The procurement of health care services is subject to the Health Care Services (Provider Selection Regime (PSR)) Regulations 2023 and the Appendix below included in these Procurement and Contract Rules shall apply to the procurement of health care services. Where there is a conflict or inconsistency between the provisions of the Appendix and the remainder of these Procurement and Contract Rules, the provisions of the Appendix shall take precedence. The Procurement team should be consulted to determine if the services fall within scope of the Provider Selection Regime.
- p) Where an exclusion applies, there is accompanying guidance on sign off monetary limits and internal governance processes.

6 The Procurement and Contract Rules do not apply to Local Authority owned companies.

### **13.1.7 Contract Value Calculation**

#### **13.1.7.1**

Contract value means the estimated total ascertainable value payable in pounds sterling, inclusive of Value Added Tax (VAT) over the entire Contract period, including any form of options or extensions of the Contract. Using the Contract Value (inclusive of VAT) will determine the governance and procurement procedure required and if the procurement is to be treated as an above or below threshold procurement. Where the Council is not able to estimate the value of the contract (for example where the contract duration is not fixed), the Contract is to be treated as being subject to the Procurement Act 2023 as a covered procurement (i.e. an above-threshold contract).

#### **13.1.7.2**

Contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding the application of Procurement and Contract Rules or the Procurement Act 2023.

### **13.1.7.3**

In the case of Framework Agreements, Open Framework Agreements or Dynamic markets, the contract value must be calculated to include the total estimated value, inclusive of VAT, of all the contracts envisaged to be awarded for the total term of the Framework Agreement or the Dynamic market.

## **13.1.8 Authorisations**

### **13.1.8.1**

For Procurements over £50,000 the Officer leading the Procurement in the relevant service area will need to consult with the Corporate Procurement Team. All Procurements over £100,000 also requires the engagement of the Legal Team.

### **13.1.8.2**

Finance, Procurement and where appropriate ICT clearance must be obtained within reports before they are submitted to Strategic Procurement Board, the Executive or Council.

### **13.1.8.3**

A Procurement Business Case paper must be completed for commencement of a Procurement activity and must be considered by the respective Strategic Procurement Board and by Executive or Council where it meets the thresholds set out in the authorisation tables below.

### **13.1.8.4**

Any Procurement must be authorised in accordance with the Scheme of Delegation as published within the Council's constitution.

### **13.1.8.5**

All Services must consider whether it is appropriate to complete an Equalities Impact Assessment prior to commencing a procurement process.

### **13.1.8.6**

A partnership arrangement must not be used as a means of avoiding the Procurement and Contract Rules or The Public Contracts Regulations. All new partnership arrangements are required to be reported as detailed in Chapter 10 of the Constitution.

### **13.1.8.7**

A Councillor has no authority, either orally or in writing, to enter into any contract on behalf of the Council.

### **13.1.8.8**

A Councillor is not permitted to negotiate personally on behalf of the Council for the purchase of goods or services or the sale of any land, property, plant rights, or commodities or for any lease or tenancy.

## **13.1.9 Procurement Procedure**

- 1 The methods of procurement and routes to procure are set out in the Procurement Guidelines.

- 2 All regulated below-threshold contract procedures for goods, services and works (and are below-threshold for a public contract) must be advertised on the Council's e-tendering Portal within 24 hours of the time when the Procurement is advertised on the Central Digital Platform. This doesn't apply if tenderers are only invited from particular or pre-selected suppliers. A below-threshold tender notice and contract details notice must also be published on the Council's e-tendering Portal and on the Central Digital Platform where applicable.
- 3 Procuring Officers must consider whether a procurement opportunity should be divided into separate lots and what the size and subject matter of those lots should be. Procuring Officers must document the main reasons for their decision to subdivide or not to subdivide a procurement into lots.
- 4 Procuring Officers must have regard to the fact that small and medium-sized enterprises (SME's) may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.
- 5 Procuring Officers must have regard to the council's Social Value Policy which is aligned with the principles defined in the Public Services (Social Value) Act 2012, the policy outlines the council's dedication to incorporating social value considerations into procurement and service delivery processes.
- 6 Where the Council accesses an existing Framework Agreement, the Framework Agreement terms and conditions of contract must be used, amended as appropriate prior to entering into them and as permitted by the Framework Agreement and by law. Before entering into a Framework Agreement, due diligence checks must be carried out to demonstrate that the Council can lawfully access the Framework Agreement and that it is fit for purpose and provides value for money. Advice must be sought from the Legal Team to review the Terms and Conditions prior to using a Framework.
- 7 Procurement activity for Contracts for certain social, community, educational and cultural related services, "Light-Touch Regime Services" whose value is equal to or over the threshold set out in the Procurement Guidelines must be procured and awarded in compliance with the Procurement Act 2023. Officers should refer to the Procurement Team to advise on the procedures to be applied in connection with the award of these Contracts.
- 8 For the procurement of regulated contracts (i.e. contracts that are not concession contracts, utilities contracts or contracts that are otherwise exempt) that are below the financial thresholds, tenders or quotes may not be restricted by reference to the supplier's suitability (this includes assessments of the supplier's legal and financial standing and its technical ability).



- 9 For Contracts under the tender financial threshold, the Head of Procurement, Contracts and Commercialisation in conjunction with the Service Director of Finance may waive the requirement to seek 3 written quotes subject to a Material Decision being provided, demonstrating that the market-place has been fully tested and the Council has obtained value for money.
- 10 The award of Contracts will be based on the most advantageous tender assessed from the Council's point of view.
- 11 Procuring Officers shall require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, goods or services.

