

Amendments to PROCUREMENT AND CONTRACT RULES

Original Clause	Original Wording	New Wording	Reasoning
Procurement and Contract Rules			
1	Introduction 1.1 to 1.5 retained as is		
	<p>1.6 Concession Contracts</p> <p>1.6.1 For public works concession contracts, subsidised works and subsidised service contracts connected to subsidised works (i.e. contracts under which the contractor is given the right to exploit the works) the council will be obliged to ensure that the concessionaire complies with relevant EU Regulations. Further advice is given in the Procurement Manual and a senior officer in the Strategic Procurement Hub should be contacted for advice, who will also engage legal services and accountancy</p> <p>1.7 Utilities</p> <p>1.7.1 Procurement of utilities is covered by The Utilities Contract Regulations 2006. This includes postal services but excludes telecommunications. For further information on scope of the Utilities Contract Regulations 2006 please refer to the Procurement Manual. A senior officer in the Strategic Procurement Hub should be contacted for advice, who will also engage legal services and accountancy</p>	Deleted	<p>Current wording is out of date and we have already referred to English and European Law so don't believe we should specifically refer to these particularly as they change.</p> <p>Agreed by Legal</p>
	1.8 A list of the definitions used in these Rules is given at Appendix 1 attached to this Section A.	Retained but updated removing definitions that are no longer applicable and adding new as required	
2.	Objects	Remains as is	
3.	Principles		
	3.1 All Procurements must comply with these Rules, the Procurement Manual, the Wiltshire Council Financial Regulations and Financial Procedure Rules, English law and European law in force in England. All procurements must remain, within budget both in year and the Medium Term Financial Plan assumptions unless approved in line with the Financial Regulations.	<p>3.1 It is the responsibility of the Corporate Directors Service Directors to ensure that the purchase of goods, services and works comply with:</p> <ul style="list-style-type: none"> a) English Law b) The Public Contracts Regulations (Utilities Contract Regulations and Concessions Contract Regulations) that are currently enforced c) The Council's Constitution including these Procurement and Contract Rules, Financial Regulations and Financial Procedure Rules d) The Procurement Manual e) Compliance with the Councils decision making process 	<p>Changed for clarity</p> <p>Agreed by Legal</p>

	3.2 to 3.4 retained as is		
	3.5 When any employee of either the council or of a service provider may be affected by any transfer arrangement under a Procurement or re-Procurement, issues relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) must be considered and the Wiltshire Pension Fund must be consulted at the planning stage of the Procurement. Recognised trades union consultation must be carried out in compliance with the Externalisation, Procurement and the Workforce Agreement published on the Intranet (or any document which replaces or supplements that agreement). See further the Procurement Manual.	Deleted	Danger of going into specific details in constitution is TUPE more important than environment or health and safety, best dealt with in Procurement Manual? Agreed by Legal
	3.7 Each Associate Director shall: 3.7.1 to 3.7.4 wording remains as is	Re numbered to 3.6 Each Director shall: Renumbered 3.7.1 to 3.7.4 to 3.6.1 to 3.6.4	Associate Director no longer a position
	3.7.6 through to 3.9 remain as is (but renumbered)	Renumbered 3.6.3 to 3.8	
	3.10 Key Performance Indicators will be used to monitor the operation of these Rules in accordance with the Procurement Manual. Results will be reported to Corporate Directors and Associate Directors regularly.	Delete	These are currently not undertaken and better dealt with in the Procurement Manual Agreed by Legal
	3.11 Remains as is	But renumbered 3.9	
	3.12 The council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties. The rules on State Aid are set out in the Procurement Manual.	3.10 The council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties. The rules on State Aid are set out in the Procurement Manual. Delete Red Renumbered	I think for complicated areas like state aid or TUPE clients should be engaging with procurement and legal rather than reading a guide and trying to do it themselves Agreed by Legal
	APPENDIX 1	Retained but updated deleting	
B	PROCUREMENT PROCEDURE		
4	Planning each Procurement		
	4.1 Remains as is		
	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.	Wording remains	Much more clarity how this will be achieved is required in the Procurement Manual
	4.3 Unless there is a clear corporate benefit of procurement, for example facilities management, each Associate Director will be responsible for the Procurement Plan for his or her service area.	4.3 Unless there is a clear corporate benefit of procurement, for example facilities management, each Associate Director will be responsible for the Procurement Plan for his or her service area. Delete Associate	The corporate benefit for procurements will come out of Category Strategies that may then required Council or County wide procurements.
	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 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	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 has	The procurement plan is an overall plan of what is likely to be procured, this clause then starts talking about individual plans, these are Sourcing Plans which are dealt with in the Procurement

