



# Birmingham City Council Constitution

**Part D – Finance, Contract and Procurement Rules**

**September 2019**

**(Amendments made November 2020 – to be agreed by Full Council)**



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## **D1. FINANCIAL REGULATIONS**

### **1.1 Financial Regulations**

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

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

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

## **1.2 Financial Accountability Arrangements to Deliver Sound Financial Management**

- i. Financial Accountability Arrangements set out the role of members, the Chief Finance Officer and Directors in delivering sound financial management across the council.

### **THE ROLE OF MEMBERS**

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

#### **FA1 Financial Planning & Control**

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

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

#### **FA2 Financial Management**

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

- (i) Virement of significant sums of money between budget headings
- (ii) Substantial new additional spending not included within revenue budget plans
- (iii) Significant variations to the Capital Programme
- (iv) The creation or unplanned use of reserves not included within the approved Revenue Budget or Capital Programme
- (v) The carry-forward of unspent revenue or capital budgets at the year end.

**FA3 Financial Assurance and Oversight**

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

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

**FA4 Financial Governance**

The Council will appoint an Audit Committee to oversee financial governance

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

**FA5 Core Strategies that support Sound Financial Management**

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

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

**FA6 Delivery and adherence to Core Strategies**

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

**THE CHIEF FINANCE OFFICER (S151 Officer)**

- iii. The Chief Finance Officer has a statutory responsibility for the proper administration of the Council's financial affairs. CIPFA, the public sector professional finance body have set out five principles that define core activities and behaviours that belong to the role of the Chief Finance Officer:

- a. The Chief Finance Officer should be a key member of the Leadership Team, helping the organisation to develop and implement strategy and to resource and deliver the organisation's strategic objectives sustainably and in the public interest.
- b. The Chief Finance Officer must be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer-term implications, opportunities and risks are fully considered, and aligned with the organisation's financial strategy
- c. The Chief Finance Officer must lead the promotion and delivery by the whole organisation of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently, and effectively.
- d. To deliver these responsibilities the Chief Finance Officer must lead and direct a finance function that is resourced to be fit for purpose; and
- e. The Chief Finance Officer must be professionally qualified and suitably experienced.

#### **FB1 Financial Planning**

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

#### **FB2 Financial Management & Control**

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

#### **FB3 Financial Oversight**



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

**FB4 Financial Governance**

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

**FB5 Core Strategies that Support the Budget**

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

**FB6 Delivery and Adherence to Core Strategies**

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

#### **ROLE OF DIRECTORS**

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

#### **FC1 Financial Planning & Control**

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

#### **FC2 Financial Management**

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

#### **FC3 Financial Oversight**

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

#### **FC4 Financial Governance**

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

#### **FC5 Core Strategies that Support the Budget**

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

#### **FC6 Delivery and Adherence to Core Strategies**

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

**Appendix A: Financial Approval Framework**

CFO – Chief Finance Officer		Within Director Delegations ( <a href="#">note 1</a> )	Above Director Delegation & below Key Decision	Key Decision
		Below £200,000	£200,000 – up to £500,000	£500,000 (revenue)
1.	Revenue Budget and Resources Approvals			
1.1	Allocation of corporate revenue budgets	CFO (in consultation with the Chief Exec and Leader if £100,000 or more)	Cabinet	Cabinet
1.2	Allocation of general revenue Policy Contingency			
1.3	Virement or reallocation of revenue budgets between Directorates			
1.4	Virement or reallocation of revenue budgets held by Directorates.	Relevant Director	Either relevant Cabinet Member or Regulatory Committee	Cabinet
1.5	Approval to bid for external revenue resources (including any associated Accountable Body Roles) to be included in an Outline Business Case Report.	Relevant Director with CFO	Either relevant Cabinet Member with CFO, or Regulatory Committee	
1.6	Approval to incur expenditure funded by accepting external revenue resources (including any associated Accountable Body roles) including where 1.5 is not applicable (e.g. where no bid submission was required).			
1.7	Technical revenue budget reallocations or adjustments (e.g. resulting from reorganisation) (note 3)	Chief Finance Officer	Chief Finance Officer	Chief Finance Officer
1.8	Allocations of Revenue Grant and Ring-Fenced related reserves			
1.9	Allocation of specific revenue Policy Contingency in line with the approved Financial Plan and Budget			