### **13.1.10 Concession Contracts**

- 1 Concession Contracts are contracts under which the Council outsources works or services to a contractor or provider, who then has the right to commercially exploit those works or services in order to recoup its investment and make a return. The key feature is that the contractor/provider bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs.
- 2 Concession Contracts must meet certain requirements and advice prior to commitment to the same should be sought from Legal Services and Procurement. The estimated value of a concession contract is the maximum amount the supplier could expect to receive under or in connection with the contract.

### **13.1.11 Contract Signing and Sealing**

- 1 Every Contract must be in a form approved by Legal Services or delegated officer, if its value exceeds £50,000 or where appropriate to the nature of the Contract.
- 2 All Contracts awarded following a Procurement process with a Contract value above the value of £100,000 shall be sealed unless Legal Services and a delegated Officer directs otherwise.
- 3 Contracts may be sealed by Legal Services on behalf of the Council in either hard-copy or electronically.
- 4 All Officers entering into an agreement with a third party/external body must retain a copy of the contract and this must be stored securely and recorded on the Council's contract register which can be accessed by the public.

### **13.1.12 Contract Management**

- 1 During the life of the Contract, Approved Officers must ensure that the Council's processes for Contract Management, as set out in the Procurement Guidelines are adhered to. In particular to ensure that the KPI measurement, contractor performance and reporting requirements are met and recorded. To ensure that these requirements and processes are met/achieved and to ensure that continuous improvement and value for money is achieved, all Approved Officers must ensure that those responsible for managing Contracts undergo Procurement approved training.

### **13.1.13 Extensions and Variations**

- 1 Contracts that have been originally advertised with extension options and which contain clear extension options can be extended subject to acceptance under the Scheme of Delegation section of the Constitution.
- 2 Under Section 74 of the Procurement Act 2023 certain amendments, and extensions or renewals of an existing Contract can be made without triggering a requirement for a new Procurement exercise. Where a variation or extension of a Contract is lawful under the Procurement Act 2023 the variation or extension of the Contract may be authorised by Procurement, Finance, the relevant Service Director and Executive Director, acting in consultation with the Executive Member using a Contract review report. Extensions or variations made pursuant to Section 74 must still comply with 5.a and 6.c below.
- 3 All extended or varied Contracts awarded with a Contract value above the value of £100,000 shall be re-sealed unless Legal Services and a delegated Officer directs otherwise. A copy of the contract must be stored securely and recorded on the Council's contract register which can be accessed by the public.
- 4 Placement Agreements for individuals in Social Care or Educational Needs may be varied or extended without reference to the Variation or Extension Acceptance levels and documentation set out in the Scheme of Delegation section of the Constitution.
- 5 In addition to the ability to extend under Section 74, Contracts may also be extended or varied where all of the following conditions have been met:
  - a. the initial Contract was based on a Procurement and Contract Rules compliant competitive tender, direct award or quotation process;
  - b. the value of the extension or variation added to the value of the original Contract does not exceed the original Authorisation threshold as defined in the Scheme of Delegation section of the Constitution;
  - c. the extension or variation has Finance approval;
  - d. if the initial Contract was subject to an UK regulated tender procedure, that the extension option was declared within the required UK Notice(s)
- 6 Where the Procurement results in a Contract which includes a provision for an extension, any Acceptance of that extension needs to be in accordance with the Scheme of Delegation section of the Constitution.

- 7 Save where the modification can be justified under Section 74, if any of the conditions of section 5 above cannot be met, then a new Procurement exercise must be commenced.
- 8 Where a variation or extension moves the total value of the Contract into a higher threshold, then acceptance must be sought in accordance with the Scheme of Delegation section of the Constitution.

### **13.1.14 Waivers**

If the application of these Procurement and Contract Rules prevents or inhibits the delivery or continuity of service, officers may apply for a waiver, to waive one or more of the Procurement and Contract Rules. All applications for a waiver of these Procurement and Contract Rules must be submitted to Strategic Procurement Board specifically identifying the reason for which a waiver is sought, including justification and risk. The waiver report should be used for this purpose. The Council can only waive the rules established by the Council. The Council cannot waive UK law or UK Procurement Regulations.

### **13.1.15 Material Decisions**

The relevant budget holder or corresponding Service Manager/Service Director is required to complete a Statement of Material Decision for all material decisions, i.e. any action that is contrary to, or specifically required by, any part of Wokingham Borough Council's Constitution. This applies to the following:

- a. waive any part of the Procurement and Contract Rules
- b. acceptance of tenders exceeding £500k.

Officers may take decisions on emergency matters (i.e. an unexpected occurrence requiring immediate action) in consultation with the Leader using a Material Decision and providing they report to the next available Executive meeting, setting out the reasons for the emergency Material Decision. A copy of the relevant Executive report must be provided to Procurement and stored on the Council's contract repository.

### **13.1.16 Award Approval**

- 1 Award approval of Contracts must be in accordance with the Scheme of Delegation section of the Constitution, and in all cases is subject to: Budget provision; a compliant Procurement process; and, where permitted, confirmation of acceptable financial status of the contractor.
- 2 Award Approval of Contracts with independent providers of individual placements for children or adults will in the first instance be achieved through approved frameworks or approved lists of providers. Where requirements cannot be met through approved frameworks or approved lists, authority is delegated to the relevant officer of a service area under the scheme of delegation in the Council's Constitution to enter into contract with a new independent provider.
- 3 Acceptance thresholds for Contract extensions and variations are set out in the Scheme of Delegation section of the Constitution.

