

**Wiltshire Council  
Constitution  
Part 10  
Procurement and Contract  
Rules**

**Contents** Review section heading, page & para numbering, etc once content finalised

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# PART 10

## PROCUREMENT AND CONTRACT RULES

### SECTION A: GENERAL

#### 1. Introduction

~~1.1~~ These Procurement and Contract Rules (the “Rules”) ~~are the standing orders which~~ apply to the acquisition of the acquisition of all goods, services and/or services or works supplies, services and works by or on behalf of the Council ~~(including Council controlled schools)~~ (see also definition of Procurement).

~~1.1~~ ~~A successful challenge made under the community right to challenge set out in Part 5 of the Localism Act 2011 will trigger a Procurement as set out in the Rules. This includes council~~Council ~~controlled schools and where the council~~Council ~~acts as lead commissioner on behalf of a third party using external funds.~~

~~1.2~~ These Rules apply to the whole lifecycle of the procurement process, from initial concept to the end of an asset’s useful life or the end of the contract liability period.

~~These Rules are divided into Sections A, B and C:~~

~~Section A (“General”) sets out the Objects and Principles of these Rules;~~

~~Section B (“Procurement Procedure”) sets out the rules for planning a Procurement and the procedure which must be followed for every Procurement up to signature of the relevant contract; and~~

~~Section C (“Contract Maintenance, Monitoring and Administration”) sets out the rules for managing the relevant contract until termination or expiry together with other administration matters.~~

~~1.2~~ The Rules must be read in conjunction with the Procurement Manual, ~~[and online toolkit]~~ which gives detailed instructions and guidance in their implementation.

~~1.3~~ All applicable English or European law Legislation must be complied with. Any change to the relevant English or European law Legislation must be observed until the Rules are revised. If the Rules or the Procurement Manual conflict in any way with English law or European law Legislation in force in England, then that Legislation takes precedence.

~~The Procurement Manual will be updated from time to time and officers must always refer to the latest information as published on the Intranet.~~

~~1.3~~ These Rules do not apply to:

~~1.3.1~~ ~~Contracts of employment; or,~~

~~1.3.2~~ ~~Contracts that relate solely to the purchase or acquisition of land; or,~~

~~1.3.3~~ ~~contracts awarded by schools which are outside the control of the~~

~~council~~Council such as academies and foundation schools, or  
 1.3.4 ~~Investment Manager contracts awarded by the Wiltshire Pension  
 Fund Committee~~

~~1.4~~ A list of the definitions used in these Rules is given at Schedule 1 attached to this

**2. Definitions**

In the Rules, the following words and phrases have the following meanings:

<b><u>Above Threshold</u></b>	<u>Procurement activity that takes place at or above the financial Threshold as set out in relevant Legislation</u>
<b><u>Below Threshold</u></b>	<u>Procurement activity that takes place below the financial Threshold as set out in relevant Legislation</u>
<b><u>Call-off contract</u></b>	<u>Individual Contracts that fall under a Framework Agreement instructing specific goods, services and/or works to be carried out. An individual Contract instructing a Supplier to deliver specific goods, services and/or works</u>
<b><u>Contract</u></b>	<u>A Contract for the provision of goods, services and/or works which is subject to the Rules</u>
<b><u>Direct Award</u></b>	<u>The award of a Contract directly to a Supplier without competition as set out in relevant Legislation and/or policy</u>
<b><u>Financial Regulations</u></b>	<u>The Financial Regulations set out in the Council's constitution as updated from time to time, which provide financial controls around commitments including contracts</u>
<b><u>Framework Agreement</u></b>	<u>An agreement which allows the Council to Call-off from a Supplier a range or pre-defined supplies or services. See Call-off Contract definition</u>
<b><u>Legislation</u></b>	<u>The Procurement Act 2023, Public Contracts Regulations 2015, Concessions Contracts Regulations 2016 or Utilities Contracts Regulations 2016 as applicable or any other relevant UK or European Law</u>
<b><u>Modification of a Contract</u></b>	<u>The Modification of a Contract as set out in relevant Legislation and/or policy</u>
<b><u>Procurement</u></b>	<u>The process by which goods, services and/or works of any value or type are acquired on behalf of the Council. Such process commences with the initial planning and completes at the end of the Contract liability period or the end of the useful life of goods or works procured</u>
<b><u>Procurement Manual</u></b>	<u>The Council's Procurement Manual as updated from</u>