1.10	Allocation of specific revenue Policy Contingency not in line with approved Financial Plan and Budget	Cabinet	Cabinet	Cabinet
1.11	Allocation of General Reserves and Balances, and Earmarked Reserves			
1.12	Creation of Reserves			

		Within Director Delegations ( <a href="#">note 1</a> )	Above Director Delegation & below Key Decision	Key Decision
CFO – Chief Finance Officer		Below £200,000	£200,000 up to £1m	from £1m
<b>2.</b>	<b>Capital Budget and Resources Approvals</b>			
2.1	Approval to changes to the capital budget, subject to limitations and policies in the Council's Financial Plan. This includes increases funded from capital receipts; revenue budgets; the capital fund; specific resources ( <a href="#">note 5</a> ); or prudential borrowing - provided the borrowing costs can be funded from additional income, redirection of ongoing revenue budgets, or treasury management budgets for borrowing costs	Chief Finance Officer	Cabinet	Cabinet
2.2	Allocation of Capital Policy Contingency			
2.3	Virement or reallocation of capital budgets from one project or programme to another (including use of underspends) ( <a href="#">note 6</a> )	Chief Finance Officer	Cabinet	Cabinet
2.4	Allocation of a budget to fund overspends			
2.5	Resource allocations in kind, e.g. asset swaps, appropriations between HRA and General Fund, and discounted asset sales			
2.6	Allocation of approved general programme capital budgets to individual projects within the existing policy framework	Relevant Director	Either relevant Cabinet Member with relevant Director, or Regulatory Committee, CFO	Either relevant Cabinet Member with relevant Director, or Regulatory Committee
2.7	Approval to bid for external capital resources (including any associated Accountable Body roles) – this should be sought as part of an Outline Business Case Report.	Relevant Director jointly with the CFO	Either relevant Cabinet Member with relevant Director and CFO, or	Cabinet

2.8	Approval to incur expenditure funded by accepting external capital resources (including any associated Accountable Body roles) where 2.7 is not applicable (e.g. where no bid submission was required).		Regulatory Committee	
2.9	Technical capital budget reallocations or adjustments (e.g. resulting from reorganisation) ( <a href="#">note 3</a> )	Chief Finance Officer	Chief Finance Officer	Chief Finance Officer

CFO – Chief Finance Officer		Within Director Delegations ( <a href="#">note 1</a> )	Above Director Delegation & below Key Decision	Key Decision
		Below £200,000	£200,000 – below £500,000 (Revenue)/up to £1m (Capital)	£500,000 (revenue) / from £1m+ (capital)
3. “Gateway” Business Case Approvals				
3.1	Outline Business Case and Full Business Case reports based on estimated whole project cost ( <a href="#">note 2</a> ). (Discretion to Chief Finance Officer to vary Business Case requirements according to circumstances).	Relevant Director (reporting formats to be determined locally)	Either relevant Cabinet Member or Regulatory Committee;	Cabinet
3.2	Post Implementation Review reports where required.			
3.3	Contract Strategy and Contract Award	Approvals are set out in the <a href="#">Procurement Governance Arrangements</a> in the Constitution		
3.4	Capital Project and Programme overspends compared to the originally approved Full Business Case value.	Amount of overspend to be approved in a revised Full Business Case by the relevant decision maker in line with resource thresholds in 3.1 above. Any additional budget must be approved under 2.4 above ( <a href="#">note 12</a> ).		