- 4 The financial assessment of tenders will be undertaken where they are necessary either by statute, to ensure value for money for the Council, or both by the following:
  - a. The relevant service undertaking a procurement if it identifies a requirement for financial assessment to be undertaken for a service/goods contract beneath the above threshold contract amount or beneath the works above threshold contract amount, or;
  - b. A Financial Officer who is delegated by the Executive Resources and Assets (Section 151 Officer) if: (a) the contract is valued at above threshold contract amount or more, for goods or services; or (b) the contract is valued at above threshold contract amount or more for works; or (c) the Executive Director of Resources and Assets (Section 151 Officer) considers that the Contract has a significant impact on the Council's finances.

### **13.1.17      Appendix A – Health Care Services**

- 1 Regardless of value, the health care services set out in Schedule 1 of the Health Care Services (Provider Selection Regime) Regulations 2023 (the “PSR Regulations”) must be procured in accordance with the Procurement Guidelines.
- 2 All procurement intentions are required to go through the authorisation process as detailed in these Procurement and Contract Rules.
- 3 A decision-making record is to be completed and stored for audit purposes for all PSR procurement awards.
- 4 Decision making records are to be presented to the relevant authoriser under the Scheme of Delegation for approval in consultation with the Head of Procurement, Contracts and Commercialisation or Procurement Manager.
- 5 The procurement methods and routes for health care services are as set out in the Procurement Guidelines. When a requirement to procure health care services arises, Officers must first consult with Procurement to determine the appropriate procurement route.
- 6 Any requirement in these Procurement and Contract Rules to seek quotes or to go out to tender shall not apply where:
  - a. one of the mandatory award routes in the PSR Regulations applies;
  - b. where an existing provider has satisfied the existing contract and is likely to satisfy a new contract that is not considerably different from the existing contract; or
  - c. where the Council is able to identify the most suitable provider of the services without seeking tenders or quotes.

**13.1.18 Appendix B - UK Procurement Thresholds from January 2024**

Works Contracts	£5,372,609
Concession Contracts	£5,372,609
Light Touch Regime Services	£663,540
Goods Contracts	£214,904
Services Contracts	£214,904

The UK Thresholds must be updated in line with relevant Crown Commercial Service Procurement Policy Notes. From 1<sup>st</sup> January 2024 thresholds are inclusive of VAT

**Authorisation Tables**

<b>TABLE 1: AUTHORISATION AND ACCEPTANCE THRESHOLDS – GOODS AND SERVICES</b>				
Total Spend / Aggregate Contract Value	Procurement Process	Pre-Procurement Approval Required	Documentation Required	Post-Procurement Approval required to accept tender and sign contract
Level 1 £5k to £50k (excluding VAT)	Minimum 3 quotes (using e-tender system) Where possible, 1 bid should be from a local Small and Medium Enterprise  If over £25k to threshold and advertised, it must advertised on the Central Digital Platform	Service Director	Request for quotation (RFQ) and Purchase Order or standard T&C's	Service Director
Level 2 £50K to £500K (VAT inclusive from GPA threshold)	Tender process (using e-tender system)  If advertised, it must advertised on the Central Digital Platform  If over £25k to threshold and advertised, it must be advertised on the Central Digital Platform	Service Director and Director Over £100k subject to Strategic Procurement Board (SPB) approval IT Projects only, subject to Technical Working Group approval	Procurement Strategy paper Tender documentation £50k - £100k standard T&C's. Contract via legal for over £100k	Service Director £50k-£100k Director £100k - £500k Contracts over £100K must be sealed

<b>TABLE 1: AUTHORISATION AND ACCEPTANCE THRESHOLDS – GOODS AND SERVICES</b>				
Total Spend / Aggregate Contract Value	Procurement Process	Pre-Procurement Approval Required	Documentation Required	Post-Procurement Approval required to accept tender and sign contract
Level 3 >£500K (VAT inclusive)	Tender (using e-tender system)  If advertised, it must be advertised on the Central Digital Platform	Executive approval Subject to Strategic Procurement Board approval IT projects only, subject to Technical Working Group approval	Procurement Strategy paper Executive report via modern.gov Tender documentation Contract via legal	Director via Material Decision Contracts over £100K must be sealed

<b>TABLE 2: AUTHORISATION AND ACCEPTANCE THRESHOLDS – SCHEDULE 3 SERVICES – LIGHT TOUCH REGIME*</b>				
Total Spend / Aggregate Contract Value (Including VAT)	Procurement Process		Documentation Required	Authorisation for award of contracts Under the Scheme of Delegation
Level 1 £5k to £50k	Minimum 3 quotes (using e-tender system)	Simple quotation and Purchase Order	Not Applicable	Service Director
Level 2 £50k – £663,540 (VAT inclusive)	Tender process (using e-tender system) or quotation  If advertised, it must be advertised on the Central Digital Platform  If over £25k to threshold and advertised, it must be advertised on the Central Digital Platform	Service Director and Director Over £100k subject to Strategic Procurement Board (SPB) approval IT Projects only, subject to Technical Working Group approval	Procurement Strategy paper Tender documentation £50k - £100k standard T&C's. Contract via legal for over £100k	Service Director £50-£100k Director £100k - £500k Contracts over £100K must be sealed
Level 3 > £663,540 (VAT inclusive)	Tender (using e-tender system)  If advertised, it must be advertised on the Central Digital Platform	Executive approval Subject to Strategic Procurement Board approval IT projects only, subject to Technical	Procurement Strategy paper Executive report via modern.gov Tender documentation Contract via legal	Director via Material Decision Contracts over £100K must be sealed