	<u>time to time and approved by the Director responsible for procurement in consultation with the relevant Cabinet Member.</u>
<b><u>Procurement Pipeline</u></b>	<u>The anticipated Procurement activity scheduled to take place in the next 12 months for Above Threshold and Below Threshold Procurements to be created and maintained in accordance with the Procurement Manual</u>
<b><u>Procurement Team</u></b>	<u>The Council's centralised Procurement function.</u>
<b><u>Relevant Stakeholders</u></b>	<u>Any person or groups of people internally or externally who can be affected by or affect the goods, services and/or works</u>
<b><u>Scheme of Sub-delegation</u></b>	<u>Delegation by Corporate Directors to officers in their service areas of the authority to exercise on their behalf powers delegated to them under Part 3B of the Constitution as updated from time to time</u>
<b><u>Supplier</u></b>	<u>Supplier contracted to provide goods, services and/or to undertake works</u>
<b><u>Threshold</u></b>	<u>A financial threshold for supplies, services or works above which the UK Regulations or the Procurement Act 2023 applies.</u>

## **2. ~~Objects~~**

~~2.1 These Rules have three objects:~~

~~2.1.1 To deliver Best Value;~~

~~2.1.2 To manage and reduce the council's corporate risk;~~

~~2.1.3 To ensure accountability for all procurement decisions.~~

## **3. Objectives~~Principles~~**

~~3.1 All Procurements must be carried out in a manner which has regard to the importance of:~~

~~3.1.1 delivering value for money;-~~

~~3.1.2 maximising public benefit;~~

~~3.1.3 -ensuring the sharing information for the purpose of allowing sSuppliers and others to understand the Council's pProcurement policies and decisions;~~

~~3.1.4 -ensuring the Council acts, and is being seen to act, with integrity; and~~

~~3.1.5 -equal treatment of sSuppliers.~~

## **4. Responsibilities**

~~3.1 It is the responsibility of the Directors to ensure that the purchase of goods, services and works comply with:~~

~~3.1.1 English law;~~

~~3.1.2 The Public Contracts Regulations (Utilities Contract Regulations and Concessions Contract Regulations) that are currently in force;~~

- ~~• The Council's Constitution including these Procurement and Contract Rules, Financial Regulations and Financial Procedure Rules (Part 9);~~

~~3.1.3 The Procurement Manual;~~

~~3.1.4 Compliance with the council's decision-making process.~~

~~3.2 Whether or not a Procurement is subject to the EU Regulations, it must be conducted in accordance with the basic EU Treaty Principles. In particular, this means all Procurements must be carried out in a fair, open and transparent way.~~

~~3.3 Any change to the relevant English or European law must be observed until these Rules are revised. If these Rules or the Procurement Manual conflict in any way with English law or European law in force in England then that legislation takes precedence.~~

~~3.4 The strategic advice of Legal Services and the Strategic Procurement Hub and accountancy must be sought during the earliest stages of planning any Procurement. See further Section B of these Rules.~~

~~3.5~~

~~3.6 All Procurements must comply with the Best Value processes set out in the Procurement Manual.~~

3.7.4.1 Each Director shall:

4.1.1 ensure all officers of the service area comply with the following:

- The Procurement Act 2023 (for Procurements commenced after this Act comes into force on 28<sup>th</sup> October 2024{DATE?})
- The EU Regulations (for Procurements commenced prior to the Procurement Act 2023 coming into force);
- all other applicable English law
- The Rules and the Procurement Manual;
- All other relevant parts of the Council's Constitution including the Parts relevant to Financial Regulations and decision making;

4.1.2 be responsible for all Procurements undertaken for ~~his or her~~ the service area;

~~3.7.14.1.3~~ be responsible for ensuring all Procurement activity will follow the relevant and appropriate decision making process as set out in the Procurement Manual;

~~3.7.2~~ ensure that Best Value is achieved in all Procurements for his or her service area; be responsible for the Procurement Pipeline for their service area including taking responsibility for corporate Contracts where appropriate. (Unless there is a clear corporate benefit of procurement, for example facilities management)

~~3.7.3~~ ensure that during the earliest stages of planning any Procurement for his or her service area:

~~the strategic advice of Legal Services, Accountancy, Human Resources and the Strategic Procurement Hub is sought; and~~

~~4.1.4~~ where appropriate, TUPE is considered and the Wiltshire Pension Fund consulted;

4.1.5 assess the ability to join up spending / eContracts across other service areas to secure efficiencies and value for money;

4.1.6 in conjunction with the Procurement Team, the Finance Team and Legal Services, ensure that training on the Rules and the Procurement Manual is provided to all staff of the service area;

4.1.7 ensure that all officers refer to the latest versions of all documents referred to in the Rules.

