

BIRMINGHAM CITY COUNCIL

Procurement and Contract Governance Rules (DRAFT)

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Contents

SECTION 1 – Introduction	4
Introduction and Purpose	4
Principles to be applied	4
Scope	4
Out of Scope	5
Compliance	6
Waiver of the Rules	7
Breach Procedure	7
Emergency Process	8
Conduct and Conflict of Interest (Procurement)	8
SECTION 2 – Roles and Responsibilities	10
Roles and Responsibilities	10
Specific	10
SECTION 3 - Thresholds	13
Thresholds	13
Estimated Contract Values	13
SECTION 4 – Process	20
Processes	20
Pre-Procurement Stage	20
Make or Buy Considerations	20
Route to Market	20
Prior information and Public Reports	21
Planned Procurement Activities Report (PPAR)	21
Procurement Strategy Report	22
Competitive Procurement Stage	23
Drafting Quotation and Tender Documents	23
Submission and opening of Quotations and Tenders	23
Evaluation and Award	23
Contract Award (including modifications)	23
Contract Extension and Modifications	24
Contract Management	24
Other considerations	25
Due Diligence	25
Clarifications	25

Frameworks	25
Negotiated Contracts without competition.....	26
Decision Making and Tolerances	27
Record of decisions	27
Equalities Impact Assessments	28
Subsidy Control	28
SECTION 5 – Definitions	29

SECTION 1 – Introduction

Introduction and Purpose

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

Principles to be applied

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

Scope

- 1.6 These Rules shall apply to the procurement of the following types of contracts by or on behalf of the Council (e.g. agency staff, agents or consultants):
 - i. purchasing of any Supplies (goods or materials)
 - ii. Purchasing of any Services, including professional services
 - iii. Purchasing/ordering of any Works (such as building and engineering)
 - iv. Contract management of all third party spend

1.7 In application of these Rules the following shall be undertaken:

- i. Observe all applicable legislative requirements related to how public sector organisations undertake procurement activity and / or arrange Concession Contracts.
- ii. Ensure compliance with the Council's Financial Regulations and Scheme of Delegation
- iii. Provide clear and consistent record keeping to ensure audit and accountability in how decisions are taken
- iv. Apply proportionality to procurement activity considering value and associated risks
- v. Use the Council's standard Terms and Conditions for Contracts entered into with third parties, seeking Legal Services input for all Above Threshold Contracts and on a case by case basis for Below Threshold
- vi. Maintain compliance with requirements of the Council's Social Value Policy, including the Real Living Wage Accreditation, Birmingham Business Charter for Social Responsibility and Armed Forces Covenant
- vii. Make legitimate efforts to promote local business and Small Medium Enterprises (SME) through our commercial arrangements
- viii. Ensure capital funded projects to be considered in line with capital programme
- ix. Give due consideration to alignment to the Council's Procurement Strategy

Out of Scope

1.8 These Rules do not apply in the following circumstances:

- i. Procurement activity undertaken by Council maintained schools in accordance with their own delegated budget, and formal procurement and contractual rules
- ii. Transactions regarding the purchase or lease of property, acquisition, disposal, transfer of land, or any interest in land which includes regulatory licenses (excluding consideration of Concession Contracts)
- iii. Legal charges, awards and disbursements (including all associated costs and fees) in connection with any and all legal proceedings governed by Civil Procedure rules
- iv. Contract offers of employment which makes an individual an employee of the Council
- v. Settlement of insurance claim compensation
- vi. Treasury transactions as outlined within the Council's Treasury Management Strategy
- vii. Non-contractual funding arrangements (including Grant agreements under which the Council gives a Grant to third parties provided that the terms of the funding arrangements do not constitute a contract. Grants are to be awarded

in line with the Council's conditions of Grant Aid. However, where the Council is using Grant monies itself or passing it on to a third party, the application of that money is subject to these Rules in addition to grant funding conditions.

- viii. Specific licencing requirements (such as TV Licence or Public Entertainment Licence) or subscriptions to national organisations (such as the Local Government Association: LGA)
 - ix. Contracts for the execution of either Works (or provision of Supplies or Services) where the Council has no discretion regarding whether Works are required or who must deliver them as in the case of Work to be provided by a Statutory Undertaker, e.g. works to Public telecommunications network
 - x. Services with a national remit, for example hosting England Illegal Money Lending Team (EIMLT), which may have requirements to comply with purchasing arrangements set out by funding body and as such those would take precedent
 - xi. Appointment of external auditors outside of the control of the Council
 - xii. Appointment of barristers, or legal firm where in the opinion of the City Solicitor (or delegate) urgent advice is needed to protect the interests of the Council
 - xiii. Disposal of Supplies deemed surplus to the Council needs
- 1.9 The above list is not exhaustive, and advice should always be sought from Corporate Procurement Services where there is uncertainty.
- 1.10 For Expenditure with Wholly Owned Council Companies with Teckal status that can provide goods, works or services to the Council, advice should be sought from Legal Services and Corporate Procurement Services as to whether any direct award is out of scope for the purposes of these Rules.
- 1.11 In consideration of the above and where these Rules do apply care must be taken to ensure compliance with the Council Constitution as a whole and applicable legislation is duly considered and applied.