<b>4.</b>	<b>Loans, other investments, guarantees, and underwritings made to Other Organisations (Note 14)</b>			
4.1	Budget allocation approval in accordance with Section 2 above.	Chief Finance Officer	Cabinet	Cabinet
4.2	Business Case approval in accordance with Section 3 above. This must include Treasury Management assessment in accordance with the Financial Management Tool and must comply with the Council's investment limit where applicable.	Relevant Director and CFO	Either relevant Cabinet Member with CFO, or Regulatory Committee	Cabinet
<b>5.</b>	<b>Property Transactions</b> Specific delegations relating to property transactions are contained in Birmingham City Council Constitution, Part E Scheme of Delegations, section E3 Delegations to Chief Officers, 3.2 General Delegations, <i>Chief Executive and the Director, Inclusive Growth</i>			

## Financial Approval Framework – Supporting Notes

### Thresholds

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

### Technical budget adjustments

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

### Corporate and Specific Capital Resources

- 4) Corporate capital resources are those which the Council can use for any purpose or with wide discretion as to their use, including all capital receipts, earmarked capital receipts, ‘service’ and ‘corporate’ prudential borrowing, un-ringfenced capital grants, and other general resources as determined by the Chief Finance Officer; it excludes Specific capital resources. Corporate resources are predominantly allocated in the annual capital budget process. Although Cabinet may approve further allocations at other points during the year, this will not generally be done.
- 5) Specific capital resources are all other resources which have a restricted purpose and include external grants and contributions as well as revenue contributions from a Directorate’s own budget. Specific resources may be added to the capital budget by Cabinet during the year when there is reasonable certainty that the resources are available.



**Capital budget virements within a project**

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

**Gateway Reports**

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

**Scope of Capital Gateway approvals**

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

**Outline Business Cases**

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

**Loans, other investments, guarantees and underwritings**

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

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

## D2. RULES RELATING TO CONTRACTS

### 2.1 Introduction

- i. These Rules shall be regarded as Standing Orders of the Council for the purposes of Local Government Act 2972.
- ii. These amended Standing Orders apply to all new procurement processes which are commenced after 03 November 2020.

Deleted: 10 September 2019

### 2.2 Application and Interpretation

In these rules:

**“Authorised Officer”** means the officer to whom the function has been delegated in accordance with delegations or sub-delegations set out in the Constitution or appendices.

**“Authorised Recipient”** means the officer responsible for the receipt of tenders and quotations.

**“Best Value”** means the Council's duty under Section 3 Local Government Act 1999.

**“Building Regulation Authority”** means a local authority as defined by Section 126(1) Building Act 1984.

**“Candidate”** means a contractor that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership.

**“Closing Date”** means the time and date specified in the invitation to tender, quote or negotiate (or any later date that is notified to all persons invited to tender, submit a quote or negotiate where such notification is provided at least 24 hours before the previous Closing Date).

**“Competitive Dialogue”** and **“Competitive Procedure with Negotiation”** mean negotiations carried out in accordance with Public Procurement legislation.

**“Contract”** means a contract for supplies, services, or for the execution of any works and also includes a Framework Agreement and Dynamic Purchasing System. It excludes contracts for the acquisition or disposal of an interest in land, and the grant of a licence.

**“Contractor”** means any person seeking to enter into a contract with the Council.

**“Decision Maker”** means the Council, Cabinet, Cabinet Member, Committee or Sub-Committee or Authorised Officer to whom a function has been delegated in accordance with the Council's Constitution (Part E or the Directorate Sub-Delegations).

**“Estimated Total Cost”** means the aggregate total cost of the supplies or services to be provided or works to be performed under a contract, including any form of option, estimated prior to its procurement.

**“Public Procurement Legislation”** means the Public Contract Regulations 2015 as amended or Concession Contract Regulations 2016 as appropriate or any other successor legislation.

Deleted: “Market Testing”/ “Soft Market testing”

**“Procurement Threshold”** means the published financial threshold applying to in scope supplies, services and works contracts and concession contracts as identified in the Public Procurement Legislation.

**“Framework Agreement”** means a contract concluded in accordance with the Public Procurement Legislation by the Council or by another contracting authority, which establishes the terms under which a contractor will enter into contracts with a contracting authority covered by the scope of the agreement in the period during which the framework agreement applies.

**“Innovation Partnership”** means a procedure carried out in accordance with regulation 31 of the Public Contract Regulations 2015 or any successor legislation, in which the aim is the development of an innovative product, service or works, not already available on the market.