~~3.7.4~~

4.2 The Head of Procurement shall:

4.2.1 ensure the most suitable appropriate procurement process is followed and conducted in line with the Rules, the Procurement Manual and relevant Legislation. for each Procurement and that Sourcing Plans and all notices (as applicable) under the Procurement Act 2023 are prepared and approved in accordance with the Rules.

4.2.2 Regularly review Procurement governance, considering any relevant audit reports, changes in Legislation external regulations, laws, advice from Relevant Stakeholders Legal

Services and the Finance Team and Council  
policies Strategy.

4.2.3 Review all Procurement-related Cabinet Reports and ensure such  
Cabinet Reports are approved by the Corporate Director,  
responsible for procurement, prior to submission to the Cabinet.

4.3 The Procurement Team shall in conjunction with Legal Services ensure that all  
review all standard tender Procurement templates are reviewed and updated  
as necessary at least annually.

4.4 Legal Services shall in conjunction with the Strategic Procurement  
Hub Team ensure that all keep current and formally review all model  
Contracts are reviewed and updated as necessary at least annually.



- ~~3.7.5 assess the ability to join up spending / contracts across other service areas to secure efficiencies and value for money;~~
- ~~3.7.6 implement and operate a Scheme of Sub-delegation for his or her service area;~~
- ~~3.7.7 in conjunction with the Strategic Procurement Hub, Accountancy and Legal Services, ensure that training on these Rules and the Procurement Manual is provided to Budget Managers and Commissioning Officers in accordance with the Procurement Manual;~~
- ~~3.7.8 ensure that all Procurements for his or her service area are conducted in a fair, open and transparent way;~~
- ~~3.7.9 ensure that Budget Managers in his or her service area comply with the duties listed at rule 3.8 below;~~
- ~~3.7.10 ensure that Commissioning Officers in his or her service area comply with the duties listed at rule 3.9 below.~~

~~3.8 Each Budget Manager shall for all Procurements within his or her remit:~~

- ~~3.8.1 ensure compliance with these Rules, the Procurement Manual, the Wiltshire Council Council Financial Regulations and Financial Procedure Rules and EU Regulations (where applicable);~~
- ~~3.8.2 ensure that the Best Value processes set out in these Rules and the Procurement Manual are achieved;~~
- ~~3.8.3 ensure that only standard documentation or documentation approved by Legal Services is used in accordance with rule 7 below;~~
- ~~3.8.4 operate within an effective check and challenge system and in line with the Behaviours Framework;~~
- ~~3.8.5 ensure that the requirements from the Strategic Procurement Hub to provide information and documentation for the Corporate Contracts Register set out in these Rules are complied with in a timely manner.~~

~~3.9 Commissioning Officers must comply with these Rules and the Procurement Manual.~~

~~3.10 A successful challenge made under the community right to challenge set out in Part 5 of the Localism Act 2011 will trigger the procurement processes set out in these Rules.~~

~~3.11 The council Council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties.~~

## Schedule 1 – Definitions

In the Rules, the following words and phrases have the following meanings:

<b>Behaviours Framework EPIC Values</b>	The Council's set of core behaviours which define how officers are expected to carry out their roles
<b>Best Value</b>	The optimum combination of whole life cost and benefits to meet the Council's requirements, and includes consideration of social responsibility, equality, economic factors and sustainability
<b>Budget Manager</b>	An officer with budgetary responsibility for the spend relating to a Procurement
<b>Contractor</b>	Provider contracted to furnish supplies or undertake works
<b>Commissioning Officer</b>	An officer with strategic responsibility for commissioning a service
<b>Contract Management</b>	The administration of a completed contract by Council officers to include ensuring compliance with its terms and conditions and implementation of any required variation
<b>Corporate Contracts Register</b>	The central repository of (i) key contract information as required under the Transparency Act
<b>EU Regulations</b>	The <u>Public Contracts Regulations 2015</u> , <u>Concessions Contracts Regulations 2016</u> and <u>Utilities Contracts Regulations 2016</u>
<b>EU Threshold</b>	A financial threshold for supplies, services or works above which the EU Regulations <u>or the Procurement Act 2023</u> applies, where EU Threshold is used in these rules unless specifically stated it shall be the threshold for supplies and services.
<b>Exemption</b>	Has the meaning given in rule 14
<b>Financial Regulations</b>	The Financial Regulations set out in the Council's constitution as updated from time to time, which provide financial controls around commitments including contracts
<b>Framework Agreement</b>	An agreement which allows the Council to call-off from a supplier a range of pre-defined supplies or services. Each call-off constitutes a standalone contract made on the terms and conditions of the Framework Agreement
<b>Grant</b>	Has the meaning given in Protocol 8 ("Wiltshire Council Partnership Protocol") of the constitution as updated from time to time