Compliance

- 1.12 Where these Rules apply compliance is deemed mandatory and is an essential part of the overall Constitution of the Council. Those with responsibility for fulfilling their duties in line with these Rules are required to maintain ongoing knowledge and awareness to ensure compliance.
- 1.13 Where reference is made to, and / or is applicable, to the UK Public Sector Procurement legislation (the "Regulation") then those Regulations need to be referred to and complied with. The Regulations are not extracted or transposed into these Rules.
- 1.14 This process shall be consistently applied across the Council and directorates should not need to add any additional processes. The relevant Chief Officer / Director is responsible for ensuring these Rules are followed and all approvals required are in place before any contract is awarded.

Waiver of the Rules

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

Breach Procedure

- 1.21 Failure to comply with these Rules will be considered a Breach.
- 1.22 It will be the responsibility of all officers (including those with line management responsibilities) to address non-compliance swiftly and in the most appropriate way according to the circumstances.
- 1.23 Means of reporting concerns can also be raised anonymously in line with the Council's Whistleblowing Policy [Whistleblowing policy | Birmingham City Council Portal](#)
- 1.24 Officers should remain alert to fraud throughout the procurement life cycle and any concerns of fraud or corruption must be reported to the Corporate Fraud Team within Birmingham Audit, at the earliest opportunity, by emailing FraudHotline@birmingham.gov.uk.
- 1.25 Failure to comply with these Rules may constitute a disciplinary matter that may be pursued as appropriate, in accordance with the relevant Human Resources policy framework.
- 1.26 Officers must follow the Code of Conduct for employees.
- 1.27 Councillors are not permitted to form part of the process once a procurement exercise is active and must ensure that their actions do not compromise or impact on the due process that has been set out.
- 1.28 Concerns related to Councillor intervention may be subject to Standards Board investigation.

- 1.29 Further details regarding investigation of Breaches of the Rules and their consequences can be found in the Procedural Note: Breaches.
- 1.30 Reports on the number of confirmed Breaches to be sent to Cabinet on a quarterly basis.

Emergency Process

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

Conduct and Conflict of Interest (Procurement)

- 1.38 A Councillor or Officer must not seek or receive any bribe, gift, or inducement of any kind in respect of any award or performance of any Contract. Any Councillor or Officer who has either been offered a bribe, gift, or inducement, or is aware or suspects that another Councillor or Officer has been, shall report it to the Assistant Director – Audit & Risk Management and / or Monitoring Officer.

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

SECTION 2 – Roles and Responsibilities

Roles and Responsibilities

2.1 In carrying out their duties officers shall ensure:

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

Specific

2.1 Specific responsibilities can be found in Table A below:

TABLE A – Specific responsibilities

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

	<ul style="list-style-type: none"> • Ensuring projects (Quotations, Tenders or contract extensions and/ or renewals) are appropriately planned to ensure the Rules are applied. • Ensuring there is a genuine and legitimate business requirement for the spend and an approved budget. • Ensuring that the appropriate approvals have been received in respect to committing spend. • Drafting a fit for purpose specification that includes appropriate contract management arrangements. • Supporting the definition of an appropriate route to market for each contract is followed and justification for any deviation from the approved approach. • Genuine estimating the total contract value prior to any procurement activity. • Conducting procurement and contract modifications / extensions under £25k total contract value • Mandatory engagement with Corporate Procurement Service for all Above Threshold procurements and any necessary proportional engagement with Corporate Procurement Services on application of the Rules for processes over £25k up to Above Threshold • Where required undertake, appropriate application of the Waiver Procedure • Meeting the requirements of the Contract Management Framework • Engaging with the Corporate Procurement Services as required. • Having authority to act, for example be the Budget Holder, or acting with the authority of the Budget Holder including seeking spend authorisations as appropriate
Councillors (Cabinet Members)	<ul style="list-style-type: none"> • Make strategic decisions in line with the Constitution including overall budgetary and policy framework within which procurement plans are developed and implemented. • Approve Decisions in line with Authorisations process and Constitution • Where they have specific responsibilities in the procedural aspects, comply with these Rules and follow supporting guidance. • Ensuring compliance with the Members' Code of Conduct, including in relation to any interests they may have.
Corporate Procurement Service	<p>On behalf of the Council provide overall strategic ownership of procurement and commercial activity. Officers working within Corporate Procurement Services must ensure the following arrangements are in place to:</p> <ul style="list-style-type: none"> • Proactively engage with Directorates to determine the forward plan of procurement activity and how this is enabled in a proportional and timely manner, in particular for engagement of activity above £25k • Support Directorates in assessing the commercial considerations at the design stage, drafting of the route to market strategy for