<b>TABLE 2: AUTHORISATION AND ACCEPTANCE THRESHOLDS – SCHEDULE 3 SERVICES – LIGHT TOUCH REGIME*</b>				
Total Spend / Aggregate Contract Value (Including VAT)	Procurement Process		Documentation Required	Authorisation for award of contracts Under the Scheme of Delegation
		Working Group approval		

\*The light touch regime (LTR) refers to a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. These contracts include social, health, and education services, defined by Common Procurement Vocabulary (CPV) codes<sup>1</sup>. Essentially, LTR provides more flexibility and fewer regulations for procuring these services, making the process more adaptable and streamlined



<b>TABLE 3: AUTHORISATION AND ACCEPTANCE THRESHOLDS – WORKS</b>				
Total Spend / Aggregate Contract Value (Including VAT)	Procurement Process	Pre-Procurement Approval	Documentation Required	Authorisation for award of contracts
Level 1 £5k to £180k	<p>Minimum 3 quotes (using e-tender system)</p> <p>Where possible, 1 bid should be from a local Small and Medium Enterprise If over £25k to threshold and advertised, it must be advertised on the Central Digital Platform.</p>	<p>Service Director approval up to £100k</p> <p>Director approval over £100k</p>	<p>Request for Quotation (RFQ) and Purchase Order or standard T&amp;Cs (including JCT standard form)</p> <p>Contract via legal over £100k</p>	<p>Service Director approval up to £100k</p> <p>£100k and over Director approval</p> <p>Contracts over £100K must be sealed</p>
Level 2 £180.1k – £5,372,609 (VAT inclusive)	<p>Tender process (using e-tender system)</p> <p>If advertised, it must be advertised on the Central Digital Platform</p>	<p>Service Director and Director Over £100k subject to Strategic Procurement Board (SPB) approval IT Projects only: subject to Technical Working Group approval</p>	<p>Procurement Strategy paper Tender documentation £50k - £100k standard T&amp;C's. Contract via legal for over £100k</p>	<p>Service Director £50-£100k</p> <p>Director £100k - £500k</p> <p>Contracts over £100K must be sealed</p>
Level 3 > £5,372,609	<p>Tender (using e-tender system)</p> <p>If advertised, it must be advertised on the Central Digital Platform</p>	<p>Executive approval Subject to Strategic Procurement Board approval IT projects only, subject to Technical Working Group approval.</p>	<p>Procurement Strategy paper Executive report via modern.gov Tender documentation Contract via legal</p>	<p>Director via Material Decision</p> <p>Contracts over £100K must be sealed</p>

## **Appendix C – Previous Procurement Contract Rules and Procedures – applicable to Procurements undertaken and Contracts that were entered into on or before 23<sup>rd</sup> February 2025**

### **CHAPTER 13 – PROCUREMENT AND CONTRACT RULES AND PROCEDURES**

#### **13.1 Purpose and Significance**

##### **13.1.1**

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

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

All references to GPA refer to the Government Procurement Agreement of the World Trade Organisation, of which the UK is now a member in its own independent right. All references to FTS refer to the Find a Tender Service, the UK’s procurement portal for international advertising of contract opportunities. equivalent of OJEU.

##### **13.1.2**

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

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

##### **13.1.3**

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

##### **13.1.4**

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

- a) Procurement and Contracts Team for day-to-day advice in respect of the operation of these rules and procedures;
- b) Legal Services team for advice on issues of precedence and the law relating to Council contracts.

### **13.1.5**

There is a series of policies which should be read in conjunction with these PCRPs. They may be updated from time to time but will always constitute a key component of the PCRPs. [See Appendix 2](#) for a list of applicable policies and [Rule 13.5](#) for an explanation of other associated documentation.

## **13.2 General Principles**

### **13.2.1 Application and Scope**

#### **13.2.1.1**

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

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

#### **13.2.1.2**

The PCRPs do not apply to contracts for:

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

#### **13.2.1.3**

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

#### **13.2.1.4**

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

#### **13.2.1.5**

The potential solutions to events/changes not in the normal course of business, whether during the procurement process or after the contract is underway, can be complex and will depend on the nature of the contract and the specific changes required. In any instance where action outside of the normal contractual terms and conditions is necessary, contact Procurement for detailed advice.

#### **13.2.1.6**

Wherever Public Contracts Regulations 2015 (UK Law) allows for exemptions from the normal processes for above threshold procurements, the analogous exemptions are allowed from the normal PCRPs for below threshold procurements. This does not remove the obligation on Officers to demonstrate Value for Money and to meet the fundamental need for transparency. A business case needs to be developed for each application of an exemption and Rule 13.3.1.1 – Procurement Business Case (including options appraisal) applied. Accordingly, regardless of the process followed, every contract with a total ascertainable value exceeding £5,000 must be recorded in Wokingham Borough Council's contracts register. Contact Procurement for advice about each individual case.

### **13.2.2 Estimating Contract Value**

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

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

Where no definition of total value is possible, the estimated contract value shall be calculated as 48 x the monthly value.

Where service contracts are regular in nature (multiple contracts of similar type – aggregation) the calculation of the estimated contract value shall be based on the total actual value of the successive contracts of the same type awarded during the preceding 12 months. The calculation must take account of the changes in quantity and value that would occur during the 12 months following award of the initial contract.

