

SECTION 3 – CONTRACT STANDING ORDERS

Council rules for buying and supplying goods, works, or services and for disposing of assets other than property.

Effective from ~~1 January 2022~~ [TBC](#)

For clarity, and pursuant to the Constitution of the County Council, the role of ~~S. Section 151 officer~~ [Officer](#) is exercised by the Executive Director for Resources and the role of Monitoring Officer is exercised by the Director of Strategy, Planning and Governance. [In the absence of the Section 151 Officer the Deputy Section 151 Officer is the Director of Finance, and in the absence of the Monitoring Officer the Deputy Monitoring Officer is the Head of Legal and Governance.](#)

1. SCOPE AND PURPOSE

- 1.1. As a body using public resources, the Council must set and follow the highest standards of financial control and stewardship. Contract Standing Orders (CSOs) provide Officers and Members with procedures to follow to ensure that the required standards are met.
- 1.2. ~~CSO's~~ [CSOs](#) are consistent with ~~procurement legislation~~ [Procurement Legislation](#) and the Council's Code of Corporate Governance and are considered by Audit & Standards Committee annually as part of the approval of the Annual Governance Statement.
- 1.3. CSOs set out procedures designed to ensure that the Council achieves value for money ~~and~~, social value [and maximises public benefit](#), that it complies with statutory requirements, [and](#) that its affairs are prudently managed and properly controlled. [CSOs also provide a basis for fair competition by providing transparent and auditable procedures to protect the Council's reputation from any suggestion of dishonesty or corruption.](#)
- 1.4. [Following CSOs is mandatory. They govern and regulate the procurement activity of all Officers and any companies or organisations within the Council's control and apply to any persons or organisations who are supporting the Council in relation to any procurement exercise.](#) Non-compliance with ~~these rules~~ [CSOs](#) could result in a legal challenge ~~and to the Council and regardless of the value of the contract concerned, will be a breach.~~ [Non-compliance](#) may also constitute a disciplinary offence [for Officers if they are involved in procurement activity that is not undertaken in accordance with CSOs.](#)
- 1.5. Prior to commencing ~~a~~ [any commissioning or procurement activity \(i.e. pre-market engagement, procurement /sale /contracting process\)](#) on behalf of the Council, Officers should ensure that they have the [internal](#) authority to do so. Failure to do so may result in delay and/or the cancelling of procurement activity. Officers should check with Legal ~~and/or~~ Democratic Services if they are unsure of ~~their~~ [the](#) authority [they need to obtain](#).
- 1.6. The purpose of CSOs is to promote good procurement [and contract management](#) practice, public accountability, ~~deter to~~ [deter](#) [fraud and](#) corruption and [to](#) provide protection for the Council and its staff against allegations of impropriety. These CSOs set out and explain the Council's minimum requirements when contracting for goods,

services and works and/or disposing of assets.

1.7. CSOs must be read in conjunction with the Council’s Financial Standing Orders. They apply to **all** spend with external suppliers regardless of type and regardless of the source of funding (e.g. capital, revenue, sponsorship, donations or grants from a third party). They apply to contracts let by the Council on its own behalf and when it is acting as a purchasing authority on behalf of others. They also apply to those companies or organisations within the Council’s control. Where the Council is taking part in procurement activity controlled by a partner authority, ~~e~~Officers should satisfy themselves that any proposed process meets the Council’s legal obligations and should speak to ~~procurement and legal colleagues~~ colleagues in Procurement and Legal (and where appropriate Contract Management) where they are unsure.

1.8. ~~CSO’s~~ CSOs are designed to ensure that all procurement, contract management and disposal activity:

- Achieves best value for money;
- Maximises public benefit
- Is consistent with the highest standards of integrity;
- Generates market competition with a transparent, fair, and consistent approach;
- Complies with ~~all~~ legal requirements;
- Complies with the Council’s transparency obligations
- Supports and complies with the ~~council’s~~ Council’s corporate aims and policies; including the Council Plan and Council Delivery Plan;
- Meets ~~on~~ the Council’s diversity and sustainability objectives and ensures equality of treatment (unless a difference between suppliers justifies different treatment)
- Has due regard to the National Procurement Policy Statement
- Complies with the Procurement Objectives and Principles of the relevant Procurement Legislation

For the avoidance of any doubt at a high level the following are the Procurement Objectives and Principles of the Procurement Legislation:

<u>Procurement Act Objectives</u> <u>Section 12 of the Procurement Act 2023</u>	<u>Provider Selection Regime Principles</u> <u>Regulation 4 of the Health Care Services</u> <u>(Provider Selection Regime) Regulations</u> <u>2023</u>
<u>Delivery of best value</u>	<u>Securing the needs of the people who use the services</u>
<u>Maximisation of public benefit</u>	<u>Improving the quality of the services</u>
<u>Sharing information for the purpose of allowing Candidates and others to understand the Councils'-s procurement policies and decisions</u>	<u>Improving the efficiency of the provision of the services</u>
<u>Acting, and being seen to act, with integrity</u>	<u>Acting transparently, fairly and proportionately</u>
<u>Treating all Suppliers the same unless in exceptional circumstances the Act otherwise permits</u>	

1.9. Council budgets and resources must only be used for the purchase of Works, Goods and Services which are for the express use of the Council and/or companies or organisations within the Council's control and/or any partners working collaboratively with the Council. Anyone engaged in purchasing decisions for the Council must declare any links or personal interests that they may have with purchasers, suppliers and/or contractors, in accordance with CSOs, the Financial Regulations and the relevant policies and procedures concerning the issue or receipt of gifts, rewards or hospitality.

2. WHEN DO ~~CSO'S~~CSOs APPLY?

2.1. ~~CSO's~~CSOs apply to all contractual arrangements entered into by the Council except for those specifically excluded at ~~paragraphs~~CSO 2.2 and 2.3 below. ~~They~~ Whilst the requirements for competition do not apply to the types of contracts set out at CSO 2.3, other requirements, such as the transparency requirements, will still apply. ~~CSOs~~ apply to contracts where the ~~council~~Council is receiving goods or services and to contracts where the ~~council~~Council is supplying goods or services. Contracts must ~~comply~~be let in compliance with ~~CSO's~~CSOs irrespective of how they are funded. Procurement ~~legislation~~Legislation covers contracts for services, works and supplies. This includes contracts for the provision of works (including design and execution of works), for the purchase, lease rental or hire of products (including installation) and for the provision of services generally, ~~(~~subject to exemptions and relaxations for specific types of service activity that procurement can advise upon. Works, services and goods are defined as:

- a. CSO'sWorks – the construction of structures of all kinds, such as buildings, highways, bridges, as well as renovations, extensions and repairs and other building works as defined in the Procurement Regulations 2024 at Regulation 45 and with the common Procurement Vocabulary Codes listed in Schedule 3
- b. Services – the supply of expertise as deliverables either once, on multiple occasions, or on a regular basis; this can include software if provided as a service, consultancy and external advisory services
- c. Goods – physical products purchased, leased, rented, or manufactured on request; this can include software in some instances, IT hardware and other consumables

Exempt Contracts

2.2. CSOs and Procurement Legislation do not apply to the following activities or contracts which are covered by separate policies and procedures:

- a. Contracts for fixed term or permanent appointments where individuals become employees of the Council (NB they will apply to contracts for services even if those services are supplied by a named individual and to contracts with employment agencies for the provision of staff) see HR Policies and Procedures
- b. Agreements for the acquisition, disposal, or transfer of land or buildings see Property Policies and Procedures and Delegations to Officers and Members within the Constitution
- c. Works placed with utility companies where there is no competition required or

- achievable
- d. Services to be delivered to the Council by the Council's in-house services (i.e. ~~legal/payroll~~Legal/Payroll etc)
 - e. Direct payments to customers **see Social Care policies and procedures**
 - f. Non-trade payments to third parties – i.e. insurance claims payments, pension payment, statutory payments to public bodies, compensation payments ordered by a court or tribunal **speak to Legal Services prior to agreeing or making any payments to ensure appropriate governance is followed**
 - g. Contracts entered into by or on behalf of the Monitoring Officer for the appointment of counsel, solicitors and/or experts in relation to or in contemplation of proceedings, including contracts in relation to alternative dispute resolutions (e.g. mediation, conciliation etc), or where procurement thresholds which are not met otherwise exempt legal services under the Procurement Legislation. **These may only be authorised by the Monitoring Officer or Head of Legal and Governance**¹; or
 - h. Loans ~~to~~from banks or other financial institutions to the Council and investments made in accordance with the treasury management strategy **speak to Finance prior to making any payments of this nature to ensure they align with the Council's policies and any terms are acceptable to the Head of Finance**
 - i. Grant agreements – these are not commercial contracts as these are agreements giving financial assistance to an individual or organisation with no supply of goods or services, or execution of works, in return. However, advice from Legal should be sought before entering into a grant agreement to ensure it does not constitute a contract for goods, services or works. Where the Council intends to bid for grant funding, the decision to bid must be approved by the relevant Portfolio Holder as set out in Part 2(4) of the Constitution. Where the Council will be or intends to make grants available to others, Officers must seek the relevant approvals in accordance with the ~~Constitution~~Constitution and must ensure that they take advice from Legal in respect of the terms of the grant and any subsidy control issues that may arise.

Direct Awards

- 2.3. The following activities are ~~also~~ excluded from the requirement for competition but other requirements of CSOs and the Procurement Legislation, such as transparency requirements, may still apply:
- a. Purchases made via a purchasing consortium (e.g. ESPO) accessible to local authorities. However, ~~purchases above thresholds set in~~ procurements which are subject to Procurement Legislation will only be excluded if the consortium has let their contract lawfully and in accordance with requirements in force at the time, and the procedures of the relevant Framework are complied with (this includes any requirements around the operation of the Framework and the use of required terms and conditions and pricing models).

¹ Please note that regardless of the procurement legislation position, no contract for legal advice or support of any kind may be entered into without the explicit approval of the Monitoring Officer and/or Head of Legal and Governance.