	<p>procurement activity and putting the contract management arrangements in place in accordance with the contract management framework.</p> <ul style="list-style-type: none"> • Work with Directorates to develop proportional and informed category strategies • Explore options for using pre-existing Public Sector compliant contractual arrangements that allow the Council's participation and compliantly use where this is the best value option • Explore options for collaboration with other contracting authorities where appropriate • Ensure the compliance of all procurement processes over £25k with the Rules and the Regulations, and monitoring and intervention as appropriate below £25k • Through category management seek to develop strategic opportunities for synergy between contracts to enable the Council to get better value
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SECTION 3 - Thresholds

Thresholds

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

Estimated Contract Values

- 3.3 No contract shall be subdivided into smaller contracts so as to avoid compliance with these Rules.
- 3.4 For the purposes of the Financial Thresholds as set out in Table 1, calculation of estimated Contract value shall consider the whole life value or estimated whole life value (in pounds sterling or equivalent value) for any purchase (including any extensions or potential variations available) calculated as follows:
 - i. For a fixed term Contract, by taking the total price to be paid or which might be paid during the whole of the fixed term period
 - ii. For purchases that involve recurrent transactions for the same type of item, across the Council as a whole, by aggregating the value of those transactions over the life expectancy of the Contract
 - iii. In accordance with the Regulations and where the Contract is for an uncertain duration, by multiplying the monthly payment by 48.
- 3.5 The value for a proposed Contract must be a genuine pre-estimate with due consideration given to all associated costs (for example consideration to be given to repair, maintenance, spare parts etc.).
- 3.6 Where there is a requirement for similar Supplies, Services or Works, this spend should be aggregated. There shall be no disaggregation of requirements from across the Council to avoid the Thresholds.
- 3.7 All figures in Standing Orders are exclusive of VAT.
- 3.8 When calculating the estimated Contract values to determine which process to follow and whether the Regulations apply, the contract value estimation should be inclusive of VAT (where applicable).
- 3.9 For the purposes of advertising Above Threshold Tenders, the related Public Sector Procurement Regulation Thresholds include VAT (where applicable).
- 3.10 The default for calculating VAT to be against the prevailing current standard rate of VAT. Where a purchase is exempt from VAT, or is zero rated VAT, no allowance needs to be made for VAT.

TABLE 1 PROCESS

Thresholds (excluding VAT)	Minimum Tender Process ⁻³	Advertising opportunity on ⁻³ : i) Contracts Finder ii) Find a Tender	Posting Contract Notice of Award on: i) Contracts Finder ii) Find a Tender	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales ⁻²
Up to £5k	Proceed to purchase	(i) Not required (ii) Not required	(i) Not required (ii) Not required	Not required	Not required	Not applicable
Low Value Quotation £5k to <£25k	Preference of three quotations (two from local suppliers or SMEs where possible), with a minimum of one quotation (local supplier or SME where possible) ⁻¹	(i) Optional (ii) Not required	(i) Not required (ii) Not required	Yes	Optional	15 working days
Supplies and Services: £25k to Below Threshold relevant Regulation (inc. For Light Touch Regime (LTR) / Concessions / Utilities contracts)	Three quotations have been submitted (to include a minimum of two local suppliers or SMEs where possible)	(i) Yes (ii) Not required	(i) Yes (ii) Not required	Yes	Yes	15 working days
Works Contracts: Low Value Quotation (£25k - £250k) or to relevant Threshold	Three quotations have been submitted (to include a minimum of two local suppliers or SMEs where possible)	(i) Yes (ii) Not required	(i) Yes (ii) Not required	Yes	Yes	15 working days

