

Council



Briefing note and supplementary papers

Date: **Monday 25 November 2024**
Time: **5.00 pm**
Place: **Council Chamber - Oxford Town Hall**

The Council agenda, reports, this briefing note, and any other supplementary papers should be considered together.

This briefing note forms part of the papers to be considered at the Council meeting. It contains additional information; councillors' questions, public addresses; and amendments to motions.

All papers for this meeting can be accessed through the council's website.

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All public papers are available from the calendar link to this meeting once published

Briefing note

Information for councillors and additional papers to be considered.

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12 Updates to Constitution	5 - 26
<p>The Head of Law and Governance (Monitoring Officer) has submitted a report which seeks Council's agreement to amend the Constitution to reflect changes to the Contract Rules.</p>	
<p>Recommendation: Council is recommended to:</p>	
<ol style="list-style-type: none">1. To approve the amendments to<ol style="list-style-type: none">a. The Contract Rules as attached at Appendix Oneb. Part 4.4 (Publication of Officer Decisions) as set out at paragraph 10;c. Part 15.4 (Key Decisions) as set out at paragraph 16;d. Part 4.5 (Decisions that must be agreed by Cabinet) as set out at paragraph 17;e. The Financial Rules as set out at paragraph 18.2. To delegate authority to the Monitoring Officer to make any other consequential amendments to the Constitution to reflect the above changes to the extent that they have not been identified in the above, provided such changes are purely required as a direct consequence.	

This briefing note is published as a supplement to the agenda and should be considered along with the agenda; reports; and other supplementary papers.

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19.1 Purpose of these rules

These Contract Procedure Rules (“the Contract Rules”) are a legal requirement under Section 135 of the Local Government Act 1972 and are part of the Council’s Constitution. They must be followed by everyone proposing to enter into any Contract on behalf of the Council other than where specific exclusions apply.

19.2 When do these rules apply?

Where the Council expects to give or receive money or payments in kind, whether funded from capital or revenue, for:

- the supply to the Council of goods, works or services, or
- the offering to the market of the opportunity to bid for a concession arrangement (i.e. where the arrangements enable a contractor to receive income from a source other than the Council such as the general public.)

For Contracts which are exempted contracts under Part 2, section 3 of the Public Contract Regulations 2015 (the Regulations) and, once in force, Schedule 2 of the Procurement Act 2023 (the Act) the following rules will not apply:

- 19.14 – Tendering of contracts
- 19.15 – Council’s Handling of Tenders Received through the Corporate Tendering Portal
- 19.16 –
- Procurement Processes and thresholds
-
- 19.18 – Decision to award contracts

The following types of agreements are exempted from the corresponding rules (and no exemption form will need to be approved):

Arrangement type	Contract Rules exempted from	Relevant Rules
<ul style="list-style-type: none"> • the acquisition and disposal of land or buildings which do not form part of a wider transaction under which the Council also procures Supplies, Services or Works • Contracts for representation by a lawyer 	All	Property Transaction Rules

<p>in arbitration, conciliation, or judicial proceedings; legal advice given by a lawyer in the preparation of any such proceedings, or where there is a clear indication and high probability that the matter will become subject of proceedings and any other legal services which are exempt from procurement legislation</p> <ul style="list-style-type: none"> contracts below the relevant procurement law threshold which are required in circumstances of extreme emergency such as an immediate danger to life or property (Executive Directors are authorised to take appropriate action and must report such action and the expenditure incurred to the next meeting of the Cabinet.) contracts above the relevant procurement law threshold which are procured using the negotiated procedure without prior publication under Regulation 26 (2)(h) of the Procurement Act 2023, when enacted, except insofar as to require compliance with the Regulations (Executive Directors are authorised to take appropriate action subject to agreement with the Monitoring Officer and must report such action and the expenditure incurred to the next meeting of the Cabinet.) 	<p>All except 19.10 and 19.18</p> <p>All except 19.10 and 19.18</p> <p>All except 19.10 and 19.18</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>
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19.3 Responsibility to follow these rules and relevant law

These rules must be followed by officers, contractors, consultants and any other person responsible for procuring, managing or supervising contracts on behalf of the Council. Reference to officer shall include any other persons procuring or managing contracts on behalf of the Council.

