

### **19. Contract Rules**

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#### **Appendix 1 to the Contract Rules Contractual Clauses**

#### **Appendix 2 Procedure for contract with Teckal Companies**

### **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 –Corporate Tendering Portal
- 19.16 – Procurement Processes and thresholds
- 19.17 – 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
<ul style="list-style-type: none"> <li>• 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</li> </ul>	All
<ul style="list-style-type: none"> <li>• Contracts for representation by a lawyer 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</li> </ul>	All except 19.10 and 19.17
<ul style="list-style-type: none"> <li>• contracts below the relevant procurement law threshold which are required in circumstances of extreme emergency such as an immediate danger to life or property (Service Directors are authorised to take appropriate action and must report such action and the expenditure incurred to the next meeting of the Cabinet.)</li> </ul>	All except 19.10 and 19.17
<ul style="list-style-type: none"> <li>• 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 (Service Directors are</li> </ul>	All except 19.10 and 19.17

authorised to take appropriate action <b>subject to agreement with the Monitoring Officer</b> and must report such action and the expenditure incurred to the next meeting of the Cabinet.)	
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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. Deputy Chief Executives and Service Directors 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 Director of Law, Governance and Strategy
- 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 H Director of Law, Governance and Strategy if offered a gift or hospitality during a tender process.

A Conflict-of-Interest Assessment must be completed for all above threshold procurements prior to the project commencement, during the procurement and post award during the contract management stage. Conflict of interest assessments must be sent to procurement for filing with the contract.

### 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 and 4.5);
  - A decision to award a contract (note award is appointing the successful bidder, this may be at the same time as agreeing to sign the contract or it may come earlier in the process);
  - A 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/enter into the contract has been taken in accordance with the rules for key decisions
- The Council has the legal power to enter into the contract and to do so is in accordance with the budget and policy framework.
- 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 Group Finance Director. The relevant Service Director must not award the contract until it has been approved by the Group Finance Director, 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 Service Director.

Where the total maximum contract value 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 Director of Law, Governance and Strategy, in consultation with the Group Finance Director, 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 Director of Law, Governance and Strategy:

Contract Value (including VAT)	Contractual Requirements
£0 – to £99,999.99	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 Director of Law, Governance and Strategy 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 Director of Law, Governance and Strategy 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
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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 19.16 only (any other departures require a waiver):

(a) Emergencies

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

(b) Where there is substantial evidence of value for money to the Council

An exemption may be granted where there is substantial evidence of value for money to the Council to keep with the current supplier, 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 Leader or the Cabinet can waive any of the rules after considering a report from the relevant Service Director giving reasons for the waiver and taking into consideration advice from the Group Finance Director and the Director of Law, Governance and Strategy.

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	Service Director in consultation with:  Procurement Manager	Service Director in consultation with the Procurement Manager, even with the requirement of one quote
£30,000 - £214,903.99	Service Director in consultation with:  Procurement Manager and Legal Services	Legal Services Manager (on behalf of the Director of Law, Governance and Strategy)
£214,904.00 – up to	Deputy Chief Executive in	Director of Law,



Key Decision Threshold	consultation with:  Group Finance Director; Procurement Manager; and Director of Law, Governance and Strategy	Governance and Strategy with:  Group Finance Director and relevant Service Director
Over Key Decision Threshold	Cabinet	Director of Law, Governance and Strategy in consultation with:  Group Finance Director and relevant Deputy Chief Executive and Service Director

Any request for a waiver must state which of the requirements of the Contract Rules the waiver is requested for 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 (once in force) and/or the Public Contract Regulations 2015 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.

## 19.15 Corporate Tendering Portal

- (a) Tenders £30,000 or over must be submitted via the Corporate Tendering Portal or the electronic system that was used to invite tenders as well as on the Government's procurement portal.
- (b) Each tender received via the Corporate Tendering Portal is automatically date and time stamped. The tender cannot be accessed until after the tender deadline.

- (c) 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.
- (d) Exemption from using the Corporate Tendering Portal can only be obtained with the written consent of the Group Finance Director or an officer nominated by them.
- (e) Where quotes are obtained outside of the Corporate System these must be retained by the relevant Service Director, 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.

### 19.16 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
up to £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 Service Director
£30,000.00 and over 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 over up to £999,999.99	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 over 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	

### 19.17 Decision to award contracts

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

<b>Contract Value Including VAT</b>	<b>Who may take the decision to award</b>
£0 – up to £214,903.99	Service Director or relevant officer authorised by Service Director.
£214,904 - up to Key Decision Threshold  Over Key Decision Threshold	Group Finance Director or Deputy Chief Executive provided there is a budget and project approval has been given by OCB/Development Board, Corporate Leadership Team or Cabinet  Cabinet

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

- That the requirements in rule 19.6 have been complied with
- any organisation the Council is acting as agent for has provided their

written agreement to the agency appointment.

- the Group Finance Director, 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.

### **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 Director of Law, Governance and Strategy 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 Service Director in consultation with the Director of Law Governance and Strategy and the Group Finance Director

### **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 Group Finance Director 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 Group Finance Director will keep and publish on the Council's website a central register of contracts of £30,000 or over, 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 £30,000 or over);
- 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.

### **19.21 Legal claims relating to contracts**

Claims by or against suppliers must be promptly notified to the Director of Law, Governance and Strategy and legal advice sought. All settlements of disputes must be agreed by the Director of Law, Governance and Strategy in accordance with the Legal Rules.

### **19.22 Varying contracts**

#### **a) Contract specifically provides for variation**

Contracts may be varied by a Service Director in consultation with the Procurement Team only where:

- The contract allows for the variation.
- The variation is carried out in accordance with the terms of the contract;
- The Service Director is satisfied that the variation represents best value;
- Legal advice has been sought in advance of a decision to confirm the variation is permitted.
- 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 (once

- in force) and/or the Public Contract Regulations 2015 to being regulated under the same; and
- does not result otherwise in a breach of procurement law.

#### **b) Contract does not specifically provide for variation**

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 Director of Law, Governance and Strategy before taking the below action to modify the contract. A variation of an 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 (Director of Law, Governance and Strategy).

Where a variation to a contract is required and is not provided for in the contract the following will apply:

<b>Cumulative Value of the proposed variations including VAT</b>	<b>Who may take the decision to vary</b>
£0 - £29,999.99	Service Director or relevant officer authorised in writing by Service Director.
£30,000 - £214,903.99	Service Director or relevant officer authorised in writing by Service Director.
£214,904.00 – up to Key Decision Threshold	Group Finance Director or Deputy Chief Executive provided there is a budget.
Over the Key Decision Threshold	Cabinet

Where any variation takes the total spend under the contract above the Key Decision Threshold the decision to vary is a key decision and must be referred to Cabinet.

Notice of the variation, once agreed, must be sent to the Procurement Team prior to being implemented to enable accurate contract recording and appropriate notices to be published.

### **19.23 Interpreting the contract rules**

Questions about the contract rules and any related guidance will be dealt with by the Group Finance Director or the Director of Law, Governance and Strategy and their ruling will be final.

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

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