Thresholds (excluding VAT)	Minimum Tender Process ⁻³	Advertising opportunity on ⁻³ : i) Contracts Finder ii) Find a Tender	Posting Contract Notice of Award on: i) Contracts Finder ii) Find a Tender	Publishing on Contract Register	Use of electronic Tendering System	Minimum Tendering Timescales ⁻²
(Concessions / Utilities Contracts)						
Works Contracts: Over £250k but below Threshold (or Concessions / Utilities Contracts)	Formal tender procedure compliant with the Rules and Regulations	(i) Yes (ii) Not required	(i) Yes (ii) Not required	Yes	Yes	20 working days
Above Threshold Supplies, Services, Works to £10m (or Concessions, Light Touch Regime or Concessions or Utilities Contracts)	Formal tender procedure compliant with the Rules and Regulations	(i) Yes (ii) Yes	(i) Yes (ii) Yes	Yes	Yes	As per Regulations
Over £10m	Formal tender procedure compliant with the Rules and Regulations	(i) Yes (ii) Yes	(i) Yes (ii) Yes	Yes	Yes	As per Regulations

-1 If the Authorised Officer is unable to secure the submission of three written quotations, then the Authorised Officer shall record, in the award report, the reasons for audit purposes and proceed with a single quotation

-2 When setting the time limit for bidding due regard should be given to allowing sufficient timescales for suppliers to bid, including any Regulatory stipulations, consideration of the complexity of the proposed contract and the time required for drafting a tender response (including supplier's own sign off timescales); plus any impediments which may limit suppliers ability to respond such as peak holiday periods and likely reduced resources.

-3 In establishing the Council's own Framework then the Thresholds would apply as established within Table 1, subsequent call offs from such Frameworks would be deemed in line with the spend as authorised.

For specific procurement activities requiring call-offs from compliant Frameworks, not all activities would be required, in particular:

Would not require advertising of opportunity but may require publishing of contract award, subject to conditions of Framework and / or Regulations.

Unlikely to require use of Council's electronic Tendering System

Timescales may be variable

In establishing the Council's own Framework then the Thresholds would apply as established within Table 1, subsequent call offs from such Frameworks would be deemed in line with the spend as authorised.

Table 2: Authorisations and Approvals

Thresholds (excluding VAT)	Pre-procurement (Authorising procurement activity)	Post-procurement (Awarding of procurement activity)	Contract (as a minimum)
Up to £5k	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails.	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails.	Purchase Order
£5k up to £25k	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails.	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails.	Purchase Order and where relevant agreed terms and conditions pertinent to the Quotation / Tender process
Supplies and Services: £25k to Below Threshold relevant Regulation (inc. For Light Touch Regime (LTR) /	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails	Contract Award Report ⁻² Chief Officer (in accordance with Directorate Scheme of Delegation approval level)	Purchase Order and where relevant agreed terms and conditions pertinent to the

Thresholds (excluding VAT)	Pre-procurement (Authorising procurement activity)	Post-procurement (Awarding of procurement activity)	Contract (as a minimum)
Concessions / Utilities Contracts)			Quotation / Tender process
Works Contracts: Low Value Quotation (£25k - £250k) or to relevant Threshold (Concessions / Utilities Contracts)	Budget Holder (or Officer delegated by Budget Holder) within Service area in line with the Scheme of Delegation by means of relevant and proportional information and details for means of audit purposes as needed, e.g. emails	Contract Award Report ² Chief Officer (in accordance with Directorate Scheme of Delegation approval level) Concessions / Utilities Contracts – In accordance with the Directorate Scheme of Delegation approval level	Purchase Order and where relevant agreed terms and conditions pertinent to the Quotation / Tender process
Works Contracts: Over £250k but Below Threshold (or Concessions / Utilities Contracts)	Planned Procurement Activity Report (PPAR) for Cabinet approval then Strategy Report by means of Delegated Procurement Report (DPR)	Contract Award Report ² by means of Delegated Procurement Report (DPR) subject to Cabinet confirming delegated approval permitted at pre- procurement stage	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus Works Contract which exceeds £250,000 in value, shall be sealed with the Common Seal of the Council and shall be executed as a Deed
Above Threshold Supplies, Services, Works to £10m⁴ (or Concessions, Light Touch Regime or	Planned Procurement Activity Report (PPAR) for Cabinet approval then Strategy Report by means of Delegated Procurement Report (DPR)	Contract Award Report by means of Delegated Procurement Report (DPR) subject to Cabinet confirming delegated approval permitted at pre- procurement stage	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus every contract (and all Framework