- b. Contracts entered into through sub-regional working or collaboration with other local authorities or public bodies, where a competitive process has been followed that complies with the CSOs of the lead organisation, provided always that the ~~collaboration~~lead organisation has let their contract lawfully and in accordance with ~~procurement procedures~~Procurement Legislation in force at the time.
- c. Collaborative proposals for joint working or shared services with other public bodies which the Monitoring Officer has approved as meeting the following conditions:
- The principal activity of the collaborative arrangement is the provision of services back to the participating bodies;
 - The collaborating public bodies when acting together exercise the same kind of control over the service as they would over an in-house service; and
 - There is no independent or private sector partner involved in the collaborative arrangement.
- d. ~~residential~~Residential placements for an individual with a registered care provider of their choice under the Care Act 2014, or
- e. ~~personal~~Personal care services where, either the individual has expressed a view in respect of which provider should be used (and the Council is required to take this view into account) or in the opinion of the appropriate ~~director~~Director, the particular needs of an individual require a specific social care package which is only available from one provider.
- f. In relation to d and e above the ~~director~~Director responsible for the delivery of the services must ensure that adequate records are maintained to demonstrate:
- The contractor meets the relevant national minimum standards;
 - The contract is effectively managed in accordance with the ~~council's~~Council's contract management framework;
 - The reasons for the choice of contractor; and
 - Why these were best possible terms for the ~~council~~Council in the circumstances.
- ~~g. For clarity, d and e above do not apply to contracts for health care or public health care services where different legislation applies. **Speak to Legal and Procurement if you are procuring health care or public health care services to ensure the contract**relevant legislation is subject to the Public-complied with.~~
- ~~h. Contracts Regulations 2015 (PCR2015), or the Utilities Contracts Regulations 2015 (UCR2015), or the Concession Contracts Regulations 2016 (CCR2016) those regulations that are necessary to award because of urgency and that have been specified in the relevant Procurement Legislation~~

2.4. Procurement Legislation will apply in addition to ~~CSO's~~CSOs. In the event of a conflict, the

~~regulations~~ Procurement Legislation will take precedence. Advice should be taken from Procurement and Legal as to ~~whether the regulations apply~~ the extent to which Procurement Legislation applies before any procurement activity is commenced or contract awards are made.

3. OFFICER RESPONSIBILITIES

3.1. Officers in Procurement, Contract Management and Legal are available to advise and assist ~~o~~ Officers with compliance with ~~these CSO's~~ CSOs.

3.2. All those involved in procurement activity have a duty in law to avoid any form of behaviour that might distort or restrict competition or call into question the award of a contract and have a duty to avoid any form of behaviour that might be perceived to restrict competition or call into question the award of a contract.

3.2.3. In order to meet those duties and to safeguard the Council, all Officers and any agents, consultants or partners acting on their behalf MUST:

- Comply with ~~these~~ CSOs
- Comply with Financial Standing Orders
- Obtain necessary internal approvals in line with the ~~Council's~~ Council's policies and procedures as published from time to time to ensure delegated authority is in place **before** commencing activity and ensure that there is budgetary provision before awarding any contract
- Take ~~all necessary~~ legal, financial, and ~~procurement or other professional~~ advice **before** commencing activity and as required throughout the process
- Comply with the Code of Conduct for Officers
- Comply with all ~~procurement legislation~~ Procurement Legislation and any other legally binding requirements specific to their activity
- Comply with all codes of practice, guidance and instructions regarding contractual arrangements issued by the ~~s.151 officer and the Monitoring Officer~~ Council
- Ensure that any agents, consultants, or partners acting with or on behalf of the Council are also compliant
- Check with ~~procurement~~ Procurement whether a suitable Council contract or Framework ~~Agreement~~ already exists **before** seeking to let another contract
- Ensure ~~council~~ Council suppliers have sufficient insurance cover appropriate to the contract in accordance with the ~~council's~~ Council's insurance guidance
- Ensure that where an employee of the ~~council~~ Council or its incumbent supplier/contractor may be affected by any ~~transfer arrangement~~ proposed contract change, Legal and HR advice is taken so that TUPE and related issues are considered **before** proceeding with inviting tenders or quotations
- Keep all required records in accordance with ~~CSO's and Contract Management Framework~~ CSOs and the Council's contract management framework including uploading contract and relevant documentation onto the Council's electronic procurement and contract management system
- Be alert for and identify suspicious bidding patterns taking advice from Legal and Procurement:
- Keep notes of all discussions with Bidders; and

- Ensure there is a procurement plan approved by the ~~S:Section 151 officer~~**Officer** for major contracts and contracts above the applicable ~~legislative~~ threshold where the Procurement Act 2023 applies. In respect of contracts that fall under the Health Care Services (Provider Selection Regime) Regulations 2023 a procurement plan will be required where the value of the contract exceeds the threshold amount for a Light Touch Contract.

3.3.3.4. Directors must:

- Ensure their staff comply with CSOs
- Ensure their staff are sufficiently skilled in procurement matters to fulfil the duties of their post and complete any required learning and development
- Ensure all records are kept as required by these CSOs
- Ensure contracts are executed in accordance with CSOs and constitutional delegations and that a copy is retained for safekeeping on the approved Council systems
- Ensure all exemptions requested and approved are recorded in accordance with ~~CSO's~~**CSOs**

3.4.3.5. Executive Directors must:

- Ensure that any scheme of delegation within their ~~director~~**Directorate** is clear about responsibilities in respect of CSOs and is lodged with the Monitoring Officer
- Approve any proposals by their ~~director~~**Directorate** to provide services to external organisations
- Ensure all Directors within their ~~director~~**Directorate** are sufficiently skilled in procurement matters to fulfil the duties of their post

3.5.3.6. The S:Section 151 officer~~Officer~~ shall

- approve procurement plans for major contracts and contracts above ~~procurement~~**the applicable** thresholds in the Procurement Act 2023 or in respect of contracts that fall under the Health Care Services (Provider Selection Regime) Regulations 2023 where the value of the contract exceeds the threshold amount for a Light Touch Contract.

3.6.3.7. The S:Section 151 officer~~Officer~~ **and Monitoring Officer** may

- With the consent of each other (and only as permitted by ~~these~~ CSOs) waive any provision of CSOs provided the same does not contravene any legal, financial, or regulatory rules
- Delegate their powers under CSOs to another suitably qualified ~~officer~~**Officer(s) – responsibility for consideration of requests to be exempted from CSOs is delegated to the Exemption Panel**
- Issue codes of practice, guidance, and instructions on any matters relevant to these CSOs
- Specify the approved learning and development requirements in procurement **and contract management** matters that ~~officers~~**Officers** must complete to meet the minimum competency standards to fulfil their duties under CSOs

3.7.3.8. The Monitoring Officer shall

- Approve contract terms and the form of contract to be used
- Ensure that a central register of all major contracts and contracts under seal is maintained
- ~~Arrange~~**Agree the arrangements** for the safekeeping of ~~original~~**any physical** copies of contracts on ~~council~~**Council** premises
- Ensure that a central register is maintained of all exemption applications relating to

contracts of £100,000 or more

~~3.8.3.9.~~ **All officers**Officers must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the ~~officer~~Officer to prove that any gift or benefit received was received or approved in line with the Council's policy on gifts and hospitality which can be found ~~at~~ <https://democracy.warwickshire.gov.uk/documents/s21746/Part%2045%20Officers%20Code%20of%20Conduct.pdf> on the intranet. Corrupt behaviour is a crime and will lead to disciplinary proceedings and possible dismissal.

~~3.9.3.10.~~ **Officers** must comply with s117 of the Local Government Act 1972 in relation to the declaration of any interest in any contracts and with the provisions of the Bribery Act.

4. GENERAL REQUIREMENTS

4.1. Classification of Contracts

The following classifications apply for the purposes of CSOs:

- Minor contract – total value less than £100,000 (excluding VAT)
- Ordinary contract – total value of £100,000 or more but below £1,000,000 (excluding VAT)
- Major contract – total value of £1,000,000 or more (excluding VAT)

4.2. Valuation of Contracts

The estimated value of a procurement is the total amount payable, ~~net~~inclusive of VAT, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents.

The estimated value of the contract should be calculated in accordance with the most appropriate of the following and using the value of any similar contracts let previously by the Council as a guide. Estimates shall include VAT, any directly associated/related requirements (e.g. maintenance and support, licences, any additional options, fees, commissions, renewals and extensions) together with any estimated costs of decommissioning, disposals or contract exit to be delivered by the supplier/contractor as part of the contract:

- a. fixed term contracts - the total price expected to be paid during the whole of the contract period, including possible extensions; or
- b. where the contract period or value is uncertain, and for the purposes of compliance with internal delegations, multiply the price expected to be paid each month by 48. However, for the purposes of the Procurement Act 2023 contracts in this category this will be always be deemed to be over threshold and thus the requirements for above threshold procurements MUST be met; or

- c. if the purchase involves a series of separate transactions for the same type of item, the 'total value' is the expected aggregate value of all of those transactions
- d. for feasibility studies, it is the value of the scheme or contracts which may ultimately be awarded as a result
- e. The estimated value of a Framework, Dynamic Market or Dynamic Purchasing System shall be the total value of all of the contracts inclusive of VAT that may be awarded against that Framework, Dynamic Market or Dynamic Purchasing System
- f. The value of a Concession Contract shall be the best estimate of the financial value to the Contractor that shall be made over the life of the arrangement.

An ~~officer~~**Officer** **must not** select a method of calculating the value in order to avoid the requirements of ~~these CSOs or procurement legislation~~Procurement Legislation. Where the value cannot be estimated (for example because the duration of the contract is unknown) it will be deemed to over threshold for the purposes of the Procurement Act 2023.

A procurement **must not** be subdivided with the intention of preventing it from falling within ~~CSO's~~CSOs or ~~procurement legislation~~Procurement Legislation. The subdivision of contracts into smaller contracts or lots is only permitted where justified by objective reasons and details of which must be published in the Tender Notice.

Where a procurement will result in contracts being let in "lots" or as a series of separate contracts that are similar or connected, advice **must be** taken from ~~procurement~~Procurement and ~~legal~~Legal. The general rule is that the value in such cases is the total estimated value of all the related lots or contracts.