<b>Invitation to Tender (ITT)</b>	An invitation to tender documents in the form required by the Rules
<b>OJEU</b>	The Official Journal of the European Union
<b>Partnership</b>	Has the meaning given in Protocol 8 (“Wiltshire Council Partnership Protocol”) of the constitution as updated from time to time
<b>Procurement</b>	<del>The process by which acquisition on behalf of the council Council of supplies goods, and/or services or works of any value or type are acquired on behalf of the Council. Such process to includes the entire process from commences with the initial planning and completes to at the end of the contract liability period or the end of an item’s the useful life of goods or works procured</del>
<b>Procurement Manual</b>	The Council’s online Procurement Manual as updated by the Head of Strategic Procurement from time to time and published on the Intranet
<b>Procurement Plan</b>	The schedule demonstrating a minimum of 12 months’ forward planning of Tender Level Procurements for each service area, to be created and maintained in accordance with the Procurement Manual
<b>Purchase Order</b>	<del>An order constituting a legally binding offer by the Council to purchase such goods and/or services or works as are detailed in the order. detailing the products or services required by the council Council. Sending a Purchase Order to a supplier constitutes a legal offer by the council Council to buy products or services. Acceptance of a Purchase Order by a supplier usually forms a one-off contract between the Council and the supplier, so no contract exists until the Purchase Order is accepted</del>
<b>Regulation 84-Evaluation Report</b>	Report recommending the award of a contract following a procurement process (Template held by SPH)
<b>Service’s-Responsible Officer</b>	The Officer responsible for the commissioning and delivering the outcomes from the procurement process
<b>Rules</b>	These Procurement and Contract Rules
<b>Scheme of Sub-delegation</b>	Delegation by Directors to officers in their service areas of the authority to exercise on their behalf powers delegated to them under Part 3B of the constitution as updated from time to time
<b>Sourcing Plan</b>	Required for all over EU Threshold tenders which lays out procurement options and recommended approach which must be approved by the Head of Strategic Procurement or their Nominee

<b>SPH</b>	Strategic Procurement Hub, central procurement team
<b>Tender</b>	A supplier's formal written offer made in competition to supply specified supplies or services or carry out specified work at a stated cost or rate, made in response to an Invitation to Tender
<b>Tender Level Procurement</b>	Expenditure which exceeds the EU Regulation thresholds at which an advert must be placed in the Official Journal of the European Union

# PART 10

## PROCUREMENT AND CONTRACT RULES

### SECTION B: PROCUREMENT PROCEDURE

#### 5. All Procurements

5.1 ~~Prior to the inception of each Procurement a decision to award a contract has been made by a person with authority to do so on behalf of the Council in and that such decision has been properly recorded in a Record of Officer Decision in accordance with the relevant sections of Part 3 of the Council's Constitution. At the outset of each Procurement the requirement (the scope of the goods, services and/or works) must be defined and authority sought from the relevant officer to commence the Procurement.~~

#### 5.2 At the earliest opportunity:

5.2.1 ~~[and ideally [12 months]-in advance of the intended cContract start date, the Procurement Team must be consulted].~~

5.2.2 ~~[Legal Services must be instructed where it is reasonably foreseeable that deviation from the Council's standard template eContracts might be required and/or where it is unclear which form of eContract is suitable for the Procurement].~~

~~[the Information Governance Team must be consulted]~~

~~[the Finance Team must be consulted to confirm that the Council has the funds available to meet all its financial obligations within the service AND under the contract prior to signature.~~

5.2.3 ~~[Any other rRelevant Stakeholder (s)Department of the Council must be consulted (for example the Estates Team in respect of any required lease or licence, IT in respect of any [technological points], Human Resources)]~~

5.3 ~~[All officers must use the appropriate un-amended model template contract found on the Intranet as updated from time to time and instruct Legal Services where deviation from such model template may be needed and otherwise seek advice as required.]Where consideration is being given to signing a third party's terms and conditions advice from Legal Services must be sought.~~

~~Where there is an existing, appropriate authorised contractual arrangement this must be used unless a business case led by the relevant Officer in the Strategic Procurement Hub is properly approved. consideration of its use must be given as part of the assessment of the range of available options as set out in the Procurement Manual.~~

5.4 ~~Contracts which are subject to the Rules can only be signed and/or sealed as set out in part 8.~~

## **6. Above Threshold Procurement**

6.1 This paragraph applies in addition the requirements of paragraph 4 above where the value of a contract is more than or equal to the Threshold. All officers must comply with paragraph 5 above and this paragraph 6 for all Above Threshold Procurements.