**“LEP Authority”** means the following local authorities:

Solihull MBC, East Staffordshire Borough Council, Lichfield Borough Council, Tamworth Borough Council, Bromsgrove District Council and Cannock Chase District Council and any other local authority (or authorities) that may join the Greater Birmingham & Solihull Local Enterprise Partnership.

**“Negotiated Contracts”** means the process undertaken by Officers in order to award contracts as set out in Section 2.5.

**“Open Procedure”** means a procedure leading to the award of a contract where any interested contractor may submit a tender in response to a contract notice.

**“Restricted Procedure”** means a procedure leading to the award of a contract where any interested contractor may submit an expression of interest in response to a contract notice, but only candidates selected by the Council will be invited to submit tenders.

**“Soft market testing”** is an exercise designed to gain an understanding of the market’s capabilities of meeting a set of requirements and/or obtain feedback on requirements being developed. It is not part of the formal procurement process and the market must be clearly advised of this. Consequently, the exercise does not result in the award of a contract or the implication of any intention to award.

The desired outcome of soft market testing should be to enable officers to develop or refine their requirements and inform any procurement strategy; this includes Single and Multiple Contractor Negotiations.

**“Unforeseen Priority”** means a situation where there is an overwhelming and immovable requirement to complete an item of work, such requirement could not have been foreseen within sufficient time to have allowed a competitive procurement, and the adverse consequences of delaying the completion of such work significantly outweigh the consequences of not securing effective competition. This is provided that the overwhelming and immovable requirement is not attributable to the Council.

## 2.3 Compliance

- iii. Every contract made by the Council shall comply with these Rules and be carried out in a fair, open and transparent manner that treats all contractors equally and without

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discrimination, provided that this does not include contracts for the appointment of barristers, or legal firm where in the opinion of the City Solicitor urgent advice is needed to protect the interests of the Council.

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- iv. Instruction of any legal firm or barrister must be approved by the City Solicitor.

#### Subdivision of Contracts

- v. No contract shall be subdivided into smaller contracts so as to avoid compliance with Standing Orders.

#### Value Added Tax (VAT)

- vi. All figures in Standing Orders are net of VAT.

#### Exemption

- vii. Exemption from any Standing Order may be authorised by the Decision Maker PROVIDED THAT the Decision Maker is satisfied that the exemption is justified by special circumstances and the Decision Maker records in writing the ground(s) for being so satisfied as part of that decision.

- viii. It is recognised that services with a national remit, such as the Council hosted England Illegal Money Lending Team (EIMLT), will procure goods and services from outside of the West Midlands area. They may be expected to use and purchase services across the UK using one time vendors and other local authority and government frameworks as part of their operating model. Where it is practical the EIMLT will comply with the arrangements set within these financial regulations and undertakes to ensure "value for money" is a primary objective when procuring goods and services.

## 2.4 Quotations

#### Low Cost Quotations

- ix. Where the estimated total cost of a contract is at or below £10,000 no contract shall be entered into unless three written quotations have been secured from contractors listed on the finditbirmingham.com database who the Authorised Recipient considers are suitable.<sup>1</sup> If the Authorised Recipient is unable to secure the submission of 3 written quotations then the Authorised Recipient shall record the reasons and proceed with a single quotation, subject to the Decision Maker's agreement being obtained pursuant to vi.

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#### High Cost Quotations

- x. Where the estimated total cost of a contract exceeds £10,000 but is below the Procurement Threshold no contract shall be entered into unless either:

<sup>1</sup> The Assistant Director Regulation and Enforcement has delegated powers to exempt the Illegal money lending team from this provision if it is prudent to do so for operational, geographical and policy reasons. Value for money will also be a consideration in line with the ringfenced grant agreement