4.3. What must I do?

All contracts must be let through a competitive process that meets the requirements of ~~Section C~~CSOs unless an exemption has been granted or the arrangement is permitted by ~~these CSOs~~, (see section 2.3). The level of competition and the process required is determined by Procurement Legislation and ~~the Council's Code~~ CSOs. Please note the Exemption Panel may exempt you from internal requirements of Corporate Governance. CSOs. The Exemption Panel CANNOT exempt you from the requirements of Procurement Legislation. It is therefore important that any request for an exemption is sent to the Exemption Panel in sufficient time for an alternative route to be considered if the exemption is not granted.

Adequate resources must be identified to manage the procurement and any contracts awarded.

There must be a procurement plan for all major contracts and for any contract the value of which exceeds the ~~thresholds set by Procurement Legislation~~relevant Procurement Threshold in the Procurement Act 2023 or in respect of contracts that fall under the Health Care Services (Provider Selection Regime) Regulations 2023

where the value of the contract exceeds the threshold amount for a Light Touch Contract.

No procurement may commence until the procurement plan has been submitted to and approved by the ~~S-~~Section 151 Officer or their nominated representative.

All references to value within CSOs are to value ~~excluding~~inclusive of any Value Added Tax (VAT) applicable to the contract levied by ~~government~~Government ~~except references to value calculated for the purposes of classifying contracts under CSO 4.1 and the approvals set out in the table at CSO 4.5 where VAT is excluded.~~

4.4. Exemptions from CSOs

~~a.~~ Any requirement of the CSOs may be waived with the consent of both the ~~s-~~Section 151 ~~officer~~Officer and the Monitoring Officer (via the Exemption Panel) subject to any legal restraints.

~~b.a.~~ ~~Where~~ However, where a proposed contract or modification is likely to exceed any ~~legislatively binding procurement threshold~~Procurement Threshold in force at that time, ~~no exemption can or would be~~ otherwise breach Procurement Legislation, it will not be authorised ~~if such an exemption would result in a breach of procurement legislation.~~

~~c.b.~~ An application for a waiver (exemption) shall be:

- submitted on the approved 'exemption form' to Procurement
- set out the reason for requiring the waiver; and
- show how the proposal complies with any applicable law, demonstrates propriety, value for money and supports the ~~council's~~Council's objectives.

~~d.c.~~ Where an exemption from competition is necessary because of an unforeseeable emergency involving immediate risk to persons, or property, or that is likely to cause serious disruption to ~~council~~Council services, the relevant Director and Executive Director must submit ~~a report~~an exemption request to the ~~s-~~Section 151 ~~officer~~Officer and the Monitoring Officer (via the Exemption Panel) as soon as practicable following the event. Any contract entered into for these purposes should be the minimum required to remove the immediate risk to persons or property or to reduce the disruption to ~~council~~Council services to a manageable level in compliance with Procurement Legislation.

~~e.d.~~ In cases of urgency if the contract is likely to exceed £1,000,000 then the urgent key decision regime (as set out in the Standing Orders at Part 3(1) of the Council's Constitution) **must** be complied with before any contract is entered into.

4.5. Transparency

- ~~All~~In addition to complying with the transparency requirements under the Procurement Legislation, details of all spend in excess of £500 must be published on the ~~council's~~Council's website and in addition, contracts over £5000 must also be published on the

~~council's~~Council's website.

~~5.~~ **Framework Agreements**

- There are various publication and notice requirements under the Procurement Legislation which are required not just during a procurement, but during pre-procurement and contract management stages as well as at the end of a contract. **Only Officers from Procurement and Contract Management are authorised to publish such notices and therefore it is important that Officers involved in procurements or in the management of contracts engage with colleagues in Procurement and Contract Management on a regular basis to ensure these requirements are complied with.**
- The **Procurement Act 2023** contains various notice and publication requirements including the following:

<u>For contracts with a contract value above £30k (including VAT) but below the relevant Procurement Threshold</u>	<u>A Below-Threshold Tender Notice may be required if the Council is advertising for the purpose of inviting tenders; and</u> <u>A Below-Threshold Contract Details Notice will be required as soon as reasonably practicable after entering into the contract.</u>
<u>For contracts with a total value at or above the relevant Procurement Threshold, various notices and publications may be required at the various stages including:</u>	<u>Planning Stage</u> <u>Pipeline Notice</u> <u>Planned Procurement Notice</u> <u>Preliminary Market Engagement Notice</u> <u>Dynamic Market Notice</u> <u>Tender Stage</u> <u>Tender Notice</u> <u>Transparency Notice</u> <u>Procurement Termination Notice</u> <u>Award Stage</u> <u>Assessment Summary</u> <u>Contract Award Notice</u> <u>Publication of KPIs</u> <u>Contract Commencement Stage</u> <u>Contract Details Notice</u> <u>Payments Compliance Notice</u>

	<u>Contract Change Notice</u> <u>Contract Performance Notice</u> <u>Contract Termination Notice</u>
<u>Any payment of more than £30k made by the Council under a contract</u>	<u>Specified information must be published in respect of such payments</u>

- For contracts that are subject to the Health Care Services (Provider Selection Regime) Regulations 2023 there are different notice and publication requirements. and again. Only Officers from Procurement and Contract Management are authorised to publish these. It is therefore important that Officers involved in procurements or in the management of these contracts engage with colleagues in Procurement and Contract Management on a regular basis to ensure the relevant requirements are complied with.

4.6 Frameworks

- The term of a ~~framework agreement~~ Framework procured by the Council under the provisions of the Procurement Act 2023 must not exceed four years without the written consent of the Monitoring Officer. ~~Such~~ unless it is an Open Framework or a Light Touch Contract. Monitoring Officer consent will only be given where there is a legally permissible justification for a ~~framework~~ Framework in excess of four years and it considered to be in the best interest of the Council from a strategic planning perspective.
- The term of an Open Framework must not exceed eight years unless it is awarded to only one supplier in which case the maximum term is four years. An Open Framework must provide for the award of a Framework at least once during the initial three-year period and thereafter once within each five year period following the date of award of the second Framework in the scheme.
- The term of a Framework subject to the Health Care Services (Provider Selection Regime) Regulations 2023 must not exceed four years without the written consent of the Monitoring Officer. Monitoring Officer consent will only be given where there is a legally permissible justification for a Framework in excess of four years.
- Contracts ~~based on framework agreements~~ awarded under Frameworks may be awarded by either:
 - Applying the terms laid down in the ~~framework agreement~~ Framework (where ~~such~~ the core terms are sufficiently precise to cover the particular call-off and permit it and there is an objective mechanism for supplier selection, or it is a single supplier Framework) this may be done without reopening competition);
 - or
 - Where the terms laid down in the ~~framework agreement~~ Framework are not precise enough (or do not permit direct awards) by holding a mini competition in accordance with the terms of the particular ~~framework~~ Framework or in accordance with the following procedure where the ~~framework~~ Framework terms are unclear:

- Inviting the organisations within the ~~framework agreement~~Framework who are capable of delivering the contract to submit written tenders;
- Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract; and
- Awarding each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the ~~framework agreement~~Framework.
- ~~Observing a~~Consider observing a voluntary standstill period before finalising the award where applicable

4.7 Collaborative and Partnership Arrangements

- In order to secure value for money the ~~council~~Council may enter into collaborative procurement arrangements. The ~~authorised officer~~Authorised Officer must consult the Monitoring Officer and the ~~Service Manager, Contract Management~~Head of Commercial and ~~Assurance~~Contracts where the purchase is to be made using collaborative procurement arrangements to ensure that all legal requirements are met and the Council has vires to undertake the arrangement.
- Collaborative and partnership arrangements include but are not limited to examples of joint working where one partner takes the lead and awards contracts on behalf of the other partners, long-term collaborative partnerships, pooled budgets, and joint commissioning.
- Collaborative arrangements between public bodies for shared services where the aim of the arrangement is for the participating bodies to be provided with services by each other or through a Teckal company rather than by an external provider may fall outside the need for competition if the conditions in CSO 2.2(e)~~(iii)~~3(c) can be met.

4.8 Record Keeping & Conflicts Assessment

- a. The ~~authorised officer~~Authorised Officer shall ensure that the following records in relation to successful tenders and awarded contracts are kept in the ~~council's~~Council's electronic procurement and contract management system for at least 7 years following the end of the contract if the contract is signed and 15 years if the contract is under seal:
 - A copy of the executed contract;
 - Any relevant correspondence or documents which may have a bearing on how the contract is interpreted;
 - A record of any exemptions exercised and the reasons for them;
 - A copy of the tender documents and responses received (including award criteria and evaluation criteria) and assessment summaries;
 - A copy of the Contract Signature Form;
 - Confirmation of authority to award;
 - Procurement documentation including any relevant notices confirming intended process, tender and award as required to be published in line with

- any relevant ~~procurement legislation from time~~ Procurement Legislation;
 - Information relating to time in force the decision-making processes and steps undertaken as required by any relevant Procurement Legislation.
- b. The ~~authorised officer~~ Authorised Officer shall ensure that unsuccessful tenders and quotes are kept in the ~~council's~~ Council's electronic procurement and contract management system for a period of at least two years from the commencement of the contract to which they relate.
- c. ~~Originals~~ Physical originals of signed contracts or deeds should be returned to Legal for secure storage unless otherwise agreed with the ~~Strategy and Commissioning Manager for~~ Head of Legal and ~~Democratic. Certified~~ Governance. Scanned copies of contracts or deeds will be provided to the relevant service areas once executed and certified copies can be provided where requested. Where the contract has been executed electronically using Docusign, a copy of the completed document will be held by Legal.
- d. The Authorised Officer shall ensure that conflicts assessment in respect of any actual, potential or perceived conflict of interest is undertaken where a procurement is identified and is kept under review until completion or termination of the contract. This shall include taking all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage.

6.5. STEPS PRIOR TO PURCHASE

6.1.5.1. How do I start a procurement?

Initial Considerations

As the Authorised Officer, you should familiarise yourself with the requirements of ~~CSO's~~ CSOs and ensure you have the approvals required by ~~paragraph CSO 4.5 below.~~ 5.2 below. The Council must advertise, procure, and award contracts in accordance with all ~~procurement legislation~~ Procurement Legislation and statutory guidance in force from time to time.