Officers must take all legal, procurement, financial, technical and other advice that they need to ensure they comply with the law and the Council's rules and policies and that the procurement method and contract are fit for purpose. Executive Directors and Heads of Service must ensure their service areas comply with these rules, the law and all other relevant constitutional rules (such as the Finance Rules).

A breach of these rules, the law or any relevant rules in relation to the letting of a contract may result in disciplinary and/or legal action.

19.4 Interests of councillors and officers in contracts

At all times where the Council is entering into an agreement (whether or not these rules apply) officers, contractors, consultants and councillors must ensure:

- They declare and avoid conflicts of interest in line with relevant codes of conduct / policies of the Council
- That such interests are properly recorded with the Head of Law and Governance
- Officers comply with the Officers' Code of Conduct when conducting procurement
- Officers comply with section 117 of the Local Government Act 1972 by declaring in writing any personal interest in a contract to the Monitoring Officer
- They do not accept any gift or hospitality from any candidate for any contract being procured by the Council: to do so is a disciplinary offence. Officers must inform the Head of Law and Governance if offered a gift or hospitality during a tender process.

19.5 Social Value

The Public Services (Social Value) Act 2012 requires the Council, under certain circumstances, to consider how the economic, social and environmental wellbeing of Oxford may be improved by services that are to be procured, and how procurement activity may secure these improvements.

The Council will apply the principles of the Public Services (Social Value) Act 2012 to the commissioning and procurement in line with the Council's Procurement Strategy, or such replacement document.

19.6 Before a contract is tendered and/or awarded

Contracts can only be entered into if they comply with these contract rules and:

- All appropriate and necessary decisions have been taken by those with authority to take them including:
 - Project approval being granted in accordance with the Cabinet scheme of delegation (Part 18.12);
 - Decision to award a contract;
 - Decision to enter into a contract (and other associated documentation)
 - Budget allocation / approval to fund the whole life of the contract.
- If applicable the decision to award the contract has been taken in accordance with the rules for key decisions
- The Council has the legal power to enter into the contract.
- The total contract value has been calculated (Part 19.7)
- It has been demonstrated by the procuring officers that the contract provides value for money over its whole duration
- There is no existing contract in place which covers, for the whole organisation (a corporate contract), the supply of the particular service or supplies.
- For all contracts over FTS a financial appraisal has been undertaken by the Head of Financial Services. The relevant Service Head must not award the contract until it has been approved by the Head of Financial Services, and a named contract manager appointed.
- For all quotes and tenders over the FTS threshold a Procurement Commencement Document (available from the Council's intranet) which evaluates options for the solution to be procured and route to market must be produced and approved by the Procurement Team and the relevant Head of Service.

Where the contract is over £30k (including VAT) and is to be procured via a direct award (i.e. without competition or under a framework) officers must produce a Justification to Direct Award report.

19.7 Total contract value

Goods, Services and Works: The total contract value is the total amount (including VAT) that is expected to be paid to the supplier as a result of the contract award during the whole life of the contract. This includes any possible extensions to the contract.

Concession Contracts: The total contract value shall be calculated in accordance with relevant procurement legislation.

A single contract must not be split into smaller contracts to avoid the application of these contract rules or the law.

The Contract value must include:

- the value of anything the Council is getting free of charge as part of the contract or which is charged on to a third party
- any income due the supplier under the contract whether the income is from the Council or elsewhere.
- If the length of a contract is unspecified, its total value will be calculated on the basis of the contract having a duration of 48 months.

19.8 Sub-contracting

Where any supplier intends to appoint one or more sub- contractors to discharge some or all of its contractual obligations, the contract must contain an obligation to notify the Council and, where required, secure a collateral warranty in favour of the Council.

In the case of contracts for Works, the Council's Head of Law and Governance, in consultation with the Head of Financial Services, shall in each case consider whether a collateral warranty from the sub-contractor in favour of the Council is required.

19.9 Framework Agreements and Dynamic Markets

The Council may use Framework Agreements and Dynamic Markets set up by third parties where the Framework Agreement or Dynamic Market entitles the Council to do so, subject to the approval of Procurement Services and Legal Services, other than for contracts under the relevant FTS value where standing approval is given.