6.2 The process by which Above Threshold Procurements should be undertaken is set out in the Procurement Manual and may be updated from time to time.

6.3 In all instances service areas must contact the Procurement Team to commence Procurement activity in accordance with the Procurement Manual.

6.4 Use the unamended: Under no circumstances should Procurement activity be undertaken or Contracts entered into without the support of the Procurement Team.

### **6.5 Modification or Direct Awards**

6.5.1 Modifications to Contracts or Framework Agreements can only be made in accordance with the Legislation.

6.5.2 The processes set out in the Procurement Manual must be adhered to.

6.5.3 Authorisation from Corporate Director, responsible for procurement, or the Director responsible for legal services will be required (as set out in the Procurement Manual) where the need for a Modification or Direct Award:

- falls outside of the above and arises for reasons which are outside of the control of the Council; and/or
- there remains residual risk.

Services Agreement Template or Goods and Services Template in respect of the acquisition of Goods and/or Services;  
Or seek the advice of Legal Services or the Procurement Team (as applicable) in respect of any other form of contract

### **Extensions to contracts or framework agreements**

The duration of a contract or Framework Agreement may only be extended if provision for that extension has been included in the terms of the contract or Framework Agreement, Tender documents and contract details notice.

## **7. Below Threshold Procurement**

7.1 All officers must comply with paragraph 4 above and this paragraph 6 for all Below Threshold Procurements.

7.2 In all instances service areas must contact the Procurement Team to commence Procurement activity in accordance with the Procurement Manual.

7.3 Under no circumstances should Procurement activity be undertaken or Contracts entered into without the support of the Procurement Team.

#### 7.4 Modifications or Direct Awards

7.4.1 Modifications to Contracts or Framework Agreements can only be made in accordance with the Procurement Manual

7.4.2 The processes set out in the Procurement Manual must be adhered to.

7.4.3 Authorisation from Corporate Director, responsible for procurement or the Director responsible for legal services will be required (as set out in the Procurement Manual) where the need for a Contract or Direct Award:

- falls outside of the above and arises for reasons which are outside of the control of the Council; and/or
- there remains residual risk.

~~Where the value of a contract is less than the Threshold.....~~

~~May use the unamended form of agreement and standard terms and conditions in respect of the acquisition of goods and/or services~~

~~Concession contracts?~~

#### ~~4. Planning each Procurement~~

~~4.1 Save where an Exemption is granted under rule 14 below, every Tender Level Procurement or complex or resource intensive procurement below tender level must be planned in accordance with these Rules and the Procurement Manual.~~

~~4.2 The Procurement Plan is the schedule demonstrating a minimum of 12 months' forward planning of such Procurements for each service area, to be created and maintained in accordance with the Procurement Manual.~~

~~4.3 Unless there is a clear corporate benefit of procurement, for example facilities management, each Director will be responsible for the Procurement Plan for his or her service area.~~

~~4.4 Each Budget Manager must ensure that his or her Procurements are represented in the Procurement Plan as soon as reasonably practicable in order to ensure timely consideration of the Procurement procedure which must be followed. They must also agree with Accountancy, before a Procurement Plan is submitted, that the council/Council has the funds and other resources available to meet all its obligations under any contract(s) that may result. This includes having sufficient non-pay budget provision in year and future years. The level of contracted work will then be driven by the ability to afford a contract as approved by accountancy. The award will also consider the value for money of the tenders and financial sustainability of the contract~~

#### ~~5. Responsibilities of the Head of Procurement~~

~~5.1 The To ensure procurement process is followed and that Sourcing Plans and Regulation 84 Reports are prepared and approved in accordance with the Rules~~

~~5.2 Regularly review procurement governance, considering any relevant audit~~

~~reports, changes in external regulations, laws, views from legal and accountancy teams and Council Council Strategy.~~

~~5.3 To ensure all procurement related Cabinet Reports are reviewed by the Head of Strategic Procurement and approved by the Corporate Director, Resources, prior to submission to the Cabinet.~~

## ~~6. Procurement Procedure~~

~~6.1 The procurement procedure to be taken is dependent on the estimated value of the supplies, services, or works to be provided. Full details of the processes and related information are given in the flow charts in Procurement Manual.~~



~~6.2 The value of the contract is the total value of the contract over its full duration including any extensions. Where the contract term is indeterminate or indefinite the value will be 48 times the monthly cost. When estimating the total value of a contract over its term, including extensions, all elements of cost must be considered not just the invoice value to be paid for the supplies, services or works.~~