### **13.2.3 Responsibilities and Compliance**

#### **13.2.3.1**

The PCRPs apply to every officer of the Council and anyone acting on its behalf. It is the responsibility of Directors to ensure that the Rules and Procedures are adhered to. The use of e-Procurement became a statutory requirement for qualifying tenders from 18 October 2018; WBC Officers should therefore manage all relevant procurements using the Council's e-Procurement system.

#### **13.2.3.2**

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

#### **13.2.3.3**

Breaches of these Rules and Procedures should be reported to the Monitoring Officer; Section 151 Officer and the Assistant Director Governance.

#### **13.2.3.4**

Any officer or member of staff who suspects any fraud, corruption or misconduct in relation to any procurement or contract must immediately report that suspicion to the Monitoring Officer, Section 151 Officer and the Assistant Director Governance.

### **13.2.4 Conflicts of Interest**

#### **13.2.4.1**

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

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

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

#### **13.2.4.2**

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

#### **13.2.4.3**

Any Council Officer or other person acting on the Council's behalf who has, directly or indirectly, a financial, economic or other personal interest, which might be perceived to

compromise their impartiality and independence in the context of any procurement process, shall disclose such interest and shall not take part in that procurement process. Disclosure of the interest should be made via the standard, annual self-declaration procedure.

#### 13.2.4.4

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

### 13.3 The Procurement and Contract Rules

#### 13.3.1 Pre-Procurement Approvals

The Pre-Procurement Approval steps indicated below must be completed before a formal procurement procedure is started; that is, before the publication of any Prior Information Notice or advertisement requesting Expression of Interest, Request for Quotation, Invitation to Tender or similar. From May 2018, all WBC procurements with a value exceeding £5k must be processed using the e-Procurement system, which requires that the Responsible Officer sets up a new project in the system to manage the process. If you require assistance, please speak to the key/super user in your Service area.

##### 13.3.1.1 Procurement Business Case (including options appraisal)

A formal business case is required for the procurement of individual contracts with a total value above £50k ([Rule 13.2.2](#) for estimating value) with the varying levels of approval shown in the table below. For the purposes of this rule, dynamic purchasing system and framework agreements are not considered contracts and have their own requirements (outlined below).

	No formal business case required	Assistant Director and Director Approval	Executive Approval (see note 1 below)	Full Council Approval (Rule 5.1.9.4)
Goods and Services	< £50k	£50k - £500k	> £500k	Annual Value >£5m or TAV >£25m (if Capital >£15m)
Schedule 3 Services	< £50k	£50k – £663k*	> £663k*	
Works	< £50k	£50k – £4,733k*	> £4,733k*	
DPS/FA set up only	N/A	< £500k	> £500k	N/A

\*These figures are aligned to the GPA Threshold Values (as set out in Appendix One) and will be amended as and when the Threshold Values change.

**Note 1** The default option is Executive approval.

In exceptional circumstances, where this is not practical and delay will have negative financial consequences, approval by two Executive Members is allowed. This will usually be the Executive Member for the relevant service area and the Executive Member with responsibility for Finance, unless the relevant service is Finance, in which case approval must be carried out in conjunction with the Deputy Leader of the Council, or if the Deputy Leader is the Executive Member with responsibility for Finance, or is unavailable, in which case the approval must be carried out in conjunction with the Leader of the Council (Rule 5.5.1 g). An explanation of the exceptional circumstances must be included within the Individual Executive Member Decision report.

In the case of the procurement of a dynamic purchasing system or framework agreement, Officers are required to develop a business case outlining the overall procurement strategy, providing justification of the selected procurement method and highlighting the main benefits and risks associated with this method of procurement. All business cases for DPS and FA with estimated value up to and including £500K require Director's approval; Executive approval is required if the total ascertainable value of the DPS or FA is estimated to be greater than £500K. Rule 13.3.1.1 will apply to procurement of call-off contracts from either an internal or third party DPS/FA, unless a different governance mechanism has been proposed and approved in the DPS/FA business case or via a separate business case at the relevant level of authority.

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

- a) a brief justification linked to service or corporate objectives;
- b) vision and description of objectives to be achieved / specific need to be addressed;
- c) appraisal of options;
- d) statement of benefits and justification of expenditure, including financial costs and benefits, where relevant over the life of the contract. (Works business cases should include a financial feasibility assessment in terms of investment payback, return on investment or discounted cash flow value);
- e) timetable;
- f) procurement approach and commentary;
- g) source and approval of funding and whether it is revenue or capital;
- h) overall approvals as indicated in table above.
- i) any specialist opinion/sign off, as appropriate (e.g. IMT and/or Business Change for any purchase of software, Finance, Procurement etc.)

The value of a Business Case shall not be distorted or split with the aim of avoiding any threshold. The exact nature of any Business Case will vary depending on the requirements of the services being procured but all should consider the elements listed above to an appropriate degree. In consultation with Procurement, Directorates may design their own templates and requirements for Business Cases, in particular where regularly recurring or rapid procurements are required.

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

#### **13.3.1.2 Budget Approvals**

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

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

#### **13.3.1.3 Legal Approval**

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

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

#### **13.3.2 Overview of Required Procurement Procedures**

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

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

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

Check with your Assistant Director to verify if any such waiver exists.