The methodology and all requirements set out in the Framework Agreement or Dynamic Market must be followed when awarding a Call-Off contract under a Framework Agreement or a Dynamic Market.

19.10 Format of Contracts

All contracts (whether bespoke or the Council's standard forms) must be in writing, setting out clearly the terms and conditions that apply. The following requirements must be met in relation to all contracts unless otherwise agreed in advance by the Head of Law and Governance:

Contract Value	Contractual Requirements
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(including VAT)	
£0 – up to £100,000	The Council’s purchase order terms and conditions or bespoke contract drafted by the Council or call-off form of contract
£100,000 +	Bespoke contract drafted by the Council or the Council’s Standard terms and conditions or Call-Off form of contract. These will be subject to drafting or sign off for use by Legal Services.

Legal advice must be sought prior to commencing a procurement if it is proposed to use a supplier’s terms and conditions. These should not be used without approval from Legal Services unless it is via a Framework Agreement or DPS and under £100,000.

Contracts which are over the Key Decision threshold must be sealed unless agreed otherwise by the Head of Law & Governance in writing.

19.11 Clauses that must be included in all contracts

Contracts must contain such clauses as listed in Appendix 1 (one) to the Contract Rules unless otherwise agreed in writing by the Head of Law & Governance in advance of contract formation.

19.12 Commissioning Teckal companies for one off capital schemes or services

The Council has a number of wholly owned companies which benefit from the “Teckal” exemption to the procurement legislation. This means that the Council may award contracts to a teckal company without the need to comply with procurement law.

Where the Council is seeking to engage a teckal company to deliver:

- one time service, works or goods; or
- works (whether capital or revenue funded); or
- any other goods or services not covered in the overarching service agreement with the teckal company

Officers must ensure that, in awarding the contract to a teckal company, they comply with the following paragraphs of these rules:

- 19.3- Responsibility to follow these rules and relevant laws
- 19.4 – Interests of councillors and officers in contracts
- 19.6 – Before a contract is tendered and/or awarded
- 19.7 – Total Contract Value
- 19.8 – Sub-contracting
- 19.10 – Format of contracts
- 19.11 – Clauses that must be included in all contracts
- 19.17 – Decision to award contracts
- 19.18 – Letters of intent

- 19.19 – Copies of contracts and register of contracts
- 19.20 – Contract management
- 19.21 – Legal claims relating to contracts
- 19.22 – Varying contracts
- 19.23 – Interpreting the contract rules

Officers must also ensure that they comply with the process for awarding contracts to a teckal company as set out in Appendix 2 to these rules.

19.13 Exemptions and Waivers

An Exemption is an approval that, for one of the following reasons, the procurement is exempt from the procurement procedure requirements contained in 19.14, 19.15 and 19.17:

(a) Emergencies

If there is an emergency or a disaster, the Chief Executive can approve contractual arrangements outside these rules after consulting the Head of Financial Services and Monitoring Officer. Where such approval is given the Leader must be notified as soon as possible.

(b) Where there is no overall economic benefit to the Council

An exemption may be granted where there is no overall economic benefit, for example where there is only one supplier or no competitive market exists.

(c) Where the contract is for goods, services or works which are available only as proprietary or patented articles, or for which there is no reasonably satisfactory alternative available on the open market, or for the supply of, parts of existing proprietary or patented articles or Works, including machinery or plant.

(d) Where the provision is for a Subscription or Membership and alternative suppliers are not available.

(e) Where the Council is a member of a Consortium and making a payment towards the Service / Goods / Works being procured as part of the Consortium. This is subject to due diligence being undertaken and it being demonstrated that value for money is obtained and the law is being complied with.

(f) Where grant funding incorporates direct instruction as to the supplier to be used.

(g) When the Council opts into a National Scheme and the supplier is assigned.

The above exemptions can only be used if to do so does not breach procurement law. With the exception of a) emergencies, officers must seek advice from the Procurement Team and Legal Services prior to using an exemption.