## ~~7. Form of Contract and Tender Documentation~~

~~7.1 All Procurements, regardless of value, must either:~~

~~7.1.1 use the council/Council's appropriate un-amended model contract available on the Intranet as updated from time to time; or,~~

~~7.1.2 be referred to Legal Services to review the proposed contract or produce a new contract as appropriate.~~

~~7.2 In addition to the requirements of rule 7.1 all Procurements must either:~~

~~7.2.1 use the SAP Purchase Order procedure; or,~~

~~7.2.2 the Form of Agreement for low value one-off procurement of supplies and services; or,~~

~~7.2.3 use the council/Council's un-amended standard tender templates which are available on the Intranet as updated from time to time; or,~~

~~7.2.4 be referred to the Strategic Procurement Hub to review the proposed tender documentation in conjunction with Legal Services.~~

~~7.31.1 Legal Services shall in conjunction with the Strategic Procurement Hub keep current and formally review all model contracts at least annually.~~

~~7.4 Contract Managers must provide relevant information required and register contract details on the corporate Contracts Register.~~

~~7.5 The Strategic Procurement Hub shall in conjunction with Legal Services review all standard tender templates at least annually.~~

~~7.6 Where there is an existing, appropriate authorised contractual arrangement this must be used unless a business case led by the relevant Officer in the Strategic Procurement Hub is properly approved.~~

## ~~8. Receiving and Opening Tenders~~

~~8.1 All tenders must be received and opened in accordance with the details set out in the Procurement Manual.~~

## ~~9.8. Awarding Contracts and Audit Trails~~

~~8.1 The results of any evaluation process must be recorded in writing by the Officer in the Strategic Procurement Hub responsible for leading the Procurement general process for awarding Contracts is set out in the Procurement Manual.~~

8.2 Unless the Contract involves a function reserved to Full Council, Cabinet or a Committee (see Part 3 Section B of the Constitution) and subject to rule 8.4 below, the authority to approve the award of Contracts as a result of a Procurement exercise is delegated to Corporate Directors in accordance with the Scheme of Delegation or officers within the directorate as may be authorised by the relevant Corporate Director Scheme of Sub-delegation.

8.3 Cabinet approval must be obtained for any Contract (or programme) which involves a key decision under Part 2 “Articles of the Constitution”.

#### 8.4 Executing Contracts

8.4.1 A Contract must be executed under seal where any of the following applies, unless advised otherwise by Legal Services:

- Exceeds £1m in value; or,
- Is considered to be of a strategically important or politically sensitive nature and therefore required a key decision in accordance with Part 2; or,
- Where the extended limitation period of 12 years would be of value.

8.4.2 Where a Contract by the following requirements is in accordance with their Scheme of Sub-Delegation):

- Solicitor to the Council, or,
- Corporate Director responsible for procurement

Contract Managers must provide relevant information required and register contract details on the corporate Contracts Register.

~~9.1 — Any Officer awarding a contract must have sought confirmation from accountancy that the council/Council has the funds available to meet all its financial obligations within the service AND under the contract prior to signature.~~

~~9.2 — Commissioning Officers must be aware that the placing of any business with a third party constitutes a contractual commitment which must comply with the Rules. Placing an order off an approved contract may be undertaken by Officers with appropriate delegated budgets where those orders are placed against existing contracts based on pre-agreed terms and pricing. If any negotiations on price or changes to terms and conditions are required to place an order an Officer in the Strategic Procurement Hub must be contacted to determine how to proceed.~~

### ~~Authority to approve award of contracts~~

~~9.3 — Unless the Contract involves a function reserved to Full Council, Cabinet or a Committee (see Part 3 Section B of this Constitution) and subject to rule 9.6 below, the authority to approve the award of contracts as a result of a procurement exercise is delegated to Corporate Directors (and their nominees) in accordance with the Scheme of Delegation or officers within the directorate as may be authorised by the relevant Corporate Directors Scheme of Sub-delegation.~~

~~9.4 — Subject to the authority to award contracts being granted as per paragraph 9.4 and 9.6 these Contracts which are subject to paragraphs 9.4 and 9.6 may only be executed under Seal as per Rule 10 or be signed by the following (and their nominees in accordance with their Scheme of Sub-Delegation):~~

~~9.4.1 — Solicitor to the Council for all contracts, or,~~

~~9.4.2 — Corporate Director, Resources~~

~~9.5 — Cabinet approval must be obtained for any contract (or programme) which:~~