Thresholds (excluding VAT)	Pre-procurement (Authorising procurement activity)	Post-procurement (Awarding of procurement activity)	Contract (as a minimum)
Concessions or Utilities Contracts)			agreements) for Supplies or Services which exceeds £1,000,000 in value, shall be sealed with the Common Seal of the Council and shall be executed as a Deed.
Over £10m ⁻⁴	Consultation with Cabinet Member(s) and relevant Scrutiny Chair(s) 3 months prior to Cabinet. Inclusion on Forward Plan, Formal Cabinet Report including the Procurement Strategy	Contract Award Report for Cabinet approval (where the decision to award has not been delegated)	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus it shall be sealed with the Common Seal of the Council and shall be executed as a Deed.
Negotiated Contracts - £0 to £200k (revenue or capital)	Strategy Report by sign off by Chief Officer (in accordance with Directorate Scheme of Delegation approval level) and the Assistant Director – Procurement	Contract Award Report ⁻² Chief Officer (in accordance with Directorate Scheme of Delegation approval level)	Purchase Order and where relevant agreed terms and conditions pertinent to the Contract Negotiations
Negotiated Contracts - £200k to £500k ⁻⁴ (revenue) £200k to £1million (capital)	Planned Procurement Activity Report (PPAR) for Cabinet approval then Strategy Report by means of Delegated Procurement Report (DPR)	Contract Award Report ⁻² by means of Delegated Procurement Report (DPR) subject to Cabinet confirming delegated approval permitted at pre-procurement stage	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus for Works Contract which exceeds £250,000

Thresholds (excluding VAT)	Pre-procurement (Authorising procurement activity)	Post-procurement (Awarding of procurement activity)	Contract (as a minimum)
			and over £1m for Supplies and Service in value, shall be sealed with the Common Seal of the Council and shall be executed as a Deed
Negotiated Contracts – above £500k⁻⁴ (revenue) or above £1million⁻⁴ (capital)	Consultation with Cabinet Member(s) and relevant Scrutiny Chair(s) prior to Cabinet. Inclusion on Forward Plan, Formal Cabinet Report including the Procurement Strategy	Contract Award Report for Cabinet approval	Purchase Order and relevant agreed terms and conditions pertinent to the Tender process plus it shall be sealed with the Common Seal of the Council and shall be executed as a Deed.

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

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

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

4 - Approvals above the Threshold are approved in the above manner by following the Procurement Gateway process – click [here](#) for link

SECTION 4 – Process

Processes

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

Pre-Procurement Stage

Make or Buy Considerations

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

Route to Market

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

- 4.6. Consideration of route to market shall include options for the Council to undertake its own procurement process or consider awarding Contracts in line with the conditions of a compliant Framework available to the Council to use.
- 4.7. The route to market consideration shall consider the procurement procedures available to the Council with due regard to the Regulations. Where Above Threshold, strict accordance to the Regulations shall be followed in application of the chosen route to market.
- 4.8. For audit and transparency purposes proportional details and records on justification of the chosen route to market should be kept.

Prior information and Public Reports

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

Planned Procurement Activities Report (PPAR)

- 4.12. For all spend above the Threshold for Supplies and Services or £250k and above for Works (see Table 1) then the Assistant Director – Procurement shall present a monthly Planned Procurement Activities Report (PPAR) to Cabinet and copy to the Resources Overview and Scrutiny Committee.
- 4.13. All relevant planned procurement activity (“Planned Procurement Activities Report”) over the following quarter. The report shall include:
 - i. Details of the Supplies, Services or Works required with a suitable brief description
 - ii. Estimated timescales
 - iii. Estimated contract values (noting some may be exempt from public disclosure subject to the public interest test in accordance with Schedule 12A of the Local Government Act 1972)
- 4.14. This purpose of the PPAR report is:
 - i. To notify Cabinet and the Resources Overview & Scrutiny Committee of planned procurement activities over the following quarter with reference to Key Decisions, seeking any recommended decisions.
 - ii. To act as a sounding for Members for the planned activities where decisions are delegated to Chief Officers;
 - iii. For Cabinet to identify any sensitivities or requirements that necessitate a procurement report to be presented to Cabinet for an Executive Decision

prior to starting the procurement rather than delegating the decision to Chief Officers.

- 4.15. Any planned procurements can, at the discretion of Cabinet, be brought back to Cabinet for an Executive Decision.
- 4.16. Where possible, any Tender which is required to be included on the PPAR report should be included at a suitable practical early stage to provide genuine insight as to planned tendering activity.
- 4.17. The requirement for the inclusion of Tender on a Planned Procurement Activity Report should not limit any necessary early engagement or feasibility work prior to the submission of the PPAR, for example to determine route to market.
- 4.18. Any deviation from this PPAR process will require approval via the Waiver Procedure.
- 4.19. Where an agreed procurement process has commenced in line with such an approval this must be included on the next available PPAR report and highlighted to identify that a procurement process has commenced.
- 4.20. No Contract or commitment to form a contract shall be permitted prior to the PPAR being signed off by Cabinet.