	<p>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</p>	<p>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</p> <p>Delete red wording</p>	<p>Manual and will require confirmation by accountancy that budget is in place for each procurement before it commences.</p>
<p>5</p>	<p>Corporate Procurement and Commissioning Board governance and approval of Tender Level Procurements</p> <p>5.1 The Corporate Procurement and Commissioning Board will regularly review procurement and commissioning governance and recommend changes which enhance performance and added value activities.</p> <p>5.2 The general powers of the Corporate Procurement and Commissioning Board are:</p> <p>5.2.1 To scrutinise and challenge planned Tender Level and outcomes/outputs of the procurement;</p> <p>5.2.2 To consider and recommend Tender Level Procurement spend at the assessment phase;</p> <p>5.2.3 To monitor the value added by the check and challenge system.</p> <p>5.3 The reporting relationships between service areas, the Corporate Procurement and Commissioning Board, the Strategic Procurement Hub, Accountancy and Legal Services are set out in the Procurement Manual.</p> <p>5.4 Every Potential Tender Level Procurement will be subject to an independent Value assessment carried out in accordance with these Rules and the Procurement Manual, unless exempted from this process by the Corporate Procurement and Commissioning Board.</p> <p>5.5 Each assessment report will be led by an Officer of the Strategic Procurement Hub. The Officer will work in collaboration with the relevant Commissioning Officer(s), including Legal and Accountancy, during the assessment and throughout the Procurement.</p> <p>5.6 The Corporate Procurement and Commissioning Board will consider each assessment in order to check, challenge and approve Tender level procurements. Approval will be required from the Corporate Procurement and Commissioning Board before Tender Level Procurements can progress.</p> <p>5.7 All procurement related Cabinet Reports must be approved by the Corporate Procurement and Commissioning Board prior to submission.</p>	<p>Delete and replace with below</p> <p>5. Responsibilities of the Head of Procurement</p> <p>5.1 To ensure procurement process is followed and that Sourcing Plans and Regulation 84 Reports are prepared and approved in accordance with the Rules</p> <p>5.2 Regularly review procurement governance, considering any relevant audit reports, changes in external regulations, laws, views from legal and accountancy teams and Council Strategy.</p> <p>5.3 To ensure all procurement related Cabinet Reports are reviewed by the Head of Procurement and approved by the Director for Finance and Procurement prior to submission to the Cabinet</p>	<p>The Board does not currently meet, the role of the Head of Procurement should ensure governance is in place working with Legal, Finance and Audit</p>
<p>6.</p>	<p>Procurement Procedure</p>		
	<p>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 Procurement Manual.</p>	<p>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</p>	<p>We have simplified the Procurement Manual and added flowcharts to make processes clearer</p>