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- The contract has been advertised on finditinbirmingham.com<sup>2</sup> and a minimum of ten working days allowed for the submission of quotations and at least three quotations have been submitted. (Due regard should be given to the complexity of the proposed contract and the time required for drafting a tender response when setting the time limit for bidding. Reducing the response time to less than ten working days requires the prior approval of the Assistant Director Development and Commercial. If at the end of the advertising period less than 3 quotations have been submitted then the Authorised Recipient shall record the reasons and proceed with a single quotation, subject to the Decision Maker's agreement being obtained pursuant to vi.; or
- Where there is a suitable Framework Agreement, then quotations should be sought by either a mini-competition or direct award in accordance with the call-off rules established for that Framework Agreement.
- Where the estimated total cost of a contract exceeds £25,000 the contract has also to be advertised on [www.gov.uk/contracts-finder](http://www.gov.uk/contracts-finder).
- All Quotations exceeding £10,000 need to be posted on the Council's electronic tendering system (InTend or its successor).

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**Building Regulation Authorities and Local Enterprise Partnership (LEP) Authorities**

- xi. Where the proposed contract is for building consultancy work with a Building Regulation Authority or for services to be undertaken by a LEP Authority and the estimated total cost of the contract does not exceed the Procurement Threshold the Council shall be entitled to enter into the contract with the Building Regulation Authority or the LEP Authority as appropriate without first seeking quotations or advertising the contract on finditinbirmingham.com.

**Tenders**

- xii. No contract whose estimated total cost exceeds the EU Procurement Threshold shall be entered into unless tenders have been invited in accordance with Public Procurement Legislation.

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**Pre Estimate of Tender Sum**

- xiii. No tender shall be invited for a contract unless:
- an authorised officer has prepared an estimate in writing of the probable expense of the supplies or services or of executing the works; and
  - in the case of a tender for the execution of any works, an authorised officer has prepared an estimate of the annual running costs after completion.
  - The estimate is still considered to be current and up-to-date at the time the tender is invited.

<sup>2</sup> As above

**Publication of Notices**

- xiv. Contracts shall be advertised and awarded in accordance with Public Procurement Legislation through the Council's e-tendering provider. Contract notices shall also be published on [www.finditinbirmingham.com](http://www.finditinbirmingham.com) and [www.gov.uk/contractsfinder](http://www.gov.uk/contractsfinder).<sup>3</sup>

**2.5 Negotiated Contracts****Single Contractor Negotiations (SCN)**

- i. Entering into an SCN 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.
- ii. A contract may be negotiated with and awarded to a single contractor where the City Solicitor (or Assistant Director, Legal), Chief Finance Officer (or the Assistant Director Finance) and the Assistant Director, Development and Commercial (for procurement) has certified approval in writing prior to the commencement of such negotiations..
- iii. The City Solicitor and Chief Finance Officer will only give written approval if:
- Legal advice is provided to ensure that the method of procurement is in accordance with Public Procurement Legislation;
  - Evidence is 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; or
  - Evidence is provided that there is an unforeseen priority that justifies the use of SCN
- iv. Where such authorisation has been issued, the Quotations and Tenders sections above (except for Pre-estimate of Tender Sum) and Submission of Quotations and Tenders section below shall not apply to that contract.
- v. For SCNs above the EU Procurement 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

For SCNs below the EU 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.

**Multiple Contractor Negotiations (MCN)**

- vi. Entering into an MCN 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
- vii. A single contract may be negotiated and awarded through a competitive process with more than one prospective contractors where the City Solicitor (or Assistant Director, Legal), the Chief Finance Officer (or the Assistant Director Finance and Governance) and the Assistant Director,

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<#>As a result of a market investigation there is only one contractor that can meet the Council's requirements for that contract; or¶  
<#>There is an unforeseen priority¶

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**Deleted:** <#>The duration of contracts awarded under SCNs should be proportionate to the subject matter of the contract.

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<sup>3</sup> See footnote 1 above

Development and Commercial (for procurement) has certified approval in writing prior to the commencement of such negotiations.