A Waiver is an approval that for the purpose of a specific procurement the procurement procedure requirements contained in any of the rules other than those covered by an exemption and their application will be waived but only as specifically listed ('Waiver').

A waiver will not be granted if it would result in a breach of the law.

A waiver must be approved before any action not wholly in accordance with the contract rules can be taken.

Subject to compliance with the law, the the Leader or the Cabinet can waive any of the rules after considering a report from the relevant Head of Service giving reasons for the waiver and taking into consideration advice from the Head of Financial Services and the Head of Law and Governance.

The following sets out how Waivers and Exemptions shall be approved:

Contract Value Including VAT	Who can authorise use of an Exemption	Who can authorise a Waiver
£0 - £29,999.99	Head of Service in consultation with: Procurement Manager	Head of Service in consultation with the Procurement Manager
£30,000 - £214,903.99	Head of Service in consultation with: Procurement Manager and Legal Services	Legal Services Manager (on behalf of the Head of Law and Governance)
£214,904.00 – up to Key Decision Threshold	Relevant Director in consultation with: Head of Financial Services; Procurement Manager; and Head of Law and Governance	Head of Law and Governance in consultation with: Head of Financial Services and Relevant Director
Over Key Decision Threshold	Cabinet	Head of Law and Governance in consultation with: Head of Financial Services and Relevant Executive Director

Any request for a waiver must state from which of the requirements of the Contract Rules the waiver is requested and reasons for the waiver.

19.14 Tendering of contracts

Tenders will be sought in accordance with the requirements of the procurement law in force from time to time and best practice. If the contract value means the contract is regulated by the Procurement Act 2023 the Procurement Team will advise of the various options available and which would be the best course of action and will assist with the tender process.

Expressions of interest and tenders will be sought via advertisement on the Council's Corporate Tendering Portal, the Government's procurement portal (Central Digital Platform) and the Find a Tender Service (FTS).

- (a) Quotation and tender documentation must clearly specify the basis on which the most advantageous tender will be determined using a combination of cost and quality. Pricing and Quality split in terms of weighting will be as agreed with the Procurement Team. Every tender must include a declaration that the tenderer has not:
- told anyone except the Council the amount of the tender;
 - changed the amount of the tender as part of an agreement with anyone; and
 - lobbied councillors or officers about the tender.
- (b) Tenders over £29,999.00 must be submitted via the Corporate Tendering Portal or the electronic system that was used to invite tenders.

19.15 Corporate Tendering Portal

- (a) Each tender received via the Corporate Tendering Portal is automatically date and time stamped. The tender cannot be accessed until after the tender deadline.
- (b) If a tender includes a condition that was not in the tender documents and accepting the condition would give the tenderer an unfair advantage over other tenderers, the tenderer must remove the condition or withdraw the tender.

19.16 Procurement Processes and thresholds

Contracts must be procured in accordance with this section unless exempted or otherwise permitted under these Contract Rules.

Officers seeking quotations from potential suppliers for a contract shall (subject to the other provisions in these rules) as a minimum comply with requirements set out in the table below. Where officers are not required to advertise or use a tender but wish to do so this is permitted.

Value Including VAT	Type	Quotes or tendering	Process led by
<= £29,999.99	Goods Works Services Concession	Minimum one quote in writing, (local supplier if possible) Use of an approved Framework	Officer authorised by the relevant Head of Service
>=£30,000.00 up to FTS	Goods Services	A minimum of three written quotes (one from a local supplier if possible). 6 recommended as best practice. Use of an approved Framework	Authorised Procurement Practitioner or Procurement Team
>=£30,000.00 and up to £1M	Works Concession	Minimum 4 written quotes. Use of an approved Framework A full tender process recommended as best practice.	
Over FTS	Goods Services	Tender process in compliance with legal requirements undertaken via the Procurement Portal. Use of an approved legally compliant Framework or Dynamic Market	
>£1M and up to FTS	Works Concession	Minimum 6 written quotes. A full tender process recommended as best practice. Use of an approved legally compliant Framework or Dynamic Market	
Over FTS	Works Concession	Tender process in compliance with legal requirements undertaken via the Procurement Portal. Use of an approved legally compliant Framework or	

	Dynamic Market	
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All purchases with a value of £30,000 and over must be undertaken through the electronic tendering system (“the Corporate Tendering Portal”) as well as on the Government’s procurement portal.