Procurement Strategy Report

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

Competitive Procurement Stage

Drafting Quotation and Tender Documents

- 4.23. All Quotation or Tender invitations shall clearly set out the procurement process for suppliers to follow for submitting bids, with bids required to be submitted in accordance with those requirements.
- 4.24. All Quotation and Tender documents shall be based on the Council's approved templates and include the Council's terms and conditions relevant to the nature of the contract, along with the mandatory clauses.

Submission and opening of Quotations and Tenders

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

Evaluation and Award

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

Contract Award (including modifications)

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

- 4.34. Following the authorisation of the Contract Award Report, all tenderers shall be notified in writing of the outcome, subject to the requirements of the Regulations e.g. standstill periods. Supplier feedback letters and where required under the Regulations a Contract Award Notice shall also be published.
- 4.35. Where a Quotation or Tender is a “call off” from a compliant Framework the Contract Award Report can be combined with the Strategy Report.

Contract Extension and Modifications

- 4.36. Contracts shall only be amended or extended where:
- i. The Contract permits the amendment and/or extension;
 - ii. It is in accordance with Public Sector Procurement Regulations (as amended and/or any successor legislation); and
 - iii. Approval is sought in accordance with the Scheme of Delegation.
- 4.37. Approvals to extend or modify a Contract must be formally recorded as part of accountability and transparency and recorded on the Contract Register as appropriate.
- 4.38. Where a Contract has expired or is due to expire with no replacement provision any continued use of that Contract, shall be considered as a breach under the Breach Procedure.
- 4.39. Where a contract extension is required that was not provided for in the original contract, then this will need to follow the governance set out in Table 2 above, having due regard for the Regulations.
- 4.40. In line with the Breach Procedure due consideration should be taken on whether a formal report to Cabinet is required outlining the circumstances relating to the Contract and what actions are to be taken to mitigate and remedy the Breach.

Contract Management

- 4.41. Proportionate contract management, taking into account risks to the Council, must be an integral part of the consideration when seeking to award a new Contract. This will include establishing dedicated contract managers and contract management systems, including a detailed knowledge of the provisions of the Contract.
- 4.42. Payments shall be made in accordance with the Contract terms and the Regulations and done in a timely manner to avoid the payment of any interest charges.
- 4.43. During the life of a Contract, the contract manager must monitor the Contract in line with any approved Contract Management Framework
- 4.44. If a contractor fails to comply with any of the provisions of a Contract, the contract manager must try to secure compliance in accordance with the Contract. Proper records must be kept regarding Contract failings and any corrective measures put forward.
- 4.45. If this is not successful, the matter should be referred promptly to Corporate Procurement Service and their advice sought as to what action should be taken to protect the Council’s interests.

- 4.46. If there is contract dispute, the contract manager must follow the dispute resolution provisions contained in the Contract and seek legal advice from Legal Services where necessary. Advice should also be sought from the Section 151 Officer (as delegated) for advice about the financial implications.

Other considerations

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

Due Diligence

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

Clarifications

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

Frameworks

- 4.52. Where the Council has established the award of a Framework Agreement which has been approved by a Cabinet Member or by a Chief Officer (in accordance with the Scheme of Delegation), then Chief Officers (or as delegated) may issue further orders under the Framework agreement provided that they comply with the scope of the agreement and Framework conditions and this is noted in the framework award report.
- 4.53. Where calling off from a single contractor Framework the issuing of individual orders for supplies, services or works within the scope of that Contract shall be permitted up to the agreed levels of spend and authorisations.
- 4.54. When more than one contractor is on the Framework Agreement then the issuing of individual call off orders from Frameworks shall be in accordance with the Framework call off conditions.
- 4.55. All Framework Agreements and Dynamic Purchasing System Agreements must be awarded, set up and managed strictly in accordance with the Regulations, where applicable.
- 4.56. In looking to establish a Framework or Dynamic Purchasing System Agreements, due consideration must be given to sub-dividing the Contract into lots and the reasoning provided where it is decided that this is not appropriate.

- 4.57. Frameworks to be monitored to ensure that spend does not exceed what is permitted under the framework.
- 4.58. Contracts to be concluded by a call off from a Framework Agreement established by another Contracting Authority shall be carried out in accordance with the rules for the operation of that Framework Agreement; ensuring that the scope covers the Council as an eligible participant to which the Framework is open.