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viii. The City Solicitor, Chief Finance Officer and the Assistant Director, Development and Commercial will only give written approval if:

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- a. The chosen procurement route satisfies Best Value;
- b. Legal advice is provided to ensure that the method of procurement is in accordance with Public Procurement Legislation; and
- Contractors would be unlikely to submit an unqualified tender or quotation.

ix. Where such authorisation has been issued, the Quotations and Tenders sections above (except for Pre-estimate of Tender Sum) and the Submission of Quotations and Tenders section below shall not apply to that contract.

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<#>(Where the value exceeds the Procurement threshold) is in accordance with Public Procurement Legislation; and ¶  
<#>Contractors would be unlikely to submit an unqualified tender or quotation.¶

x. For MCNs below the EU 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 delegate) is required for that report to confirm the contract value and allow the award of contract.

#### Competitive Dialogue, Competitive Procedure with Negotiation or Innovation Partnership

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xi. A contract may be the subject of Competitive Dialogue, Competitive Procedure with Negotiation or Innovation Partnership where Cabinet or the City Solicitor and the Chief Finance Officer, or the Assistant Director Development and Commercial has agreed the Procurement Strategy report prior to the publication of a contract notice, that use of an alternative procurement procedure will not satisfactorily allow the award of contract.

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xii. Where such authorisation has been issued, the Quotations and Tenders sections above (except for Pre-estimate of Tender Sum) and Submission of Quotations and Tenders section below shall not apply to that contract.

## 2.6 Framework Agreements

### Single Contractor Framework Agreement

- i. Where a single contractor has entered into a contract with the Council based on a Framework Agreement established by the Council or by a Contracting Authority that has included the Council within the scope of their Agreement, the issue of individual orders for work within the scope of that contract shall not require further action under Standing Orders.

### Multiple Contractor Framework Agreements

- ii. When more than one contractor has entered into a Framework Agreement with the Council then the issue of orders shall be in accordance with any allocation rules agreed with the Decision Maker on the award of the contract. Where the rules require opening up competition between the Framework Contractors, then a report shall be issued to the Decision Maker under the Evaluation and Award section below setting out the reason for



the award to the particular contractor and how the price payable by the Council has been reached.

- iii. 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 a Contracting Authority to which the framework is open.

#### Dynamic Purchasing Systems

- iv. Dynamic purchasing systems shall be operated as a completely electronic process, and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. The procurement of a dynamic purchasing system must be in accordance with the Public Procurement Legislation.

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## 2.7 Submission of Quotations and Tenders

#### Method of Submission

- v. All invitations to tender or quote shall state that no tender or quotation shall be considered unless it is submitted in accordance with the requirements described in the instructions for tendering or submitting quotations.

#### Closing Date

- vi. No tender or quotation received after the closing date shall be accepted or considered.

#### Record

- vii. Those undertaking the Opening Ceremony of tenders or quotations on the Council's e-tendering system shall be responsible for ensuring that there is an accurate record of the receipt of tenders and quotations.

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## 2.8 Evaluation and Award

#### Evaluation principles

- viii. All invitations to tender or to submit a quotation shall specify the selection and award criteria. The evaluation of tenders or quotations must be in accordance with Procurement's Evaluating Tenders Procedure Guidance.

#### Award Report

- ix. A written report on the evaluation of tenders shall be issued to the decision maker, following any procurement in accordance with the Tenders, Negotiated Contracts or Framework Agreements sections above including the opening up of competition when calling off from a framework agreement and when establishing a dynamic purchasing system.
- x. Award reports shall include at least the following:
- j) A brief summary setting out the subject matter of the report and the desired outcomes;

k) results of the qualitative selection and the reasons for selection or rejection of contractors;

l) and additionally (where appropriate):

- The reasons for selection or rejection of Candidates;
- The reasons for the rejection of tenders found to be abnormally low;
- Any delegations sought to take up options to extend the contract subject to satisfactory performance and budget availability;
- The pre-estimate of expenditure or the total value of orders; and
- The rules for the allocation of orders.

#### Contract Award

- xi. Following the authorisation of the award report, all tenderers shall be notified in writing of the outcome, subject to the requirements of the Public Procurement Legislation regarding standstill periods. Feedback letters and publication of the award notice(s) shall be complied with.