Exemption from using the Corporate Tendering Portal can only be obtained with the written consent of the Head of Financial Services or an officer nominated by them.

Where quotes are obtained outside of the Corporate System these must be retained by the relevant Head of Service, disposing of:

- Unsuccessful quotes after 12 months from award of the contract;
- successful quotes for a period of 7 years from the end of the contract.

19.17 Decision to award contracts

The decision to award a contract must be made in accordance with the following:

Contract Value Including VAT	Who may take the decision to award
£0 - £214,904	Head of Service or relevant officer authorised by Head of Service.
£214,904 - up to Key Decision Threshold	Head of Financial Services or Exec Director provided there is a budget and project approval has been given by OCB/Development Board, CMT or Cabinet
Over Key Decision Threshold	Cabinet

In accepting quotes and tender the above officers must also ensure:

- 19.6 has been complied with
- any organisation the Council is acting as agent for has provided their written agreement to the agency appointment.
- the Head of Financial Services, the Monitoring Officer, the Chief Executive and the relevant Cabinet Member have been consulted on the decision to award where required in accordance with the constitution or any delegation from Cabinet.
- where Cabinet approval is required that this has already been

sought and, where a delegation has been made to officers to award, that decision is exercised in accordance with that delegation.

- Where the proposed contract is over the threshold in Part 19.19 an officer decision must be recorded and published.

19.18 Letters of intent

A letter of intent is provided by the Council to a contractor and sets out an intention to enter into a formal contract for the works services or goods described and authorises the contractor to start identified work or supplies before the full contract is agreed.

Letters of intent must not be issued without the approval of the Head of Law and Governance as to the terms of the letter.

All authority/decisions must be obtained as required in these rules and the Constitution prior to any letter being issued where it is binding the Council to incur expenditure (i.e. the contractor is not proceeding at risk). In addition all letters of intent must:

- Not be used as a means to circumvent proper contractual or procurement arrangements.
- Be authorised by the relevant Executive Director in consultation with the Head of Law and Governance and the Head of Financial Services

19.19 Copies of contracts and register of contracts

(a) Storage of Contracts

Contracts with a value of £30,000.00 or more (and any variations to such contracts) shall be sent to the Head of Financial Services by the relevant procuring officers to be kept securely:

- for a least seven years from its end date if it was signed;
- for a least 13 years from its end date if it was sealed,

All contracts under £30,000 will be retained by the relevant service area in line with the retention policies of the Council.

(b) Keeping a register of contracts

The Head of Financial Services will keep and publish on the Council's website a central register of contracts over £30,000, recording details as required under the Transparency Code for Local Government and will be published on the Council's website.

19.20 Contract Management

All contracts shall have an appointed officer responsible for managing the contract who is responsible for:

- Reporting contract performance to the Government's Central Digital Platform where the contract spend exceeds £5m
- ensuring that service expectations are met or exceeded;
- managing the performance of the supplier;
- ensuring that the Procurement Team have a copy of the contract (if the value is over £30,000);
- maintaining a risk register, where required;
- notifying the Procurement Team when a contract is terminated (whether during the contractual period or at the end of the Contractual period);
- notifying the Procurement Team in advance and seeking approval to any variation of a contract where it is a variation in length of contract, cost/spend or additional requirements and
- planning sufficient time to retender contracts prior to the end of the existing contract.

1921 Legal claims relating to contracts

Claims by or against suppliers must be promptly notified to the Head of Law and Governance and legal advice sought.

1922 Varying contracts

Contracts may be varied by a Head of Service without Procurement Team approval only where:

- The contract allows for the variation.
- The variation is carried out in accordance with the terms of the contract;
- The Head of Service is satisfied that the variation represents best value;
- The variation is recorded in writing and signed by the parties; and
- The variation does not take the contract:
 - from not being regulated by the Procurement Act 2023 to being regulated under the Procurement Act 2023 when enacted; and
 - and does not result in a breach of procurement law.