**13.3.2.1**

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

Goods & Services Contract Value	Below GPA Threshold			Above GPA
	< £5k	£5k - £50k	>£50k - £189k	> £189k
Approved business case for the procurement at the appropriate level			✓	✓
Fully compliant PCR process. Any applicable process may be utilised.				✓
Pre-qualification questionnaire (SQ) (Restricted Process)	prohibited	prohibited	prohibited	✓
Invitation to Tender (ITT) Open (single step) process			✓	
Quick Quotes process <sup>1</sup> , with credit check & references		✓ (min 3 quotes)		
Simple quotation and Purchase Order	✓			
Support teams to be notified before start of procurement undertaking			If >£100k SLS	SLS & Procurement
Formal specification & evaluation criteria			✓	✓
Simplified specification & evaluation	(if necessary)	✓		
All documents available on the date of publication of notice or advertisement		if advertised	✓	✓
Publish in FTS <sup>2</sup>				✓
Advertise in Contracts Finder <sup>2</sup> (within 24 hrs of 1 <sup>st</sup> advert anywhere else)		>£25k if advertised anywhere	✓	✓
Formal tender evaluation process			✓	✓
Award notified in FTS <sup>2</sup> /OJEU <sup>3</sup>				✓
Award notified in Contracts Finder <sup>2</sup>		if >£25k	✓	✓
Signed contracts lodged			✓	✓

<sup>1</sup> If you wish to advertise your Quick Quote, use the 'Create Project' 'Advertised Quotation (<50K)' process

<sup>2</sup> Handled automatically by the e-Procurement system

<sup>3</sup> Any procurement that was advertised on OJEU prior to 31 December 2020 23:00 must have its award notice and all subsequent notices of amendment etc. also published in OJEU, despite formal transition from the EU being completed

with SLS				
Standstill period			recommended	✓
Complete Reg84 Report				✓

### 13.3.2.2 Schedule 3

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

Schedule 3 Services Contract Value	Below GPA			Above GPA
	< £5k	£5k - £50k	> £50k - £663k	> £633k
Light Touch Regime ("LTR")				✓
Any appropriate process may be used			✓	✓
Quick Quotes Process <sup>4</sup> with credit check and references for selected supplier		Min 3 Quotes		
Formal specification and evaluation criteria		✓	✓	✓
Simple quotation and Purchase Order	✓			
Support teams to be notified before start of procurement undertaking			If >£100k SLS	SLS and Procurement
All documents available on the date of publication of notice or advertisement		if advertised	✓	✓
Advertise in FTS – contract notice or PIN <sup>5</sup>				✓
Advertise in Contracts Finder <sup>4</sup> (within 24 hrs of 1st advert anywhere else)		> £25k, if advertised anywhere	✓	✓
Pre-qualification questionnaire (SQ) (Restricted Procedure)	prohibited	prohibited	Optional (but prohibited below £189k)	✓
Invitation to Tender (ITT)			✓	
Formal tender evaluation process			✓	✓
Publish contract award notices <sup>4</sup> (can publish notices grouped quarterly)		If > £25k	✓	✓
Standstill period			recommended	✓
Complete Reg84 Report				✓

For ALL procurements, any appropriate process may be used and there is flexibility in the types of award criteria that can be defined but any procedure used must ensure equal

<sup>4</sup> If you wish to advertise your Quick Quote, use the 'Create Project' 'Advertised Quotation (<50K)' process

<sup>5</sup> Handled automatically by the e-Procurement system

treatment of tenderers and transparency. There are no prescribed timescales for procedures but they must be “reasonable and proportionate”.

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

### 13.3.2.3

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

Works Contract Value	Below GPA			Above GPA
	< £5k	£5k - £50k	> £50k - £4,733k	> £4,733k
Approved business case for the procurement at the appropriate level			✓	✓
Full PCR process				✓
Invitation to Tender (ITT)			✓ (if not Construction Line)	✓
Optional Construction Line “Tender”		✓	✓ (if no ITT)	n/a
Pre-qualification questionnaire (SQ) (Restricted Process)		prohibited	Optional (but prohibited below £189k)	✓
Quick Quotes process <sup>3</sup> , with credit check and references for selected supplier		✓ (min 3 quotes)		
Simple quotation and Purchase Order	✓			
Support teams to be notified before start of procurement undertaking			If >£100k SLS	SLS and Procurement
Formal specification & evaluation criteria			✓	✓
Simplified specification & evaluation	(if necessary)	✓		
All documents available on the date of publication of notice or advertisement		if advertised	✓	✓
Publish in FTS <sup>6</sup>				✓
Advertise in Contracts Finder <sup>5</sup>		> £25k, if advertised anywhere	✓	✓
Formal tender evaluation process			✓	✓
Award notified in FTS <sup>7</sup>				✓

<sup>6</sup> Handled automatically by the e-Procurement system

<sup>7</sup> Handled automatically by the e-Procurement system

/OJEU <sup>8</sup>				
Award notified in Contracts Finder <sup>7</sup>		If > £25k	✓	✓
Signed contracts lodged with SLS			✓	✓
Standstill period			recommended	✓
Complete Reg84 Report				✓

### 13.3.2.4 Abnormally Low Tenders

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

### 13.3.3 Contracting Requirements

#### 13.3.3.1 Overview of Contract Terms and Conditions

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

Contract Value	Duration	Corporate Credit Cards	Standard Purchase Order Terms	Template Contract	Formal Contract Terms (via SLS)	Suppliers' Terms
< £50k	<12mth	✓	✓	if necessary		By exception and only with input of Legal Services
	>12mth	n/a	✓	if necessary		
£50k – £100k	any	n/a	n/a	✓		
>£100k	any	n/a	n/a	n/a	✓	

#### Note

Services may have Corporate Credit Cards, which can be utilised for low value, low risk, one-off transactions, subject to the individual spending limit on the card. All ongoing / recurring requirements should be procured under a purchase order and/or an appropriate contract.