Additional rules ~~will~~ may apply to any procurement subject to external funding e.g. by ~~EU or~~ central government Government bodies. Where grant funding of any kind is used to fund a procurement advice must be taken from Legal ~~Services~~ to ensure compliance of the proposed activity with the conditions of the grant.

If during the course of a procurement an issue arises upon which these ~~CSO's~~ CSOs are silent the matter shall be reported to the ~~Monitoring Officer~~ Monitoring Officer or their nominated representative for determination.

Procurements ~~above the Procurement Threshold will always~~ must so far as practicable be conducted electronically using and where required by the Procurement Legislation, must use the Central Digital Platform via the Council's approved ~~e-tendering~~.

~~portal~~ electronic procurement and contract management system and must be conducted by the Procurement Team, unless the Service Manager – Contract Management and Quality Assurance Head of Commercial and Contracts or their nominated representative(s) give(s) prior consent in writing. Procurements below the Procurement Threshold will be conducted using an appropriately robust process. The relevant notices advertising the opportunity must be published in line compliance with the provisions of CSOs and confirmed as acceptable by the transparency requirements of the relevant Procurement Legislation. Only Officers in Procurement Team or Contract Management are authorised to publish such notices. Authorised Officers must therefore engage with Procurement and Contract Management throughout the life of the contract. Regulated Below-Threshold Contracts will be let in compliance with the applicable provisions of the Procurement Legislation and again. Authorised Officers must engage with Procurement and Contract Management to ensure that all requirements of CSOs and the Procurement Legislation are complied with.

Commencing the procurement

In order to commence the process, you must be the Authorised Officer and you must take advice from and engage with Procurement and Contract Management on the following:

- Pre-procurement;
 - Options appraisal
 - ~~Market~~ Preliminary market engagement and
 - Procurement strategy
- Strategic sourcing
- Spend and supplier intelligence and development and management of opportunities for innovation in supply chain
- Transactional, operational, and administrative procurement activity and the use of the electronic tendering system
- Notice requirements under the Procurement Act 2023 including Preliminary Market Engagement and Tender Notice.
- Notice requirements under the Health Care Services (Provider Selection Regime) Regulations 2023.
- How the contract will be managed including compliance with any notice requirements of the Procurement Legislation during the life of the contract.

Note that only Officers in Procurement and Contract Management are authorised to publish notices and Authorised Officers/Officers should not attempt to do this themselves.

The Authorised Officer must also take advice from Legal ~~Services~~ on

- All legal, regulatory, and constitutional aspects of the procurement process; and
- The content and form of any contract before it is made available to bidders (whether or not a formal tender is being carried out) and/or to be entered into on behalf of the Council – no contracts should be issued without approval of the terms by Legal

6.2.5.2. Necessary Approvals

- a. **Before a procurement is commenced and/or a contract is awarded**, all contracts and activity **must** be appropriately authorised in accordance with the ~~council's~~**Council's** scheme of delegation and project governance framework (where applicable) and in line with the table below.
- b. Any proposal to let a contract with an estimated total value of between **£1,000,000 and £3,000,000 (excluding VAT)** can ~~only~~**ONLY** be approved by the ~~deputy leader~~**Deputy Leader**, the ~~leader~~**Leader** or ~~cabinet~~**Cabinet** (see table below). Authority must be obtained before a procurement commences.
- c. Any proposal to let a contract with an estimated total value of **more than £3,000,000 (excluding VAT)** can ~~only~~**ONLY** be approved by the ~~cabinet~~**Cabinet** or the ~~leader~~**Leader** (see table below). Authority must be obtained before a procurement commences.
- d. The approvals required are set out in the table below. They apply to all contracts regardless of the procurement process followed. They also apply to contracts awarded from ~~framework~~**Framework** arrangements including those let using an ESPO ~~framework~~**Framework** or an internal ~~council~~**Council** procured ~~framework~~**Framework**. Where proposing to use a ~~framework~~**Framework** arrangement you **must** check with Legal ~~Services~~ and/or Procurement whether (a) the ~~framework~~**Framework** is valid and properly procured, (b) able to be utilised for the purpose proposed and (c) that your proposed process meets the requirements of the ~~framework~~**Framework** in question. Failure to do so may leave the Council at risk of a challenge and lead to delays and failures in service provision.
- e. Any major contract **must** comply with the ~~K~~**key D**ecision regime. When commissioning major contracts, the ~~K~~**key D**ecision is the proposal to begin a procurement process for a particular contract. Appropriate approvals **must** be obtained at that stage and not wait until award. Key Decisions being taken by Members MUST be on the Forward Plan maintained by Democratic Services on the Council's committee management systems (Modern.gov) at least 30 days prior to the decision being taken. Liaise with Democratic Services. Key Decisions being taken by Officers must be taken in accordance with the Constitution.
- e.f. The subsequent decision to award the major contract to a specific contractor will not be a ~~K~~**key D**ecision provided the value of the contract does not vary above the original estimated value by 10% or more.
- f. ~~All contracts should be in writing~~
- g. ~~The and the~~ terms and conditions of any contract must be approved in accordance with the table below.
- h. All contracts must be submitted to the appropriate person for signature in

accordance with the table below.

- i. The written formalities should be completed **before** the contract is due to start.
- j. Letters of intent will only be used in exceptional circumstances and where approved by the ~~s151~~Section 151 Officer in consultation with the Monitoring Officer.

Total Contract Value	Column 1:	Column 2:	Column 3:	Column 4:
	Authority to start process	Approval of Contract Terms	Authority to award contract	Contract Signing
Major Contracts More than £3,000,000 (excluding VAT)	Cabinet or leader <u>Leader</u> . This will be a key decision. This authority will also generally give the Executive Director delegated authority to award the contract.	Monitoring Officer unless standard terms and conditions have already been approved as suitable by legal services <u>Legal</u> .	Generally covered by column 1. If bids exceed the original estimates by 10% or more then <u>you</u> must report back to leader <u>Leader</u> or cabinet <u>Cabinet</u> before award.	Send to Monitoring Officer for signing / sealing by designated officers. The relevant authority must be provided at the same time.
Major Contracts £1,000,000 or more up to £3,000,000 (excluding VAT)	Leader, deputy leader <u>Deputy Leader</u> or cabinet <u>Cabinet</u> . This will be a key decision. This authority will also generally give the Executive Director delegated authority to award the contract.	Monitoring Officer unless standard terms and conditions have already been approved as suitable by legal services <u>Legal</u> .	Generally covered by column 1. If bids exceed original estimates by 10% or more then report back to leader, deputy leader <u>Leader, Deputy Leader</u> or cabinet <u>Cabinet</u> before award.	Send to Monitoring Officer for signing /sealing by designated officers. The relevant authority must be provided at the same time.
Ordinary Contracts £500,000 or more but	Executive Director or person authorised in writing by him/her.	Monitoring Officer unless standard terms and conditions have already been approved as suitable by legal	Same as column 1.	Executive Director or above.

below £1,000,000 <u>(excluding VAT)</u>		services.Legal.		
Ordinary Contracts £100,000 or more but below £500,000 <u>(excluding VAT)</u>	Director or third tier manager <u>(Head of Service)</u> or person authorised in writing by him/her.	Monitoring Officer unless standard terms and conditions have already been approved as suitable by legal services.Legal.	Line manager or above of person who gave authority to start the process (column 1).	Director or above.
Minor Contracts Below £100,000 <u>(excluding VAT)</u>	Cost centre manager or above.	Purchase <u>The Council's standard purchase</u> order terms can be used unless the contract is for works, software, or the services of a consultant, in which case legal or procurement advice must be taken. <u>Legal or Procurement advice must be taken and appropriate terms agreed. Officers are required to speak with Legal to ensure that they are using the most up to date standard terms. Supplier terms are NOT TO BE USED unless approved by Legal</u>	Line manager or above of person who gave authority to start the process (column 1).	Third tier manager <u>(Head of Service)</u> or cost centre manager or above.

The Contracting Process

6.3.5.3. This section sets out in more detail the requirements to be met and steps to be followed when dealing with a specific contract.

6.4.5.4. Before beginning a purchase, ~~authorised officer~~ Authorised Officer must:

- a. Assess the need for the expenditure;
- b. Define the objectives of the purchase;
- c. Calculate the total value;
- d. Make sure that the appropriate approval is in place to start the process (including where required by the Constitution approval by the relevant member body) including adherence to the requirements of the Capital Project framework or Change Programme framework
- e. Where necessary make sure that a procurement plan is in place
- f. Make sure that the budget is available and approved to cover the **whole-life financial commitment** being made (including any internal and external charges or fees);
- g. Make sure the forward plan requirements have been followed where the purchase is a key decision;
- h. Ensure sufficient legal, procurement, contract management, finance, risk management and technical (such as ICT or Business Intelligence) support is available throughout the entire procurement process;
- i. Ensure sufficient resources will be available (i.e. people with sufficient skills and capacity) to manage the contract once it has been let;
- j. Ensure the ~~council's~~ Council's requirements for data security and information governance (including but not limited to ~~the General~~ data protection and the use of Artificial Intelligence) are met including ensuring that Data Protection ~~Regulation~~ are met Impact Assessments and System Specific Risk Assessments are carried out where required;
- j.k. Ensure the Council's requirements in relation to equalities are met, including, where appropriate, ensuring an Equality Impact Assessment has been carried out and have due regard to Armed Forces Covenant entered into by the Council;
- k.l. Consider, when commissioning services, whether these could improve the economic, social, and environmental wellbeing of the area (social value).
- m. Consider all options available including utilising existing contracts, market and financial analysis as part of the approval to procure document and considering value for money, quality and benchmarking.
- n. Add details of the upcoming procurement or re-procurement to the Procurement Pipeline and ensure that entries are kept up to date
- o. Consider and have regard to the Procurement Objectives and Principles as set out in CSO 1.8.