Negotiated Contracts without competition

- 4.59. The criteria for applying a Negotiated Contract without competition shall only be deemed appropriate for the execution of supply of Supplies or Services or the execution of Works under the following circumstances:
- i. The purchase of a named product required to be compatible with an existing installation.
 - ii. The purchase of proprietary or patented Supplies or materials or Services which, are obtainable only from one supplier, and where no reasonably satisfactory alternative is available.
 - iii. The creation or acquisition of a unique work of art or artistic performance.
 - iv. Carrying out, with the approval of the Section 151 officer, security works where the publication of documents or details in the Tender process could prejudice the security of the works to be done.
 - v. The activities are controlled by a statutory body which prohibits competition by others.
 - vi. It can be demonstrated and evidenced that no genuine competition can be obtained.
 - vii. The activities are of a specialised nature which, are carried out by only one supplier, and it can be evidenced that there is no reasonably satisfactory alternative available.
 - viii. Whereby a change cannot be reasonably made in the case of a business-critical system and/or strategic ICT solution (with proprietary licensing therein) for technical reasons such as, interchangeability and / or interoperability with existing back-office solutions and infrastructures
- 4.60. Evidence is to be provided which demonstrates that as a result of a market investigation there is only one contractor that can meet the Council's requirements for that Contract in line with the criteria.
- 4.61. Where use of a Negotiated Contract has been approved a Quotation or Tender will not be applicable.
- 4.62. Where appropriate officers should comply with the need to issue notices in accordance with the Regulations.
- 4.63. For Negotiated Contracts Above Threshold, two separate reports are required – one for the approval to commence negotiations and then one for the award of contract following the outcome of those negotiations

- 4.64. For Negotiated Contracts Below Threshold a single report is required for the approval to commence negotiations. Following the conclusion of negotiations, a further signature of the Chief Finance Officer (or their delegate) is required for that report to confirm the contract value and allow the award of contract.
- 4.65. Where it is deemed negotiations are required with more than one supplier due regard must be given to the Regulations around what is permitted in respect of negotiations and / direct awards.
- 4.66. Entering into a Negotiated Contract process to award a contract without competition is not to be used as a means to extend contracts that have failed to be re-procured in sufficient time. In such cases these would be investigated as part of the Breach Procedure.
- 4.67. Where an appointment of a Supplier(s) is through the application of a Negotiated Contract a formal Contract must be formed with the Supplier(s) and registered on the Council's Contract Register.

Decision Making and Tolerances

- 4.68. If a project within the Planned Procurement Activity Report is not approved for the Supplies, Services or Works required, then an Executive Decision will need to be made by Cabinet (or the relevant Cabinet Member on a report of the relevant Chief Officer if it is within the appropriate financial limits).
- 4.69. In addition, the following are decisions that must also go to Cabinet where:
- i. Submitted bids are above the estimated total value of the Contract where they exceed the figure stated in the Planned Procurement Activities Report by 20% or £500,000 (whichever is the lower), or exceeds £10,000,000;
 - ii. If the Full Cabinet Report including Strategy Report was delegated and the submitted bids are above the estimated total value of the Contract by not more than 20% or £500,000 then the DPR award report process may still be applied;
 - iii. the proposed length of the Contract exceeds by more than 12 months the term stated in the Planned Procurement Activities Report;
 - iv. there is a material change to the scope of the contract as set out in the Planned Procurement Activities Report;
 - v. there is a material change to the procurement approach set out in the Planned Procurement Activities Report.

Record of decisions

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

Equalities Impact Assessments

- 4.71. Prior to commencement of a procurement due regard should be given as to whether an Equalities Impact Assessment should be completed, guidance for which can be found at :
https://intranet.birmingham.gov.uk/download/downloads/id/2016/equality_impact_assessment_guidance.pdf

Subsidy Control

- 4.72. Subsidy Control rules must be considered in situations or circumstances where the proposed arrangement may provide an advantage through state resources on a selective basis to any organisation(s) that could potentially distort international competition and / or trade.
- 4.73. All relevant Government guidance should be applied where subsidy control rules may apply. Advice from Legal Services should also be sought in such circumstances.

SECTION 5 – Definitions

Above Threshold	Means spend threshold above the UK Government thresholds for Local Councils setting out requirements to advertise on “Find a Tender” (Find high value contracts in the public sector – GOV.UK (www.gov.uk))
Authorised Officer	Means the Officer as set out in Roles and Responsibilities – Section 2.
Birmingham Business Charter	Means the Birmingham Business Charter for Social Responsibility (BBC4SR).
Below Threshold	Means spend falling below the UK Government requirement to advertise on “Find a Tender”.
Best Value	Means the duty placed on the Council to secure Best Value in line with statutory duties.
Breach	Means an act or action undertaken which is counter to the requirements as set out in these Rules.
Breach Procedure	Means the procedure to be undertaken to investigate and determine if a Breach to these Rules has occurred.
Budget Holder	Means the Authorised Officer with overall responsibility for the financial budget.
Chief Finance Officer	Means the Section 151 Officer.
Chief Officer	Means Officers reporting to the Chief Executive including all Strategic Directors and the Director of Strategy, Equality and Partnerships.
Concession (Contract)	As defined within the Public Contract Regulations, typically for granting of rights to operate as a Concession on public services.
Conflict of Interest Forms	Means the form under which Conflicts of Interest Declarations are to be recorded in line.
Contract	Means a formal agreement between the Council and a Supplier that has been set up with the expressed intention of supporting the delivery of Supplies, Services or Works or Concessions arrangements.
Contract Award Notice	Means the Award Notice as defined within the Regulations.
Contract Award Report	Means the formal Council defined Award Report in relation to contract awards with third party suppliers.