Original Contract Value and the value of any variations including VAT	Who may take the decision to vary
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£0 - £29,999.99	Head of Service or relevant officer authorised in writing by Head of Service.
£30,000 - £214,903.99	Head of Service or relevant officer authorised in writing by Head of Service.
£214,904.00 – up to Key Decision Threshold	Head of Financial Services or Exec Director provided there is a budget
Over the Key Decision Threshold	Cabinet

The variation is sent to the Procurement Team prior to being implemented to enable accurate contract recording and appropriate notices to be published.

Where a variation to a contract is required which is not provided for within the contract, a variation will not automatically be permitted. Officers must consult with the Procurement Team and have agreement on behalf of the Head and Law and Governance before taking any action to modify the contract. A variation of a FTS contract will only be allowed where it is a permitted variation in accordance with procurement law and it has had written approval of the Monitoring Officer (Head of Law and Governance).

19.23 Interpreting the contract rules

Questions about the contract rules and any related guidance will be dealt with by the Head of Financial Services or the Head of Law and Governance and their ruling will be final.

Where there is a conflict between these rules and the law, the law will prevail.

Appendix 1 to the Contract Rules Contractual Clauses

All contracts entered in to must set out clearly:

- what is to be supplied or done (the specification)
- the timescale for performance
- the standards of performance required (this could include KPI's and SLA's);
- the payment arrangements and any arrangements for deductions and discounts. The payment arrangements must not allow for payment in advance of the provision of goods or services unless the Head of Financial Services agrees;
- the period/duration of the contract – whether it is based on a date or an action being achieved the contract must have a mechanism explaining when it will end
- require suppliers to meet any standards:
 - as set by the Head of Service;
 - as stipulated in any Council policy, procedure or the constitution;
 - in line with best industry practice;
 - all relevant British Standards;
 - health and safety requirements.
- That suppliers are required to follow:
 - all applicable codes of practice;
- to hold appropriate insurance cover – the level of indemnity will be set by the Head of Service after assessing the risk and consulting with the Council's insurance officer if necessary. However this cover must include a minimum of £5 million public liability insurance, unless a lower level of cover has been agreed by the Head of Financial Services.
- that suppliers must commit to pay their employees at least the Oxford Living Wage or the Living Wage Foundation rate: this includes (where appropriate) any employees engaged by a sub-contractor in fulfilling the contract;
- all other conditions and terms that have been agreed; and
- where applicable provisions securing social value.

For Contracts over FTS threshold:

- (a) a clause allowing the Council to cancel the contract and recover any resulting losses from the supplier if it discovers that:

- the supplier or its employees have given, offered or promised anything to influence how the Council awarded or managed the contract;
- the supplier or its employees have committed an offence under the Bribery Act 2010, and
- the supplier or its employees have given anything that Section 117(2) of the Local Government Act 1972 forbids officers from accepting.

the supplier or an associated person has been listed as an excluded supplier on the Governments Debarment List.

- (b) a clause requiring the supplier to:
- provide £5,000,000 employer liability insurance indemnity or any other level of cover recommended by the Head of Financial Services
 - provide £1,000,000 professional insurance or any other level of cover recommended by the Head of Financial Services
 - produce proof of insurance (for example copies of the insurance certificates) if the Head of Service thinks it necessary
 - provide a bond (or other suitable form of guarantee) for 10 per cent of the contract value if the Head of Financial Services thinks it necessary
- (c) a clause saying who will manage the contract on behalf of the Council and the approval process for any necessary changes to its terms;
- (d) a clause requiring the supplier to protect the health and safety of anyone affected by its work;
- (e) a clause requiring the supplier to comply with data protection laws and help the Council to comply with the Freedom of Information Act or Environmental Information Regulations;
- (f) a clause requiring the supplier to get the Council's permission before subcontracting or transferring any of the contract;
- (g) a clause giving the Council the right to end the contract if the supplier does not meet the Council's standards and timescales and to bill the supplier for:
- the administrative costs of finding and appointing a new supplier, and
 - any amount by which the new contract exceeds the old one.
- (h) if the Head of Service considers it necessary, a clause saying what damages must be paid if the supplier breaks the contract and explaining how the amount of damages was reached – the Head of Service will consult the Head of Law and Governance on the amount of the damages and what should trigger them;