6.5.5.5. For major contracts or ~~contract~~ contracts above the Procurement Threshold:

- a. Ensure that the matters at ~~4.1~~ CSO 5.2 have been complied with; ~~and~~
- b. Engage with ~~procurement~~ Procurement before any activity is undertaken to ensure compliance with ~~procurement legislation~~ Procurement Legislation;
- c. Consider any lessons learnt report from previous relevant tender processes;
- d. Produce a business case for approval by the appropriate body;
- e. Submit a fully completed procurement plan for approval by the ~~s.151 officer~~ Section 151 Officer (via Procurement) in advance;
- f. Carry out an options appraisal in conjunction with ~~legal~~ Legal and ~~procurement~~ Procurement to decide the best way to achieve the purchasing objectives, including internal or external sourcing, partnering, and collaborative

- procurement arrangements with another public authority or ~~government~~Government department;
- g. Consult users where appropriate about the proposed procurement, contract standards, performance, and user satisfaction monitoring;
 - h. Consult the market where appropriate and permitted by legislation in accordance with these CSOs and the advice of ~~procurement~~Procurement;
 - i. Assess the risks and how to manage them;
 - j. ~~Agree with the Monitoring Officer,~~ the approved form of contract to be used or if none, the terms and conditions that are to apply to the proposed contract with Legal;
 - k. Set a minimum of 3 KPIs where the contract value exceeds £5m (including VAT) and assess the performance of the supplier against the KPIs annually and on contract termination.

~~6-6.5.6.~~ The Public Services (Social Value) Act 2012 requires the Council to consider at the pre-procurement stage:

- How the proposed procurement might improve the economic, social, and environmental well-being of the area;
- How the Council may act with a view to securing that improvement in conducting the process of the procurement; and
- Whether it should undertake any community consultation on the above.

Officers **must** consult the Procurement ~~Team~~and Contract Management Teams for advice on specifying requirements under Social Value and how to evaluate this as a part of any bids received.

Pre-Tender Market Research and Consultation

For all procurements (except Regulated Below-Threshold Contracts which have been awarded in accordance with a Framework) the Authorised Officer must also have regard to small and medium-sized enterprises that may face particular barriers to participation and to consider whether such barriers can be removed or reduced. These may include tailored market engagement for new market entrants, appropriate conditions of participation to ensure suppliers have the technical capacity to perform the contract, not requiring insurances to be put in place before the contract is awarded and avoiding short tender timescales

Preliminary market engagement

~~6-7.5.7.~~ Authorised Officers may ~~consult~~ undertake preliminary market engagement with potential suppliers and other persons in the market prior to the issue of an invitation to tender about the nature, level and standard of the supply, contract packaging and other relevant matters for the purpose of developing the Council's requirements and approach to the procurement -in consultation with the Procurement. Records must be kept of this consultation and any notices published.

~~6-8.5.8.~~ Advice should be taken from ~~procurement and/or legal services~~ Procurement before any preliminary market engagement activity.

5.9. When conducting market engagement, Authorised Officers should consider developing the service requirements and approach to procurement, designing a procedure, conditions of participation or award criteria. This shall include preparing the Tender Notice and associated tender documents and the contractual terms.

6.9.5.10. Authorised Officers must not, once any ~~pre-tender~~preliminary market ~~research~~engagement has concluded or consultation period has ended, seek or accept technical advice on the preparation of the actual invitation to tender or quotation from anyone who may have a commercial interest in bidding for the contract as this may result in a conflict of interest arising and prejudice the equal treatment of all potential tenderers and distort competition.

Prevention of Corruption

6.10.5.11. The following clause (or suitable equivalent wording approved by Legal ~~Services~~) must be included in every ~~council~~Council contract:

"The Council may terminate this contract and recover ~~all its~~ from the Contractor the amount of any loss if ~~resulting from the termination if at any time it becomes known to the Council that~~ the Contractor, its employees, or anyone acting on the Contractor's behalf ~~do~~, whether with or without the knowledge of the Contractor, does any of the following things:

- a. Offers, gives, or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or*
- b. Favoured or discriminated against any person in relation to this Contract or any other contract with the Council; or*
- b.c. Commits an offence in relation to any contract with the Council under the Bribery Act 2010 or s117(23) of the Local Government Act 1972; or*
- d. Communicates to any person other than the Council the details of the Contractor's proposed tender (other than in confidence in order to obtain quotations necessary for the preparation of the Contractor's tender); or*
- e. Enters into any agreement or arrangement with any person or body that they shall refrain from tendering or as to the amount of any proposed tender;*
- e.f. Commits any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, Contractors, or employees.*

Any clause limiting the Contractor's liability shall not apply to this clause".

7.6. CONDUCTING A PURCHASE OR DISPOSAL

7.1.6.1. Purchasing – Competition Requirements

6.1.1 ~~Where~~Where a proposed contract is subject to the Procurement Act 2023 and the total value for a purchase is within the values in the first column below, the award procedure in the second column must be followed as a minimum.

Total Value (<u>exclusive of VAT</u>)	Award Procedure
Minor – below £25,000	One quotation confirmed in writing.
Minor - £25,000 to below £100,000	Three written quotations of which at least one should be local if appropriate. Local means has a place of business in Warwickshire.
Ordinary & Major - £100,000 or more	Invitation to tender to at least three tenderers. If the contract value exceeds the applicable EU Procurement Threshold the procedure must also be EU -compliant with Procurement Legislation

6.1.2 Where a proposed contract is subject to the Health Care Services (Provider Selection Regime) Regulations 2023 advice must be sought from Procurement as to the appropriate award procedure.

6.1.26.1.3 ~~The authorised officer~~Authorized Officer shall take appropriate advice from ~~procurement~~Procurement to determine the method of conducting any purchase that exceeds threshold set within Procurement Legislation in force from time to time.

7.2.6.2. Setting Standards and Award Criteria

- Before seeking bids or commencing any procurement activity, the ~~authorised officer~~Authorized Officer must define the selection and award criteria that are appropriate to the purchase ensuring that they are designed to secure an outcome giving value for money for the ~~council~~Council.
- ~~Authorised officers~~When setting the award criteria Authorized Officers need to ensure that the criteria:
 - relate to the subject matter of the contract;
 - do not contain Non-Commercial Considerations unless this is permitted by the Procurement Legislation;
 - are sufficiently clear, measurable and specific;
 - comply with the rules of technical specifications in the Procurement Act 2023;
 - comply with the Procurement Objectives and Principles as required under the Procurement Legislation; and
 - are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.
- Authorized Officers are responsible for ensuring that all tenderers for a contract are suitably assessed. The assessment process shall establish that all potential tenderers have sound

economic and financial standing and sufficient technical ability and capacity to fulfil the requirements of the ~~council~~Council.

- The criterion for award of a contract shall be the “most ~~economically~~ advantageous”. ~~This must be further defined tender” (MAT). The “most advantageous tender” is the tender that the Council considers satisfies the Council’s requirements described in the Tender Notice and associated tender documents, and best satisfies the award criteria when assessed by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance, social value~~ the assessment methodology and any other relevant matters. where there is more than one criterion, the relative importance of the criterion.
- ~~7.3. Selection and award criteria must not include non-commercial considerations and must comply with procurement legislation at the time the procurement commences~~
- Any shortlisting exercise must be carried out in accordance with the published ~~terms of tender~~ Tender Notice or other relevant notice and have regard to the financial and technical standards relevant to the contract and the published selection and award criteria.

7.4.6.3. Contract Formalities, Signing and Sealing

- a. Contracts shall be signed by the council as follows:

Major Contracts:	By affixing the common seal of the council <u>Council</u> and witnessed <u>authenticated</u> (signed) by one designated officer <u>Designated Officer</u> OR where there is no seal affixed, signed by at least two designated officers <u>Designated Officers</u> .
Ordinary Contracts:	By affixing the common seal of the council <u>Council</u> and witnessed <u>authenticated</u> (signed) by an designated officer <u>one Designated Officer</u> OR where the contract value is between £500,000 and £999,999 (<u>excluding VAT</u>) and there is no seal affixed, signed by a <u>one Designated Officer or an</u> Executive Director or above OR

	where the contract value is between £100,000 and £499,999 (excluding VAT) and there is no seal affixed, by <u>one Designated Officer or</u> a Director or above.
Minor Contracts:	By affixing the common seal of the council <u>Council</u> and witnessed <u>authenticated</u> (signed) by one designated officer <u>Designated Officer</u> OR Signed by third tier manager, <u>(Head of Service)</u> , cost centre manager or above.

b. A contract **must** be sealed where:

- The ~~council~~Council wishes to enforce the contract more than six years after its end; or
- The price paid or received under the contract is nominal and does not reflect the value of the goods or services; or
- Where Legal has indicated advised that the contract should be executed in this way.

Or

- c. All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Monitoring Officer.
- d. The ~~authorised officer~~Authorised Officer is responsible for securing signature of the contract and must ensure that the person signing for the other contracting party has authority to enter into a legal agreement. Speak to Legal for advice where needed
- e. The Council will undertake signing of contracts ~~via DocuSign~~using Council-approved electronic document signing software (currently as DocuSign) where practicable. Sealing must be done physically, and seals ~~witnessed~~authenticated by ~~an appropriately authorised officer~~a Designated Officer. Legal ~~Services~~ maintains the record of ~~authorised officers~~Designated Officers. All documents sealed must be recorded within the register held by Legal ~~Services~~.

7.5.6.4. **Contract Documents**

- a. All contracts, irrespective of value, shall clearly specify:

- What is to be supplied and when;
- Any quality standards or requirements that apply;
- Risk and liability apportionment between the parties;
- Where applicable, appropriate provision around use of and safety of data
- The price to be paid, how and when;
- Appropriate performance indicators; and/or KPIs (including where required by Procurement Legislation);
- Clear dates and times for performance;
- ~~Liquidated damages~~ Any financial liabilities (where relevant); and
- ~~termination~~ Termination provisions.

- b. The Monitoring Officer must approve the terms and conditions of all contracts either as a standard form contract for particular types of matters or through a specific approval. This clause is complied with by taking appropriate and following advice from ~~Warwickshire Legal Services~~ on the terms that are acceptable, and (in respect of standard terms, currently approved).