		the Procurement Manual. Red writing added	
	6.2 remains as is		
	6.3 A Request for Quotes (RfQ) procedure may be used for spend below the threshold defined for supplies and services in the EU Regulations for advertising contracts in the Official Journal of the European Union. Strategic Procurement Hub Officers may consider that an RfQ is not the best route to manage procurements below that threshold and may, for example, recommend a tender or use of a Public Buying Organisation framework where it is appropriate to do so. For procurements above EU Regulation thresholds as detailed in the Procurement Manual, a compliant procedure must be followed.	Deleted	Suggest deleted as this sort of detail should be in Procurement Manual Agreed by Legal
7.	Form of Contract and Tender Documentation		
	7.1 to 7.3 Remain as is		
8.	Receiving and Opening Tenders		
	8.1 All tenders must be received and opened in accordance with the council's "Tender Receiving and Opening Procedures" These can be found in the Procurement Manual.	8.1 All tenders must be received and opened in accordance with the council's " Tender Receiving and Opening Procedures " These can be found in the details set out in the Procurement Manual.	The majority of tenders will be received by the electronic portal
9.	Awarding Contracts and Audit Trails		
	9.1 to 9.3 remain as is		
	9.4 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 Associate Directors (and their nominees) in accordance with the Scheme of Delegation.	9.4 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 Associate Directors (and their nominees) in accordance with the Scheme of Delegation.	Directors Schemes of Delegation may now refer to the Delegated Authorities Matrix
	9.5 Subject to the authority to award contracts being granted as per paragraph 9.4 and 9.6 these contracts 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) 9.5.1 Solicitor to the Council for all contracts or, 9.5.2 Associate Director for Corporate Office, Programme Office and Procurement	9.5 Subject to the authority to award contracts being granted as per paragraph 9.4 and 9.6 these contracts 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) 9.5.1 Solicitor to the Council for all contracts or, 9.5.2 The Director of Finance and Procurement 9.5.2 Associate Director for Corporate Office, Programme Office and Procurement	Signing is currently carried out by SPH this is not reflected here so changed
	9.6 Cabinet approval must be obtained for any contract (or programme) which: 9.6.1 Involves a key decision under this Constitution (see Part 1 paragraph 9);	9.6 Cabinet approval must be obtained for any contract (or programme) which: 9.6.1 Involves a key decision under	Out of date reference removed and updated

		<p>this Constitution (see Part 1 paragraph 9); (see Part 1 paragraph 4.2.7)</p>	
	9.6.2 to 9.7 remain as is		
10	Contracts to be executed under Seal Whole section remains as is		
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, vendor accreditation and registration processes set out in the Procurement Manual.	11.1 Budget Managers, Commissioning Officers and those managing contracts shall observe the contract management, supplier management, vendor accreditation and registration processes set out in the Procurement Manual.	Vendor accreditation and registration more linked to SRM outside of manual?
12.	Extensions to Contracts or Framework Agreements		
	12.1 to 12.5 remain as is		
	12.6 Where the value of an extension exceeds £100,000.01 written approval must be obtained following consideration of a written report. The report should be addressed to the Head of Strategic Procurement and will be considered by the following officers as well as the Cabinet Member for Procurement: 12.6.1 Corporate Director 12.6.2 Head of Strategic Procurement (or nominee); 12.6.3 Head of Legal Services (or nominee); 12.6.4 Section 151 Officer.	Deleted	Where an extension is allowed for within the contract the total value including extensions should have already been approved, if the contract does not allow for an extension then for contracts over EU Threshold this becomes an Extraordinary Exemption
	12.7 remains as is		
	12.8 New Clause	12.8 Where an extension does is not allowed under the existing contract then the request to extend will need to follow the extraordinary exemption route.	To ensure we are clear that extensions outside of what the contract allows are non-compliant
13	Variations to Contracts		
	13.1, 13.3 and 13.4 remain as is		
	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. Nil value variations may be signed by the Senior Category Manager.	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. Nil value variations may be signed by the Senior Category Manager. Red wording Deleted	The Head of Finance and Procurements Scheme of Delegation covers these specifics and they do not need to be in the constitution
14	Exceptions to these rules		
	Whole section remains as is 14.1 to 14.3.2		
	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. This includes any recognised wider public sector agreements including, for example, Crown	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	This is a route to market that is acceptable under PCR 2015 so not required to be an exemption, will be identified in Sourcing Plan