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

<sup>8</sup> Any procurement that was advertised on OJEU prior to 31 December 2020 23:00 must have its award notice and all subsequent notices of amendment etc. also published in OJEU, despite formal transition from the EU being completed

**13.3.3.2 Acceptance of Tenders and Signing of Contracts:**

Activity	Up to £100,000	£100,000 - £500,000	Greater than £500,000
Acceptance of Tenders (prior to contract award)	Assistant Director	Director	Director by Material Decision
Contract Signature	None if PO or Purchasing Card. Otherwise 1 Officer named on "List of Authorised Officers" for the relevant service area.	Either: Sealed as a deed. or <b>Two Officers:</b>  1. Any Solicitor or Barrister employed by WBC  2. One officer from the "List of Authorised Officers" for the relevant Service area	Sealed as deed
		Sealing is facilitated by Legal Services	

These levels apply as long as the tender does not exceed the overall approved budget by the lesser of 10% or a maximum of £20,000, providing sufficient budget can be secured, and the tender is the most advantageous, as measured against the previously set criteria.

Directors may only accept a tender which falls outside these criteria subject to consultation with the Deputy Chief Executive (Chief Finance Officer/Section 151 Officer) or nominated Deputy, if delegated to, and if applicable, the Head of Human Resources and Organisation Development with regard to Transfer of Undertakings (Protection of Employment) Regulations [TUPE], as a Material Decision.

**13.3.3.3 Supplier Details**

It is the responsibility of the Responsible Officer to ensure that all Suppliers to the Council are entered into the Council Purchase-to-Pay (P2P) system (or any replacement system) and that a purchase order is created to allow for the payment of invoices, prior to the start of the contract.

**13.3.3.4 Modification of Contracts During Their Term (including extensions)**

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

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

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

#### **13.3.4 Contract Management During the Contract Duration**

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

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

##### **13.3.4.1 Recording of Contract / Tender Information**

For transparency reporting and audit requirements, as well as to enable effective Council-wide contract management activity, all contract details are automatically recorded by the e-Procurement system and held in a central register. All contracts awarded by other means and exceeding £5,000 must be entered into the e-Procurement system following award. It is the responsibility of the relevant Assistant Director to ensure that contract information is recorded and kept up-to-date.

The details will be made directly available to the public, via the WBC external website, as required by Transparency Regulations. Legal Services shall retain original copies of contracts valued over £50,000 during the term of the contract. These contracts will be archived for a period of 6 years from the contract end date or for 12 years if under seal.

Directors (or a delegated Responsible Officer) shall retain copies of contracts under £50,000 which should be archived at the contract end date, as a guide, for a period of 5 years.

##### **13.3.4.2 Key Performance Indicators**

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

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

#### **13.3.4.3 Performance Reviews**

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

#### **13.3.4.4 Contract end planning**

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

### **13.4 Overview of Procurement Process Selection**

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

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

1	2	3	4	5		
Type	Above/ below GPA	Procurement Size	Available Corporate Contract	Available Framework Agreement	Default Process	Optional Processes available
Goods & Services	Above	> £189k	Yes	n/a	Corporate Contract	
			No	Yes	Framework Contract	
				No	Full PCR Process	① ② [③ ④]
	Below	£50k – £189k	Yes	n/a	Corporate Contract	
			No	Yes	Framework Contract	
				No	Above £50k Process	① ⑤ [③ ④]
		£5k - £50k	Yes	n/a	Corporate Contract	
			No	Yes	Framework Contract	
				No	Above £5k Process	<a href="#">Table 3.2.1</a>
		£0k - £5k	Yes	n/a	Corporate Contract	
			No	Yes	Framework Contract	
				No	< £5k Process	⑥

1	2	3	4	5		
Type	Above/ below GPA	Procurement Size	Available Corporate Contract	Available Framework Agreement	Default Process	Optional Processes available
Schedule 3 Services	Above	> £663k	Yes	n/a	Corporate Contract	
			No	Yes	Framework Contract	
				No	Light Touch Regime	
	Below	< £663k	Yes	n/a	Corporate Contract	
			No	Yes	Framework Contract	
				No	Tender Process	① ② ③ ④ ⑤
					Approved Supplier List	⑥



1	2	3	4	5		
Type	Above/ below GPA	Procurement Size	Available Corporate Contract	Available Framework Agreement	Default Process	Optional Processes available
Works	Above	> £4,733k	No	Yes	Framework Contract	
				No	Full PCR Process	① ② [③ ④]
	Below	£5k –£4,733k	Yes	n/a	Corporate Contract	
			No	Yes	Framework Contract or > £50k Process	① ② ③ ④ ⑤ <a href="#">Table</a> 3.2.3
				No	> £50k Process	
					£5k - £50k Process	
		< £5k	Yes	n/a	Corporate Contract	
			No	n/a	Purchase Order	⑥

No.	Optional Processes
①	Open Procedure
②	Restricted Procedure (above £189k only)
③	Competitive Procedure with Negotiation (by exception only)
④	Competitive Dialogue (by exception only)
⑤	Framework or Dynamic Purchasing System (DPS)
⑥	Approved Supplier / Provider List

### 13.5 Related Policies and Obligations

There is a range of policies and additional obligations that support and expand on these PCRPs but they are typically specific and / or are subject to update from time to time.

As such, they do not form part of the core PCRPs and are supplied as appendices, as indicated below. Ensure that you always access a fresh copy of any particular document you need to refer to.