7.6.6.5. **The Appointment of Consultants to Provide Services**

- A Consultant is someone engaged for a specific length of time to work (or provide a service) to a defined project brief with clear outcomes to be delivered, and who brings specialist skills or knowledge to the role. A ~~consultant~~ Consultant is not an employee, a fixed term employee, a locum, an agency, or a temporary worker or someone engaged to provide general day to day activities within a service.
- Contracts for consultancy services are subject to the same competition requirements as any other type of contract and must be procured in accordance with ~~these~~ CSOs.
- The engagement of a ~~consultant~~ Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided, the total cost to be paid and any stage payment arrangements. The engagement shall also be subject to completion of a contract.
- Self-employed ~~consultants~~ Consultants must not fall within the off- payroll working rules i.e. IR35. It is the responsibility of the ~~authorised officer~~ Authorised Officer to ensure that all tax and legal advice regarding the terms of any consultancy appointment is taken in advance of the procurement activity and actioned. This shall also include completing an IR35 assessment in accordance with Council policies.
- Records of consultancy appointments shall be maintained in accordance with ~~these~~ CSOs and entered on the Council's electronic procurement and contract management system as for any other contract.
- Consultants shall be required to provide evidence of and maintain professional indemnity insurance policies to the satisfaction of the ~~council's~~ Council's insurance team for the periods specified in the respective agreement.

7.7.6.6. **Invitations to Tender / Quotations**

- All invitations to tender or quotation must:

- Specify the goods, service or works that are required, together with the terms and conditions of contract that will apply; and
 - State that the ~~council~~Council is not bound to accept any quotation or tender.
- All tenderers invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.**
- All invitations to tender shall include:
 - Clear instructions on how and where tenders are to be submitted, together with the date and time by which they are to be received;
 - A specification that describes the ~~council's~~Council's requirements in sufficient detail to enable the submission of competitive offers;
 - A description of the award procedure;
 - Full details about how the bids will be assessed, including any weighting and sub-criteria that apply and any “pass mark” for any stage of the procurement;
 - Information on the ~~council's~~Council's policies as appropriate, e.g.:
 - i. ~~∓~~Equalities;
 - ii. ~~∓~~Complaints;
 - iii. ~~∓~~Sustainability
 - All invitations to tender shall state that any tender received after the date and time stipulated in the invitation to tender may be rejected and not considered.
 - All invitations to tender shall include requirements for tenderers to:
 - Declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose e.g. legal, financial advice etc); and
 - Complete fully and sign a form of tender and certificates relating to canvassing and non-collusion.
 - Submit tenders to the ~~council~~Council on the basis that they are compiled at the tenderer's expense.
- The ~~council's~~Council's approved ~~E-tendering~~electronic procurement and contract management system linked with the Central Digital Platform and Find a Tender Service must**

be used for all competitive procurement activity unless agreed ~~otherwise~~ by the ~~Service Manager, Contract Management and Assurance~~ Head of Commercial and Contracts or otherwise ~~approve~~ approved by these CSOs.

- No tender will be considered unless submitted in accordance with the conditions of participation included within the invitation to tender / quote.

7.8.6.7. **Submission, Receipt and Opening of Tenders**

- Tenderers must be given an adequate period in which to prepare and submit a tender, consistent with the complexity of the contract. Procurement ~~legislation~~ Legislation lays down specific time periods and processes that must be followed for procurements above the published ~~thresholds~~ Procurement Thresholds at the time the procurement commences. Regulated Below thresholds contracts ~~Threshold Contracts~~ must still be treated in accordance with this ~~clause~~ CSO 12.16.7
- All tenders must be returned in accordance with the system requirements of the ~~council's E-tendering~~ Council's electronic procurement and contract management system and/or as required in any specific documentation published.
- Tenders received by fax or electronic means outside of the ~~council's e-tendering~~ Council's electronic procurement and contract management system (e.g. email) must be rejected, save that quotations for minor contracts under £10,000 may be received by email.
- All tenders are to be opened at the same session after the period for their submission has ended. Tenders must be opened in the presence of at least two ~~officers~~ Officers.
- The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm their tender.

7.9.6.8. **Clarification Procedures and Post-Tender Negotiations**

- Providing clarification of matters within or related to an invitation to tender to potential or actual tenderers ~~or~~ and seeking clarification of a tender submitted prior to the closing date whether in writing or by way of a meeting is permitted.
- However, 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) ~~must be the exception rather than the rule. In particular, such negotiations must not be conducted~~ without their only permitted where it is compliant with Procurement Legislation. The agreement of the Monitoring Officer is required.
- If post tender negotiations appear necessary after a single stage tender or after the second stage of a two-stage tender, then you should ~~take legal advice~~ consult with Legal on whether ~~negotiations are permissible. Normally such negotiations should be undertaken with all those who have met the selection criteria in the original process. During negotiations, the council's requirements set out in the original procedure should not be substantially altered and no material change should be made to the risk profile of the contract. The prior~~

~~approval of the Monitoring Officer is required to any proposal to negotiate in other circumstances and to what extent negotiations are permissible.~~

7.10.6.9. Evaluation, Award of Contract and Debriefing Tenderers

- Apart from the debriefing required or permitted by ~~these~~ CSOs, the confidentiality of quotations, tenders and the identity of tenderers must be preserved at all times and information about one tenderer's response must not be given to another during the evaluation process.
- Quotations and tenders must be evaluated in accordance with the award criteria. During this process, ~~authorised officers~~ **Authorised Officers** shall ensure that submitted tender prices are compared with any pre-tender estimates and that any significant differences are examined and resolved satisfactorily, and that appropriate approvals are sought internally where tendered costs exceed the expected prices provided for in the approval to procure.

~~For ordinary and major contracts authorised officers-~~

- Authorised Officers must advise all tenderers in writing of their award decisions. ~~For contracts that are subject to Public and a Contract Regulations or other UK applicable procurement legislation this Award Notice must be published prior to contracts being entered into. Only Officers in the form of intention Procurement are authorised to award letters (award notification letters) that are issued simultaneously to all tenderers advising them of the intention to award the contract to the successful tenderer and providing them~~ **publish this notice and therefore Authorised Officers must engage with Procurement throughout the process.** The Contract Award Notice will state that the Council intends to enter into a 'contract and triggers a mandatory standstill period' ~~period~~ of at least ~~158~~ **158** working days (~~10 days if notification letters are sent by the council's approved E-tendering system~~) in which provides unsuccessful tenderers with an opportunity to challenge the decision before the contract award is confirmed.

~~For contracts that are subject to advertising and publication requirements within~~

~~7.11. Where required by the Procurement Legislation, the council's 'intention to award notification letter' standard template must where there has been a competitive tendering procedure each tenderer must be used, which includes the following debriefing provided with an Assessment Summary prior to the Contract Award Notice being published. Assessment Summaries should include the following information:~~

- ~~How the award criteria were applied~~
- ~~The name of the successful tenderer(s);~~
- ~~The score of the tenderer, together with the score of the successful tenderer;~~
- **Details of the reason for the decision** required by the Procurement Regulations; ~~including the characteristics and relative advantages of the successful tender; and:~~
 - Confirmation ~~Award criteria including title~~ of each criterion and its weighting
 - Summary of assessment methodology
 - Scores and reasons for each criterion and sub-criterion as the date before

which total score

- Reasons why the council will tenderer was not enter into awarded the score immediately above for that criterion except where they have received highest score given (i.e. what could the tenderer have done to score more highly)
- Explanation of how the tender was assessed against each different strand criteria
- Explanation for that score by reference to relevant information in the tender and includes sub-criteria

7.12.

- For unsuccessful tenderers the Assessment Summary must also include any further explanation of why that supplier is not being awarded the contract (i.e. the date after the end of the 'standstill period') e.g. failing to achieve the minimum score for a particular award criterion.
- If a decision is challenged by an unsuccessful tenderer, after the issue of an intention to award notification letter or Contract Award Notice, then the ~~authorised officer~~ Authorised Officer shall immediately inform the ~~s-Section 151 officer~~ Officer and seek the advice of the Monitoring Officer on next steps. No contract may be awarded until the ~~s-Section 151 officer~~ Officer and the Monitoring Officer are satisfied that the matter has been resolved.
- Authorised ~~officers~~ Officers shall ensure that the contract formalities are completed following the award of the contract (see CSO 6.32-5).

7.13-6.10. Supplier Exclusion & Debarment

- Where a decision is being made to exclude a supplier, connected person or an associated person from the procurement process due to mandatory or discretionary exclusion grounds set out in the Procurement Act 2023 or the Health Care Services (PSR) Regulations 2023 (where relevant) the Monitoring Officer must be notified and advice sought from Legal prior to notification to the appropriate authority.
- Suppliers may be added to the Debarment List where they have been investigated and the Authorised Officer must undertake checks to see whether they are excluded prior to contract award.

7.14-6.11. Publication of Contract Awards

- The award of all contracts over £5,000 must be published via the ~~council's~~ Council's electronic procurement and contract management system.
- The award of all contracts over ~~£2530,000~~ £2530,000 (inclusive of VAT) must be published on the Central Digital Portal. The award of all contracts ~~finder~~ under the Health Care Services (Provider Selection Regime) Regulations 2023 must be published on the Central Digital Portal. Publication will be undertaken by ~~the~~ Procurement Team.

- The award of contracts above the relevant published ~~procurement threshold~~Procurement Threshold applicable at the time of the commencement of procurement -must be published as required by Procurement Legislation.

7. Post Contract Award

7.1. Practicalities

- A copy of all contracts must be uploaded to the Council's electronic procurement and contract management system as well as a copy being kept by the Authorised Officer on the appropriate electronic system. Physical originals of signed contracts or deeds should be returned to Legal for secure storage unless otherwise agreed with the Head of Legal and Governance.

7.15.7.2. Contract Management, Evaluation and Review

- a. All contracts must be managed in accordance with the ~~council's~~Council's contract management framework
- b. As a minimum and subject to any additional requirements within the contract management framework for all ordinary and major contracts:
 - An up to date risk register should be maintained throughout the procurement process and during the life of the contract;
 - For identified risks, appropriate actions should be put in place to manage them.
 - There should be regular monitoring and reports during the contract period on:
 - ~~performance;~~
 - compliancePerformance;
 - Compliance with Contract obligations~~programme~~, specification, terms and conditions;
 - ~~estimated~~Estimated final cost compared to budgets;
 - ~~any~~Any value for money/social value (including environmental) requirements; and
 - ~~user~~User satisfaction and risk management.
 - For contracts subject to the Procurement Act 2023 whose total value (including VAT) is over £5m, a minimum of 3 KPIs must be set and monitored annually and on contract termination
 - For contracts subject to the Procurement Act 2023 but which are Light Touch Contracts, contracts subject to the Health Care Services (Provider Selection Regime) 2023 and contracts remaining under the Public Contract Regulations 2015, appropriate performance indicators must be set and

monitored at least annually.