Contract Register	Means the electronic register for storing and documenting Contract information and associated documents. At the time of drafting these Rules shall mean Oracle.
Contract Standing Orders	Means these Rules which form the Standing Orders in relation to Contract spend In line with section 135 of the Local Government Act 1972.
Council	Means Birmingham City Council.
Council's E-Tendering System	Means the Council's preferred electronic system for advertising of contracts and opportunities, i.e. Oracle or its successor.
Council's Corporate Retention Schedule	https://intranet.birmingham.gov.uk/info/20005/information_document_and_records_management/37/how long to keep records
Dynamic Market(s)	Means dynamic arrangements and / systems as set out in the Public Sector Procurement Regulations.
Financial Regulations	Means the formal Financial Regulations of the Council which form part of the overall Council constitution.
Framework Agreement	Means agreements as set out in the Public Sector Procurement Regulations.
Grant	Means a payment made by the Council to help the recipient (e.g. charity) to delivery an agreed outcome but has no contractual basis. Whilst typically provided subject to conditions that state how the Grant shall be used (for example to support the wider objectives of the Council in promoting the social, economic or environmental well-being within their communities) the grant funder (e.g. the Council) gets no direct service delivery in return. Usually preceded for award of a Grant by a call for proposals. The Grant offer letter will be in line with the Grant Policy (Condition of Grant Aid) normally set out general instructions as to how this is to be achieved and any particular conditions in regard to clawback if those wider objectives are not met.
In-house Preferred Test	In-house assessment PGA.ppt (sharepoint.com)
Light Touch	Means appropriate Contracts which able to be subject to Light Touch procedure as defined within the Public Sector Procurement Regulations.
Negotiated Contracts	Means Contracts negotiated in line with the Negotiation Process as set out in these Rules.
Procurement and Contract	Means this document, also referred to as the Rules.

Governance Rules	
Procurement Gateway Process	Means the Gateway process that provides the series of reports that are required be these Governance Rules. See procurement gateway slides PGA.pptx (sharepoint.com)
PPAR	Planned Procurement Activity Report.
Public Sector Procurement Regulations (the Regulations)	Means Public Contract Regulations 2015 (as amended and/or any successor legislation).
Rules	Means the defined reference for The Procurement and Contract Governance Rules which form the Council's Procurement and Contract Standing Orders within the constitution, i.e. this document.
Scheme of Delegation	Means the Council's rules in respect of authorisations of spend in line with individual responsibilities of Officers and the elected Members of the Council.
Services	Means the provision spend on Services for the Council as set out in public sector procurement Regulations.
Social Value	Means the duty on the Council to consider the Public Services (Social Value) Act 2012 when commissioning a public service to consider how the service that is being procured might bring added economic, environmental and social benefits.
Social Value Policy	Means the Council's formally adopted Social Value Policy setting out the approach to be adopted in applying Social Value in relation to spend with third parties.
Subsidy Control	Means State Subsidy as set out in the Subsidy Control Bill that sets out a legal framework and setting out conditions within which public authorities can provide subsidies to businesses. The Bill places an obligation on public authorities to consider seven subsidy control principles before granting a subsidy - https://www.gov.uk/government/collections/subsidy-control-bill
Supplies	Means the provision spend on Supplier for the Council as set out in public sector procurement Regulations.
Teckal	As defined in the Public Contract Regulations 2015 (as amended and/or any successor legislation).
Terms and Conditions (Council)	Means the Council's formally agreed Terms and Conditions.
Thresholds	Means general spend thresholds related to spend with third parties.

Value for Money	Means optimum combination of whole-life cost and quality (or fitness for purpose) to meet the customer's requirement which includes consideration of Social Value.
Waiver	Means an agreed action to set aside a requirement or requirements as strictly set out within these Rules.
Waiver Procedure	Means the procedure to be undertaken to give consideration to whether a Waiver is granted to set aside a requirement or requirements as set out in these Rules.
Works	Means the provision spend on Works for the Council as set out in public sector procurement Regulations.