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

#### 13.5.1 Related Policies and Processes ([Appendix 2](#))

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

### **13.5.2 Additional Obligations**

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

**Statutory Obligations ([Appendix 3](#))**

**WBC Specific Obligations ([Appendix 4](#))**

## Appendix One

## Threshold Values

Threshold	GBP (2020 conversion)	Display Value	Bookmark name
Goods & Services	£ 189,330	£189k	GSthold
Schedule 3	£ 663,540	£663k	S3thold
Works (Schedule 2)	£ 4,733,252	£4,733k	WORKSthold
Concessions	£ 4,733,252	£4,733k	Cthold

The GPA procurement thresholds for application of the Public Contracts Regulations 2015 are fixed for a 2 year period (1<sup>st</sup> January – 31<sup>st</sup> December); the values are subject to change on the 1st January of every even year (i.e. 2020, 2022, 2024...).

Public Concession contracts occur very rarely in WBC but when they do, they are subject to a separate set of regulations; the Concession Contracts Regulations 2016. If you believe your procurement may fall into this category, contact Procurement for further information.

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

**NOTE: -**

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

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

## **Appendix Two**

### **Related Council Policies & Processes**

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

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

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

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

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

**Appendix Three****Additional Obligations, Statutory****Index**

- i. The Social Value Act / Localism
  - ii. Safeguarding – DBS (Disclosure & Barring Service)
  - iii. Supported Organisations
  - iv. Social Enterprises (VCSE)
  - v. Contracts involving Council Assets
  - vi. TUPE (Transfer of Undertakings (Protection of Employment))
- 

**i The Social Value Act / Localism**

For all:

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

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

**ii. Safeguarding – DBS (Disclosure & Barring Service)**

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

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

DBS checks should be repeated at 3-yearly intervals for those who remain in post.

Contractors should be asked to provide evidence that DBS checks are monitored and kept up to date.

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

- a) An organisation which knowingly employs, in a relevant role, someone who is barred to work with children or vulnerable adults is breaking the law.
- b) They must inform the Independent Safeguarding Authority if they dismiss or remove a member of staff because they have harmed a child or vulnerable adult, or they would have dismissed or removed them had they not left.

### **iii. Supported Organisations**

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

This should not be confused with the completely separate arrangement (Regulation 77) for reserved contracts to support mutual and social enterprises, [See iv](#) below. – Social Enterprises VCSE

### **iv. Social Enterprises (VCSE)**

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

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

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

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

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

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

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

This regulation is designed to promote opportunities to qualifying social enterprises by protecting them from full EU competition for the first 3-years of a particular type of contract. They are expected to be able to develop their services during that initial period and will then be subject to full competition.

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

**v. Contracts involving Council Assets**

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

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

**vi. TUPE (Transfer of Undertakings (Protection of Employment))**

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

If in any doubt, the Contract must be checked with the Head of Legal Services or the Service Manager, Human Resources.

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

**Additional Obligations, WBC SPECIFIC****Index**

- i. Assets & Security
  - ii. Loans, Leases & Guarantees
  - iii. Sponsorship & Grant Monies
  - iv. Mitigation of Risk (including Performance Bonds)
  - v. Insurance
- 

**i. Assets & Security**

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

**ii. Loans, Leases & Guarantees**

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

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

**iii. Sponsorship & Grant Monies**

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

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

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

**iv. Mitigation of Risk (including Performance Bonds)**

An appropriate level of security for the due performance of a contract should be considered in every case. For low value contracts no specific steps may be necessary but as contract value increases, so should the level of safeguards that are put in place.



For all contracts, appropriate performance safeguards should be agreed and formally recorded in the contract documents.

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

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

- a) **Maturity of the market**  
Where there are many capable suppliers available (especially if several are locally based), who could potentially step in to cover any urgent issues, the need for other forms of protection is diminished.
- b) **Length of contract/Payment Schedule**  
A long-term contract with regular monthly payments, in arrears, should be quite stable and can, in practice, supply immediate funds by withholding payment for the most recent period/s, if necessary.
- c) **Nature of contract**  
If the service can tolerate a short lapse in provision without major difficulties the Council will have time to secure alternatives, should the incumbent contractor fail. Statutory service provision, with significant immediate consequences of failure, will need a much more secure approach.
- d) **Nature of Risk**  
Are the real risks in the contract focussed around potential default or are localised failures and issues more likely, where appropriate insurance may be more effective. Clearly, multiple risk factors are present in all contracts and combined safeguards may be required. A balanced assessment of the likelihood and consequences of each risk factor is needed to establish the right controls and mitigation.
- e) **Financial Standing**  
If the contractor is large and financially stable, especially when compared to the contract value, there may be no need for additional safeguards.  
Alternatively, the Contractor may be a subsidiary of a larger parent company/group, which is a real entity (as opposed to a holding company name) that can draw on real resources. In these cases, a parent company guarantee can be an effective, generally cost free, safeguard. The Council has a standard Form of Parent Company Guarantee.
- f) **Contract Management**  
The effective use of Performance Measures and Key Performance Indicators as part of an active contract management scheme can be the best safeguard. This is most effective when implemented as an integral part of the contract tender with planned development throughout the contract term.

Not only can well planned and executed contract management provide advanced warning but it can also prevent potential issues from developing into major concerns, through early intervention and a stronger relationship between Council and Contractor.

g) Performance Bond

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

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

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

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

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

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

**v. Insurance**

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

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

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

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

The Officer, or team, entering into the contract on behalf of the Council, must carry out the monitoring of the insurance during the contract period.

Further details and a suggested template letter are available.

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