- (i) a clause giving the Council the ability to exclude the supplier from applying for new contracts where there has been significant or persistent deficiencies in the performance of a significant requirement under a prior public contract;
- (j) where relevant and operationally possible, a clause requiring the supplier to fit side guards and appropriate side mirrors to vehicles over 3.5 tonnes to protect cyclists and pedestrians when driving to and from any site specified by the Council; and
- (k) a clause indicating that the Council is required to publish all new contracts on its website, and will do so in accordance with its obligations, subject to any operative exemptions, within the applicable local government transparency regulations.
- (l) a clause indicating the agreed service levels (SLAs) and key performance indicators (KPIs) which for contracts in excess of £5M will be published to the Governments Central Digital Platform.
- (m) incorporate net zero considerations and sustainability in tender documents and contract management
- (n) incorporate equality, diversity and inclusion (EDI) considerations in tender documents and contract management
- (o) Incorporate Social Value in tender documents where proportionate and relevant with a minimum 10% weighting.

Appendix 2 Procedure for contract with Teckal Companies

Where the Council does not have an existing contract in place with its teckal company for the provision of goods, services, works or concessions it must comply with this appendix to in granting any new contract to the teckal company.

In addition to these rules all contracts must be awarded in line with the other rules within the constitution such as Financial Rules and rules concerning decision making.

Legal Compliance:

When we refer to a teckal company we mean a company that the Council owns which it can directly award a contract to without being in breach of procurement law, due to the company meeting the Teckal criteria.

To fall within the teckal exemption the council's wholly owned company must undertake a minimum of 80% of its business for the Council.

Meeting the Teckal criteria does not mean it that is lawful to award the contract, and therefore before granting and entering in to any new contract officers must demonstrate and record in writing that:

- All other relevant aspects of the Council's constitution have been complied with – for example the Financial Rules
- the Council is meeting all its other legal obligations and responsibilities (not just procurement law), including but not limited to
 - Best Value Duty
 - Equalities Duty
 - Construction Design and Management
 - Health and safety
 - Subsidy control
 - Competition law

Contracts to be awarded should not be artificially disaggregated to avoid compliance with these requirements.

Value (including VAT)	Contract requirements
below (\leq) £29,999.99	All proposed contracts must have a detailed specification. A quote should have been sought and confirmed for the provision of the works in accordance with the specification before contracts are entered into
above (\geq) £30,000 up to	All proposed contracts must have a detailed

<p>or equal to £150,000</p>	<p>specification.</p> <p>A quote should have been sought and confirmed for the provision of the works in accordance with the specification before contracts are entered into.</p> <p>The commissioning officer should be aware of the market price and conditions for such services. This can be shown by market quotes for the work (which may not be practical to obtain) or benchmarking information verified on a regular basis and retained for audit purposes.</p>
<p>(>) £30,000 to £1m (works)</p>	<p>All proposed contracts must have a detailed specification.</p> <p>For audit purposes, the justification that the contract is subsidy complaint must be documented, with an assessment having been carried out to show the contract is being let in line with market conditions. This can be shown by:</p> <ul style="list-style-type: none"> (i) benchmarking the contractual terms and price being proposed against similar contractual offers made by third party contractors; and/or (ii) using the services of independent advisers commissioned by the Council such as an external QS to assess the commercial price or price range for the contract before the contract is let.
<p>Over FTS (works)</p>	<p>The use of external QS services is mandated.</p> <p>All proposed contracts must have a detailed specification.</p> <p>For audit purposes, the justification that the contract is subsidy complaint must be documented, with an assessment having been carried out to show the contract is being let in line with market conditions. This can be shown by:</p> <ul style="list-style-type: none"> (i) benchmarking the contractual terms and price being proposed against similar contractual offers made by third party contractors; and/or (ii) using the services of independent advisers commissioned by the Council such as an external QS to assess the commercial price or price range for the

	<p>contract before the contract is let.</p> <p>A formal tender evaluation process should be followed with a Cabinet report written to support the decision to award the contract. This will be a key decision.</p>
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