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## 2.9 Content of Contracts

- xii. Every contract shall be in writing and shall contain clauses which are currently approved by the City Solicitor which address:

m) The prevention of corruption;

n) Equal opportunities;

o) The Council's procurement policy framework for jobs and skills where applicable;

p) The Council's Birmingham Business Charter for Social Responsibility where applicable;

q) Where the contract exceeds the Procurement Threshold; the contract shall contain clauses reflecting obligations under Public Procurement Legislation;

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r) General Data Protection Regulation (GDPR) compliance;

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s) Serious Organised Crime.

## 2.10 Execution of Contracts

#### Sealing

- xiii. Every works contract which exceeds £250,000 in value, every contract for supplies or services which exceeds £1,000,000 in value and all Framework Agreements irrespective of their value shall be sealed with the Common Seal of the Council (see Part A of the Constitution) and shall be executed by the contractor as a Deed.

#### Signing

- xiv. Every contract shall be signed on behalf of the Council either by a senior lawyer who is duly appointed as an Authorised Signatory by the Council or an authorised officer.

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**Members**

- xv. No Member of the Council shall enter either orally or in writing into any contract on the Council's behalf.

## D3. PROCUREMENT GOVERNANCE ARRANGEMENTS

### 3.1 Scope

- xvi. This sets out the governance arrangements for approval and award of contracts and for the exercise of the chief officer delegations where the supplies, materials, services to be purchased or the works to be executed are between the Procurement Threshold and £10,000,000 in value. Chief Officers/Directors will put in place a scheme of sub-delegations to other officers and these will be published on the Council's webpage.
- xvii. These figures refer to the Council's expenditure only, notwithstanding that the Council may permit its Framework Agreements to be used by other contracting authorities.
- xviii. Where the estimated value of a contract is £10,000,000 or above, Cabinet is required to approve the strategy report and the contract award. Where the estimated value of a contract is under £10,000,000, the contract award decision shall normally be delegated to Chief Officers/Directors in accordance with the Procurement Governance Arrangements; provided that the [tolerances](#) below are not exceeded, in which case such contract award decision will be made by the Cabinet Member, Finances and Resources on a report of the relevant Chief Officer.
- xix. 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, in which case the decision must be made by Cabinet.

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### 3.2 Sounding out Cabinet – Planned Procurement Activities Report (PPAR)

- xx. The Assistant Director of Development and Commercial shall present a monthly report to Cabinet plus a copy to the Resources Overview and Scrutiny Committee of all relevant planned procurement activity ("Planned Procurement Activities Report") over the following quarter.
- xxi. The report is in header form listing the goods or services with estimated timescale, together with a briefing note. Estimated contract values may in most cases be exempt from public disclosure subject to the public interest test in accordance with Schedule 12A of the Local Government Act 1972.<sup>4</sup> This report is:
  - t) To inform Cabinet and the Resources Overview & Scrutiny Committee of planned procurement activities over the following quarter.
  - u) To act as a sounding for Members for the planned activities where decisions are delegated to Chief Officers/Directors;
  - v) 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/Directors.

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<sup>4</sup> Further guidance on exempt information can be found in Part C2 Access to Information

- xxii. Any planned procurements can, at the discretion of Cabinet, be brought back to Cabinet for an Executive decision.

### 3.3 Strategy Report

- xxiii. Prior to commencing a procurement process and the issue of tender documents, a brief outline of the proposed activity ("Strategy Report") will be prepared by the Directorate Chief Officer, or if the contract is designed to service two or more Directorates, the relevant Head of Category from within Corporate Procurement ("**the Contract Owner**") seeking approval from:

- Finance - to validate that the anticipated benefits can be realised and to confirm the budget is available;
- Legal Services - to confirm the proposal including the method of procurement is within the Council's powers.; and
- Corporate Procurement Services - to confirm that the strategy demonstrates the best form of procurement, is likely to secure effective competition and deliver best value and approve the market engagement strategy.
- The Contract Owner shall gain approval to the content of the Strategy Report from City Solicitor, Chief Finance Officer and Assistant Director of Development and Commercial Finance (or their delegates) by email. It is required that the same, final version of the Strategy Report having been seen and authorised by all parties.