~~9.5.1 — Involves a key decision under this Constitution (see Part 1 paragraph 4.2.7)~~

~~9.5.2 — exceeds an annual value of £1 million or the total contract value exceeds £4million including any optional extension period;~~

~~9.5.3 — involves the transfer of 50 or more employees in or out of the Council; or~~

~~9.5.4 — relates to a matter which is commercially, politically or strategically sensitive.~~

~~9.6 — The legal requirements for issuing contract award notices must be followed.~~

## ~~**10. — Contracts to be executed under Seal**~~

~~10.1 — Where a contract either:~~

~~10.1.1 Exceeds £1m in value; or,~~

~~10.1.2 Is considered to be of a strategically important or politically sensitive nature; or,~~

~~10.1.3 Where the extended limitation period of 12 years would be of~~

value,

~~the contract must be executed under seal, unless advised otherwise by Legal Services.~~

# ~~PART 10~~

## ~~PROCUREMENT AND CONTRACT RULES~~

### ~~SECTION C: CONTRACT MAINTENANCE, MONITORING AND ADMINISTRATION~~

#### ~~11. General~~

~~11.1 Budget Managers, Commissioning Officers and those managing contracts shall observe the contract management, supplier management, set out in the Procurement Manual.~~

#### ~~12. Extensions to contracts or framework agreements~~

~~12.1 The duration of a contract or Framework Agreement may only be extended if provision for that extension has been included in the terms of the contract or Framework Agreement.~~

~~12.2 The duration of Tender Level Procurements awarded under the EU Regulations may only be extended if provision for that extension was identified in the original OJEU Notice.~~

~~12.3 An extension should not be made where it would have the effect of changing the fundamental nature of the original contract and in no circumstances should an extension be made to a contract that has the effect of increasing the contract to a value over the EU Thresholds in force at that time.~~

~~12.4 The advice of the lead Officer in the Strategic Procurement Hub and Legal must be sought in relation to any proposals to extend a contract, even if a contractual option exists to explore if best value is offered from that option. This advice must be sought in an appropriate time period that would allow a new procurement to be undertaken if the advice is that the contract should not be extended.~~

~~12.5 All extensions must be fully documented and the signatories of the formal extension documents shall be Legal Services or as specified within Rule 9.5.~~

~~12.6 Cabinet approval must be obtained for any extension where the decision falls under the criteria for a key decision under the Constitution.~~

~~12.7 Where an extension is not provided for under the existing contract then the request to extend will need to follow the extraordinary exemption route, unless the total value of the contract including extensions is less than the EU Threshold which case it will be treated as a normal exemption.~~

#### ~~13. Extensions Variations to contracts or framework agreements~~

~~13.1 In any case where a variation means that the value of a contract would exceed the relevant EU Threshold, or where there is any material change to the~~

~~contract, the contract must be treated as a new Procurement under these Rules~~  
~~the Rules.~~

~~13.2 All variations to contracts must be fully documented, whether they have a financial impact or not, and the signatories of the variation documents shall be Legal services or the same officers at 9.5.~~

~~13.3 Any variation resulting in additional spend above the budgeted contract level will need approval in accordance with the Financial Regulations and must be funded before a decision to vary is taken.~~

~~13.4 Cabinet approval must be obtained for any variation where the decision falls under the criteria for a key decision under the Constitution.~~

#### ~~14. Exceptions to these rules~~ the Rules

~~14.1 These Rules~~ The Rules apply to all supplies, services and works purchased by the Council. However, subject to rule 14.2, a formal exemption to the requirements of one or more of these Rules the Rules may be considered where the Procurement in question is not subject to the EU Regulations or existing legislation i.e. for procurement where the RfQ procedure may be used. Guidance on the exemption process is in the Procurement Manual.

~~14.2 Formal exemptions cannot be used to remove the requirement:~~

~~14.2.1 to use un-amended model contracts and standard tender templates, or to seek the advice of Legal Services and the Strategic Procurement Hub where the standard documentation must be amended, in accordance with rule 7 above;~~

~~14.2.2 to seek the advice of Legal Services and the Strategic Procurement Hub for all Tender Level Procurements.~~

~~14.3 The Strategic Procurement Hub may grant formal exemptions which fulfil the following strict criteria (“Exemptions”):~~

~~14.3.1 Works orders placed with utility companies, e.g. for re-routing cables or pipework. The term utilities does not include telecommunications.~~

~~14.3.2 Genuine emergencies—Critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from a hitherto unforeseen ‘catastrophic’ event or incident such as fire, bombing, flooding, major landslide etc. Any contract entered into by the Council under this exemption must not be for a term of more than 6 months.~~