	Commercial Services or successor contracts, etc.	legislation including, where relevant, the EU Procurement Directives. This includes any recognised wider public sector agreements including, for example, Crown Commercial Services or successor contracts, etc. Red section deleted	
Extraordinary Exemptions (this whole section is remodelled)			
	<p>14.4 Any Exemption which does not fulfil the strict criteria of rule 14.3 will be an “Extraordinary Exemption”.</p> <p>14.5 Only the Head of Strategic Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.</p> <p>Procedure for Exemptions and Extraordinary Exemptions</p> <p>14.6 Exemption requests made for one of the reasons under rule 14.3 must be submitted to a Business Partner in the Strategic Procurement Hub. Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.</p> <p>14.7 An Exemption will be either:</p> <p>14.7.1 approved by the Strategic Procurement Hub, registered and confirmed with the requesting Commissioning Officer;</p> <p>14.7.2 held pending a request for further information (where appropriate);</p> <p>14.7.3 rejected stating the reasons why; or</p> <p>14.7.4 referred to Cabinet for determination.</p> <p>14.8 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.</p> <p>14.9 An Extraordinary Exemption will be either:</p> <p>14.9.1 approved by two of the following three designated officers:</p> <p>14.9.1.1 The Head of Procurement;</p> <p>14.9.1.2 The Solicitor to the Council (or nominee); and</p> <p>14.9.1.3 The Section 151 Officer, and registered and confirmed with the requesting Commissioning Officer;</p> <p>14.9.2 held pending a request for further information (where appropriate) and then dealt with in accordance with rules 14.9.1, 14.9.3 or 14.9.4;</p> <p>14.9.3 rejected stating the reasons why; or</p> <p>14.9.4 referred to Cabinet for determination, and in the event of Cabinet approval, registered and confirmed in accordance with rule 14.9.1.</p>	<p>14.4 Any Exemption which does not fulfil the strict criteria of rule 14.3 will be an “Extraordinary Exemption” or is an extension not allowed under the existing contract.</p> <p>14.5 Only the Head of Strategic Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.</p> <p>14.6 Service 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.</p> <p>14.7 The procurement may proceed only after the notification of approval is received by the Commissioning Officer.</p> <p>14.8 All Exemption requests which would contravene English law or European law in force in England will be rejected.</p> <p>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.</p> <p>Procedure</p> <p>14.10 Exemption requests made for one of the reasons under rule 14.3 must be submitted to ProcurementUnit@wiltshire.gov.uk. It is recommended that the SPH are engaged to support the development of the exemption. a Business Partner in the Strategic Procurement Hub. Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.</p> <p>14.11 An Exemption will be either:</p> <p>14.11.1 approved by the Strategic Procurement Hub, registered and confirmed with the requesting Commissioning Officer;</p> <p>14.11.2 held pending a request for further information (where appropriate);</p>	<p>In rewriting this we are trying to make the process clearer, a flow chart has been added to the Procurement Manual to simplify.</p>

<p>14.10 Within 10 working days of an Extraordinary Exemption approval made under rule 16, details of the approval decision and the attendant business case will be:</p> <p>14.10.1 notified to the relevant Cabinet Member; and</p> <p>14.10.2 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.</p> <p>14.11 Service 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.</p> <p>14.12 The procurement may proceed only after the notification of approval is received by the Commissioning Officer.</p> <p>14.13 All Exemption requests which would contravene English law or European law in force in England will be rejected.</p> <p>14.14 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.</p>	<p>14.11.3 rejected stating the reasons why; or</p> <p>14.11.4 referred to Cabinet for determination.</p> <p>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.</p> <p>14.13 An Extraordinary Exemption will be either:</p> <p>14.13.1 approved by two of the following three designated officers:</p> <p>14.13.1.1 The Head of Procurement and one of either</p> <p>14.13.1.2 The Solicitor to the Council (or nominee); and</p> <p>14.13.1.3 The Section 151 Officer, and registered and confirmed with the requesting Commissioning Officer;</p> <p>14.13.2 held pending a request for further information (where appropriate) and then dealt with in accordance with rules 14.11.1, 14.11.3 or 14.11.4;</p> <p>14.13.3 rejected stating the reasons why; or</p> <p>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.</p> <p>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:</p> <p>14.14.1 notified to the relevant Cabinet Member; and</p> <p>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</p>	
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		appropriate for legal reasons.	
15	Partnerships and Grants Remains as is		