- For contracts subject to the Procurement Act 2023 but which are not Light Touch Contracts, contract performance must be assessed every 12 months and details of supplier performance against KPIs published on the Central Digital Platform using a Contract Performance Notice. ~~Please note that~~ Only Officers in Procurement and Contract Management are authorised to publish such notices and therefore Officers **must** engage with Contract Management on a regular basis to ensure that this requirement is complied with.

c. Before commencing any procurement for a major contract or a contract above ~~EU~~ relevant thresholds in the Procurement Legislation, the following steps must be completed:

- A 'lessons learnt' report should be considered to inform the tendering process;
- A business case must be approved; and
- A procurement plan must be approved by the ~~s.~~Section 151 ~~officers~~Officer.

7.16.7.3. **What if I want to change my contract?**

You **must** take advice from Legal ~~Services~~ if:

- You wish to ~~amend~~modify or extend a contract;
- you wish to assign or novate a contract; or
- you wish to terminate a contract before the expiry of the contractual term.
- ~~Where~~In some cases, a ~~variation means~~modification might mean that the ~~value of a~~ contract ~~would exceed~~must be treated as a new procurement under the threshold set in Procurement Legislation, ~~or where there is~~ and/or CSO's and advice from Legal must be taken in respect of this prior to any material change ~~modification being made.~~
- ~~In respect of contracts that are subject to the~~ contract, Procurement Act 2023, a ~~modification may be permitted without treating~~ the contract ~~must be treated as~~ a new procurement ~~under CSO's~~
- ~~A change will not be deemed material if the~~ value of contract is a Light Touch Contract, or if the modification is ~~both below the threshold set by procurement legislation and below 10%;~~
 - a) a Permitted Modification under Schedule 8 of the ~~original contract value after~~ indexation, or if permitted by the terms Procurement Act 2023;
 - b) is not a Substantial Modification; or
 - c) is a Below-Threshold Modification.

- In respect of contracts which are subject to the Health Care Services (Provider Selection Regime) Regulations 2023, the levels of modifications allowed without having to undertake a fresh procurement are different. It is therefore important that advice must be taken from Legal prior to any modifications being agreed to ensure that they are permitted under CSOs and the contract originally procured relevant Procurement Legislation.
- The authorisation needed for any change/modification will be dependent upon the value of that change/modification in line with financial delegations.
- Officers must be satisfied that they have sufficient budget to cover any variation/modification and that the variation/modification is lawful, reasonable in all the circumstances and will achieve value for money. If modifications or extensions will result in additional spend beyond that authorised at approval to procure stage, additional approvals to the spend will be required.
- A copy of all variations/modifications must be kept with the original contract. and it is for the Authorised Officer must to upload them onto the Council's electronic procurement and contract management system.
- There are requirements for notices to be published for any changes to or termination of contracts under the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023. Such notices can only be published by officers in Procurement and Contract Management and therefore Officers must engage with Contract Management on a regular basis to ensure that such transparency requirements are complied with.
- Modifications in relation to Light Touch Contracts may be made provided to procurement for inclusion on CSW-jets Officers comply with the requirements of the Procurement Act 2023 including having regard to the Procurement Objectives and have prior written approval from Procurement and Legal by way of an exemption approval in accordance with CSO 4.7 below.

8. The Council as a Supplier - Providing Works, Goods or Services to External Organisations

8.1. The s.151 officer The Council's Traded Services deliver services- throughout Warwickshire and England. To ensure that any associated risks are appropriately managed; that the Council only enters into contracts that are part of an approved Traded Service; and where relevant approvals to submit a bid have been obtained; it is important that Officers review and understand the stages that the Council has identified for opportunities and bids before making a formal bid to be a supplier to external organisations. Definition for each of the stages and detailed guidance on matters to consider can be found in the Council's **Bidding Guidance.**

8.2. Where the fundamental model of a service is about quoting for new external work, the practical working approval model would be agreed between the service and the relevant Executive Director. Where the business model of a Traded Service relies on regular

submission of bids for new external work, advanced agreement can be obtained from the relevant Executive Director to avoid needing to request approval on each individual occasion. The Executive Director may set parameters for their approval. If you are unsure of what applies, contact Legal or the Commercial Services Manager.

Services who already have approval to trade

8.3. Where a service is proposing to bid for work via a tender process, a standard bid management process has been introduced with guidance and template documents available to guide services and protect the Council.

8.4. As part of any bidding process, the terms and conditions/contract published by the buyer that will apply to the successful bidder ~~need to~~ must be reviewed by Legal. The legal documents may contain limits on liability and risks that must be reviewed early on so that clarification questions can be raised around anything that is not acceptable to the Council. In extreme cases, it may not be possible for services to submit bids for tenders if the terms are not acceptable to the Council.

8.5. Any Head of Service considering a bid for provision of external work must have the approval of their Executive Director and should use and follow the bid / no bid decision template available via the Commercial Team Intranet for each new opportunity or tender, which should be approved in accordance with these Contract Standing Orders.

8.6. Each bid must receive approval ~~from~~ at least the relevant Head of Service and a representative of the Commercial Team in Finance. For complex and large value bids Finance and Legal representation should also be considered.

8.7. The bid sign off ~~panel~~ should be presented with a document that includes the key commercial and legal aspects of the project, including:

- An updated version of the Bid / No Bid Decision Template
- Financial Summary of the tender
- Legal documentation confirming contract terms are acceptable
- Confirmation that contract insurance thresholds are acceptable
- Risk Matrix clarifying how risks have been mitigated

8.8. The decision ~~–~~ should be clearly documented, and a record made of any amendments required before the bid can proceed. Should any commercial and legal changes be made that substantively affect the submission, it is recommended that the bid should ~~be~~ reconsidered to ensure all parties are comfortable with the final proposal.

Services who do not already have approval to trade

~~8.1-8.9.~~ The Section 151 Officer and the Monitoring Officer must be consulted where work for an external organisation is contemplated ~~by a Service trading for the first time~~. If either the Section 151 Officer or the Monitoring Officer decides that trading is not appropriate or that consent to work for the external organisation proposed should not be granted, the Service cannot proceed with the proposal.

~~8.2. Any proposals to work for an external organisation must be approved by the Executive Director responsible for the service and the approval recorded in writing in accordance with the Councils Standing Orders and Delegations.~~

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~~8.10. A robust business case must be produced and approved by Commercial Delivery Group and Corporate Board before any arrangement decision is entered into where taken for any Sservice within the council acts Council to trade / act as a supplier. That for the first time.~~

~~8.11. If the proposal is for the Sservice to trade on an ongoing basis, theirat business case must have input from Legal and Finance and take into account the full, include a detailed commercial and financial case to justify the proposed trading model. This must set out how the Sservice intends to price its services to include recovery of all overheads, how the service proposes to continue to meet demand internally if providing external support, a market appraisal and evidence of ongoing demand, and what level of surplus can be anticipated.~~

~~8.12. If the proposal is for a one off supply of services, a business plan is still required and must show how the work can be taken on without detriment to the existing provision of services and an appraisal of the whole life costs cost to the council Council of delivering the goods, works or services concerned and (including any set up/mobilisation costs, impacts on other internal services, and any costs that may be incurred when the contract comes to an end).~~

~~8.13. In all cases, the service will be required to confirm that appropriate insurance and contract terms can be agreed. The financial viability of suchany business cases must be approved by the s-Section 151 officer-Officer.~~

~~8.3-8.14. The key decision regime applies to the council Council providing services over £1,000,000 as well as to purchasing services over £1,000,000.~~

9. Disposals

9.1. Assets for disposal must be sent to public auction except where:

- a. Better value for money is likely to be obtained by inviting quotations or tenders; or
- b. The prior approval of the s-Section 151 officerOfficer and the Monitoring Officer has been obtained to the selling of specified items on an auction website such as eBay; or
- c. Specific disposal procedures have been agreed by the council Council for certain types of assets.

9.2. Goods or assets may be disposed of via public auction, including electronic auctions,

without further specific consent being sought provided the following conditions are met;

- a. The ~~council~~Council owns the item and has the right to sell it;
- b. Appropriate market research has been carried out to establish the estimated value of the item and verified by ~~procurement officers~~Procurement Officers;
- c. The estimated value of the item to be auctioned does not exceed £10,000;
- d. A reasonable reserve price is set for the item based on the estimated value;
- e. The item is withdrawn from sale if it does not reach its reserve price;
- f. The item is in good working condition and fit for purpose, and complies with relevant legislation, in particular:
 - any electrical item bears a valid Electrical ~~Safety Check~~Installation Condition Report (EICR) label, completed by a registered electrician who is ~~registered~~ on the ~~Kite Mark Scheme, the~~Competent Person Electrical ~~Safety Register, or the Electric Safe~~ Register. The date of the inspection on the label must not be more than 12 months prior to the date of sale.
 - any item of furniture complies with the Furniture and Furnishings (Fire-) (Safety) Regulations ~~2010~~1988. Any item of furniture, with the exception of mattresses and bed bases, will have a permanent label in compliance with the regulations.
 - any computer or data storage device is adequately wiped of data, to ensure that no information, particularly personal data, remains on the device.
- g. When an item is disposed of, any listing or description of it must NOT give any indication that the ~~council~~Council provides any guarantee for the product or any promise to make good any defects. All items are to be carefully and truthfully described in detail and any known defects highlighted. The following or similar wording must be prominent within the listing or description

~~ITEM IS SOLD AS IS: THE SELLER DISCLAIMS ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR DESIGN. THE SELLER MAKES NO REPRESENTATIONS AND GIVES NO WARRANTIES AS TO THE QUALITY, CONDITION, STATE OR DESCRIPTION OF THE ITEM, OR ITS FITNESS OR SUITABILITY FOR ANY PURPOSE. ALL IMPLIED STATUTORY OR COMMON LAW TERMS, CONDITIONS AND WARRANTIES AS TO THE ITEM ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.~~

- h. A record of the steps taken under a) to g) is kept for a period of 2 years.