### 3.4 Tolerances for operation

- i. If a project within the Planned Procurement Activities Report is not approved for the goods or services 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).

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- ii. Decisions must also go to Cabinet where:

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- the estimated total value of the contract exceeds the figure stated in the Planned Procurement Activities Report by 20% or £500,000 (whichever is the lower), or exceeds £10,000,000;
- the proposed length of the contract exceeds by more than 12 months the term stated in the Planned Procurement Activities Report;
- there is a material change to the scope of the contract as set out in the Planned Procurement Activities Report;
- there is a material change to the procurement approach (e.g. use of framework or as set out in the Planned Procurement Activities Report).

- iii. Otherwise the Executive decision on contract award will be delegated to the relevant Chief Officer.

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### 3.5 Contract Award Report

- iv. At the end of the tender and to enable a contract award to be made and an award notice to be published, an award report shall be produced in accordance with the Public

Procurement Legislation for consideration by the relevant Decision Maker in order to authorise approval ("Contract Award Report").

- v. 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, by written notice to the contractor(s), subject to satisfactory performance and funding availability. See Award Reports [section D2.8 iii](#) above for the minimum content of Award Reports.
- vi. The Contract Award Report shall be approved by the City Solicitor, the Chief Finance Officer and the Assistant Director Development and Commercial Finance (or their delegates); the same final version of the Contract Award Report having been seen and authorised by all parties.

### 3.6 Combined Strategy and Contract Award report

- vii. Where the proposed procurement route is the use of (or "call off" from) another Contracting Authority's Framework Agreement, a combined strategy and award report may be presented to the relevant Decision Maker provided that, in addition to the applicable requirements of the Framework and Award sections above, the report contains an options appraisal stating:

- The justification for use of the framework agreement;
- How the Council's policies (including the Social Value and Living Wage Policies) will be addressed; and
- The reason for the award to the particular contractor and how the price payable by the Council has been reached.
- See Award Reports section D2.8 iii above for the minimum content of Award Reports.

### 3.7 Contract Extension Report

- viii. A Contract Extension Report may authorise an extension to a contract where a contract has expired and a replacement contract has not been procured in time, [where](#) this delay is not attributable to the actions of the Council, and there is no option outstanding to extend the contract provided that:
  - The City Solicitor, the Chief Finance Officer and the Assistant Director Development and Commercial Finance (or their delegates) are satisfied that there is no viable alternative solution, having regard to the Public Procurement Legislation;
  - The value of the extension does not exceed £500,000;
  - Where the contract exceeds the Procurement Threshold, due regard is to be given to the circumstances in which a modification of a contract or a framework agreement is permitted under the Public Procurement Legislation.
  - The contract conditions are similar to those of the contract which has expired; and
  - There is no change to the specification to that contained in the contract which has expired.
- ix. Such [Contract](#) Extension Report shall set out the business case and appraisal of options, the outcome of any negotiations with the contractor and the reasons why it was not

practicable to complete a procurement process and award a contract prior to the expiry of the current contract. It will be classed as non-compliant spend.

### 3.8 Framework agreements

- x. Where the award of a framework agreement has been approved by a Cabinet Member, or by a Chief Officer in accordance with the Procurement Governance Arrangements then Chief Officers may issue further orders under the framework agreement provided that they comply with the scope of the agreement and Framework Limits.

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### 3.9 Record of decisions

- xi. The Assistant Director Development and Commercial shall:
- Maintain a record of all decisions made by Chief Officers/Directors; and
  - Report on a quarterly basis to Cabinet on all decisions taken by Chief Officers/Directors during the previous quarter;
- to which these Procurement Governance Arrangements apply. The report will be in header form listing the contract values, timescales and goods, services or works.

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### 3.10 Compliance

- xii. This process shall be consistently applied across the Council and directorates should not need to add any additional processes. The relevant Chief Officer is responsible for ensuring these Procurement Governance Arrangements are followed and all approvals required are in place before any contract is awarded.