~~14.3.3 Collaborative/Joint Purchasing—Where another authority/public body is acting as ‘lead buyer’ and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Best Value and other applicable legislation including, where relevant, the EU Procurement Directives.~~

~~14.3.4 Sole source of supply—Where suitable supplies or service are genuinely only available from one supplier (e.g. if patent, copyright or other exclusive design rights exist). Similarly, for any highly~~

~~specialised/niche services where, for all practical purposes, no realistic alternative source of supply exists. Exemption requests made on this basis will be tested by the Strategic Procurement Hub using sourcing tools.~~

~~14.3.5 Urgent situations not of the Council's own making—The urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation, urgently imposed statutory changes, etc.) and genuinely be a case of 'time is of the essence'. However, urgency arising through problems of the Council's own making (whatever the cause and regardless of whether it involved previous delays or shortage of resources, etc.) shall not in itself justify exemption. Any contract entered into by the Council under this exemption must not be for a term of more than 6 months. Where extensions of contracts are entered into without an Opportunity Assessment, the Strategic Procurement Hub will seek a temporary extension term in order to allow a full Opportunity Assessment to take place as soon as reasonably practicable. The avoidance of Opportunity Assessments will be exceptional.~~

~~14.3.6 Reasons of compatibility—If compatibility with existing supplies, equipment or services is essential and where they cannot be sourced from another supplier (e.g. spare parts/components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics, etc.~~

~~14.3.7 Procurements of a value of less than EU Threshold or extensions to contracts where the total value of the contract including extensions is less than the EU Threshold.~~

#### Extraordinary Exemptions

~~14.4—Any Exemption which does not fulfil the strict criteria of rule 14.3 will be an "Extraordinary Exemption".~~

~~14.5—Only the Head of Strategic Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.~~

~~14.6—Directors must ensure that the information submitted in all Exemption Request Forms and Extraordinary Exemption Request Forms for his or her service area is correct.~~

~~14.7—The procurement may proceed only after the notification of approval is received by the Commissioning Officer.~~

~~14.8—All Exemption requests which would contravene English law or European law in force in England will be rejected.~~

~~14.9—If the Exemption is approved, the application form will be endorsed and returned to the relevant Commissioning Officer who must enter the contract on to the Corporate Contracts Register in accordance with rule~~

~~7. A copy of the Exemption will be retained by the Strategic Procurement Hub.~~

### Procedure

~~14.10 Exemption requests made for one of the reasons under rule 14.3 must be submitted to [ProcurementUnit@wiltshire.gov.uk](mailto:ProcurementUnit@wiltshire.gov.uk). It is recommended that the SPH are engaged to support the development of the exemption. Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.~~

~~14.11 An Exemption will be either:~~

- ~~14.11.1 approved by the Strategic Procurement Hub, registered and confirmed with the requesting Commissioning Officer;~~
- ~~14.11.2 held pending a request for further information (where appropriate);~~
- ~~14.11.3 rejected stating the reasons why; or~~
- ~~14.11.4 referred to Cabinet for determination.~~

~~14.12 Extraordinary Exemption requests must be submitted to the Head of Strategic Procurement (“Extraordinary Exemption Request Form”). Extraordinary Exemption Request Forms must include a full business case and must be countersigned by the relevant Service Director. Wherever possible, completed Extraordinary Exemption Request Forms should be scanned and submitted by email.~~

~~14.13 An extraordinary exemption will be either:~~

- ~~14.13.1 Approved by two of the following three designated officers:
  - The Head of Strategic Procurement and one of either
  - The Solicitor to the Council (or nominee); and
  - The Section 151 Officer, and registered and confirmed with the requesting Commissioning Officer~~
- ~~14.13.2 Held pending a request for further information (where appropriate) and then dealt with in accordance with rule, 14.11.1, 14.11.3 or 14.11.4.~~
- ~~14.13.3 Rejected stating the reasons why; or,~~
- ~~14.13.4 Referred to Cabinet for determination, and in the event of Cabinet approval, registered and confirmed in accordance with rule 14.11.1.~~

~~14.14 Within 10 working days of an Extraordinary Exemption approval made under rule 14, details of the approval decision and the attendant business case will be:~~

- ~~14.14.1 Notified to the relevant Cabinet Member; and,~~
- ~~14.14.2 published on the Intranet, and the approval decision will normally be made available to the public, except where the notification of approval states that this would not be appropriate for legal reasons.~~

## **15. Partnerships and Grants**

~~The Rules do not apply to Partnerships and Grants that are approved under the relevant policies and procedures.~~