9.3. Applications for approval of the disposal of goods / assets by auction which do not meet the above conditions should be made to the Exemption Panel who will liaise with the Monitoring Officer and ~~s151~~Section 151 Officer as required.

9.4. An individual purchasing goods at auction without the opportunity to inspect the goods may still have consumer rights, i.e. that the goods:

- Are of a satisfactory quality
- Do what they are designed to do
- Are as described, matching any pictures or description of them
- Are safe, under the Consumer Protection Act 1987 or any other applicable legislation.

9.5. Other matters to be aware of:

- Misrepresentation of goods - A customer is entitled to a refund on goods that have been misrepresented, for example, goods sold on the basis of features they do not have. Prosecution can also follow if the misrepresentation is reported to Trading Standards.
- Faulty goods - It is the ~~council's~~Council's responsibility to arrange for the collection of faulty goods, particularly large items. If a customer returns faulty goods within a reasonable time, the ~~council~~Council is obliged to give a refund, and not a credit note. If a repair of a faulty good is unsatisfactory, a customer is still entitled to a refund.
- Time to check goods - on-line auctions - Customers have the right to the time to check they are satisfied with their goods, though this can be just a week.

10. Procurement Legislation Transitional Arrangements

10.1. As of the 24th February 2025 the awarding and management of public contracts will be subject to different procurement regimes depending on their subject matter and/or when the procurement activity leading to contract award commenced.

10.2. All contracts that were awarded before the 24th of February 2025 or were awarded after that date if the procurement went live (i.e. bidders were invited to tender or quote) before the 24th of February 2025, will continue to be subject to the Public Contract Regulations 2015 for the purposes of contract management, modifications, and publication of relevant notices. They will remain under the PCR 2015 until they come to an end, except for contracts that fall under CSO 10.3.

10.3. All contracts whose subject matter falls under a specified Common Procurement Vocabulary Code detailed in the Health Care Services (Provider Selection Regime) Regulations 2023 (e.g. health care or public health care services delivered to an individual), are subject to these Regulations instead. New contract awards must follow one of the 5 mandated Award Processes detailed in these Regulations. All these contracts must comply with the contract management, modification processes and publication of notices as specified.

10.4. All new procurement activity and contract awards (other than where covered by CSO 10.3) after the 24th of February 2025 are subject to the Procurement Act 2023 (and any subsequent legislation) and must follow its requirements for procurement processes, contract management, modification processes and publication of notices.

Appendix: Definitions

Agent	A person or organisation acting on behalf of the council <u>Council</u> .
Authorised Officer	An officer <u>Officer</u> responsible for conducting a procurement.
Award Criteria	The criteria by which the successful quotation or tender is to be selected. (see further CSO 6.212).
Award Procedure	The procedure for awarding a contract as specified in CSO 6.914 .
S.151 officer <u>Below-Threshold Modification</u>	The officer <u>Is a modification to whom a Contract which is subject to the statutory role is delegated under Procurement Act 2023 where:</u> a) the constitution <u>modification would not itself increase or decrease the estimated value of the contract by more than:</u> (i) _____ <u>_____ in the case of a contract for goods or services, 10 per cent;</u> (ii) _____ <u>_____ in the case of a contract for works, 15 per cent;</u> b) the aggregated value of below-threshold modifications would be less than the threshold amount for the type of contract; c) the modification would not materially change the scope of the contract; <u>and</u> d) _____ <u>the modification is not a Permitted Modification or a Substantial Modification.</u>
Section 151 Officer	The Officer to whom the statutory role is delegated under the Constitution
Code of Conduct	The 'Officers' Code of Conduct' (see part 4 of the council's constitution <u>Council's Constitution</u>).
Consultant	Someone engaged for a specific length of time to work to a defined project brief with clear outcomes to be delivered, and who brings specialist skills or knowledge to the role.
Designated Officer	The chief executive <u>Chief Executive</u> , the Executive Director for resources <u>Resources</u> and any other officer authorised <u>Officer Authorised</u> by either of them. <u>The Monitoring Officer shall keep a list of Designated Officers. If a document requires executing by a Designated Officer, the Authorised Officer should contact Legal.</u>
ESPO	The Eastern Shires' Purchasing Organisation.
<u>Exemption Panel</u>	<u>Panel consisting of Head of Legal and Governance and two senior Procurement Officers (as determined from time to time) to hear requests for exemption from the requirements of CSOs. Requests in relation to contracts less than £100,000 are onward delegated to Procurement Officers.</u>
Forward Plan	The forward plan, which is prepared on a rolling basis and contains matters which the council <u>Council</u> has reason to believe are likely to be the subject of key decisions during the following four months.
Framework Agreement	An agreement <u>A contract</u> between one or more <u>a</u> contracting authorities <u>authority</u> and one or more economic operators <u>suppliers</u> that provides for the purpose <u>future award</u> of which is to establish the terms governing contracts to be awarded during a given period <u>by a contracting authority to the supplier or suppliers.</u>

Invitation to Tender	An invitation to tender sent to tenderers inviting bids for works goods or services.
Key Decision	Decisions that are defined as key decisions in the constitution <u>Constitution</u> . In relation to letting contracts, the key decision is the proposal to let a contract for a particular type of work. The subsequent decision to award the contract to a specific contractor will not be a key decision provided the value of the contract does not vary above the estimated amount by more than 10% for contracts with a value of £1,000,000 or more.
<u>KPIs</u>	<u>Key Performance Indicators</u>
<u>Light Touch Contract</u>	<u>A Contract that is wholly or mainly for the supply of services of a kind specified in regulations under section 9(2) of the Procurement Act 2023 (which includes some social care, education & health contracts)</u>
Major Contract	A contract that has a total value of £1,000,000 <u>(exclusive of VAT)</u> or more.
Minor Contract	A contract where the total value is less than £100,000 <u>(exclusive of VAT)</u> .
Monitoring Officer	The officer <u>Officer</u> to whom the statutory role is delegated under the council's constitution <u>Council's Constitution</u>

Non-Commercial Considerations	<p>The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer, or training of or the other opportunities afforded to, their workforces (“workforce matters”);</p> <p>whether<u>Whether</u> the terms on which contractors’ contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;</p> <p>any<u>Any</u> involvement of the business activities or interests of contractors with irrelevant fields of government policy;</p> <p>the<u>The</u> conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons (“industrial disputes”);</p> <p>the<u>The</u> country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors; any political, industrial, or sectarian affiliations or interests of contractors or their directors, partners, or employees;</p> <p>financial<u>Financial</u> support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;</p> <p>use<u>Use</u> or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.</p> <p>Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations for the purposes of s17(5) Local Government Act (LGA) 1988 and part 1 of the LGA 1999 (Best Value); or where there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) may apply.</p>
Officer	A person employed by the council <u>Council</u> .
<u>Open Framework</u>	<u>A scheme of Frameworks that provides for the award of successive Frameworks on substantially the same terms.</u>
Ordinary Contract	A contract where the total value is £100,000 or more but is less than £1,000,000.
Pecuniary Interest	Any direct or indirect financial interest. An indirect interest is distinct from a direct interest in as much as it is not a contract to which the member or employee is directly a party. A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the greater) is not a pecuniary interest for the purposes of these CSOs.
<u>Permitted Modification(s)</u>	<u>In respect of Contracts which are subject to the Procurement Act 2023, modifications which are permitted under Schedule 8 of the Procurement Act 2023</u>
Personal Care Services	Services provided to people who have personal care needs as assessed by the Executive Director for Social Care and Health or their nominees. As such these services can be provided to people of all ages whose needs may result from old age, physical disability, sensory loss, mental illness or learning disability.

Procurement Legislation	The requirements of any and all relevant public procurement legislation in force within England from time to time including but not limited to the Public Contracts <u>Procurement Act 2023, The Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations, 2024, the Concession Contracts</u> Procurement Regulations, the Utilities Contracts 2024 and The Health Care Services (Provider Selection Regime) Regulations 2023 (all as amended or replaced from time to time) together with any relevant codes of practice and/or statutory guidance
<u>Procurement Pipeline</u>	<u>A full list of the County Council's current and ongoing procurements and re-procurements over the next 2-3 years</u>
<u>Procurement Objectives and Principles</u>	<u>These are the objectives and principles set out in the relevant Procurement Legislation (Section 12 of the Procurement Act 2023 and Regulation 4 of the Health Care Services (Provider Selection Regime) Regulations 2023)</u>
Procurement Threshold	The contract value at which the Procurement Legislation must be applied
<u>Regulated Below-Threshold Contract</u>	<u>Contracts that are below the Procurement Threshold but when procured are subject to the provisions in Part 6 of the Procurement Act 2023</u>
Quotation	A quotation of price and any other relevant matter (without the formal issue of an invitation to tender).
Relevant Contract	A contract to which these contract standing orders apply (see CSO 1).
Selection Criteria	The criteria by which tenderers are chosen to be invited to submit quotations or tenders
Shortlisting	The process of selecting tenderers who are to be invited to submit quotations or tenders or to proceed to final evaluation as part of a Restricted, Competitive with Negotiation <u>Open</u> or Competitive Dialogue <u>Flexible</u> Procedure.
<u>Substantial Modification</u>	<u>In respect of Contracts which are subject to the Procurement Act 2023, a modification which would:</u> <u>a) increase or decrease the term of the Contract by more than 10 per cent of the maximum term provided for on award;</u> <u>b) materially change the scope of the Contract; or</u> <u>c) materially change the economic balance of the Contract in favour of the supplier.</u>
Teckal company	A company which meets particular legal requirements relating to its ownership and activities i.e. wholly public sector owned and its main business is providing services to its members.
Tender	A tenderer's proposal submitted in response to an invitation to tender.
Tenderer	Any person who asks or is invited to submit a quotation or tender.
Total Value	As defined in CSO <u>2.14.2</u>

TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006 [SI2006 No.246]
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Note: any references to legislation through-out these Contract Standing Orders shall be construed as a reference to the legislation as it may be amended, replaced, consolidated or re-enacted from time to time