

## **Part Eight - Procedures**

### **Section Five – Contract Regulations**

#### **The Purpose and Scope of Contract Regulations**

##### **1 Legislation Governing these Contract Regulations**

- 1.01 The Royal Borough of Kensington and Chelsea (RBKC, the Council) is legally obliged to have Contract Regulations, which guide processes for ensuring transparency, best value (value for money and maximising public benefit), accountability, and suitable competition (including the removal of barriers to small and medium-sized enterprises) in the award of contracts using public funds. The Council is publishing these Contract Regulations in line with its obligations under the Local Government Act 1972. In setting out how the Council will contract; it is essential that the Council complies with the relevant Public Procurement Legislation (as detailed in 1.05). This document sets out how officers should do this. Should there be any inconsistencies between this document and the relevant Public Procurement Legislation the latter will take precedence.
- 1.02 These Contract Regulations must be read in conjunction with the Council's Procurement Code and Finance Procedure Rules, which together form the framework for ensuring compliance with the Constitution. While the Procurement Act comes into effect on 24 February 2025, contracts procured before this date, including call-offs from an existing framework, will continue to be governed by the relevant Public Procurement Legislation. Officers should seek advice from the Strategic Procurement team as to which legislation applies. The Contract Regulations should also take account of any policy (i.e. in relation to the Grenfell Inquiry) that the Council holds which sets out the prohibited use of certain suppliers (both as primary and sub-contractors), or of whose products it will not permit the use - this will be extended to any construction related products which are banned elsewhere in the world and ensuring suppliers are not using "deleterious materials".
- 1.03 These Contract Regulations form part of the Constitution of the Council.
- 1.04 It may be a disciplinary offence for officers not to follow the Contract Regulations. Officers have a duty to report breaches appropriately to the Director of Audit, Fraud, Risk and Insurance or the Chief Solicitor and Monitoring Officer.

- 1.05 The key legislation and regulations that apply are:
- (i) Public Contract Regulations 2015 ('PCR 2015');
  - (ii) Concession Contracts Regulations 2016 ('CCR 2016');
  - (iii) Procurement Act 2023 ('PA 2023'); and,
  - (iv) Health Care Services (Provider Selection Regime) Regulations 2024 ('PSR 2024').
- (the Public Procurement Legislation)

## **2 Scope of Contract Regulations**

- 2.01 These Contract Regulations apply to all contracts awarded by the Council for services, works or supplies, procured or commissioned activity regardless of the source of funding (including grant funding received from other organisations).
- 2.02 These Contract Regulations apply to any person, firm or body acting on the Council's behalf.
- 2.03 These Contract Regulations apply to concession contracts.
- 2.04 These Contract Regulations do not apply to –
- (i) Awarding of a grant by the Council. For the avoidance of doubt, where grant funding is received by the Council and is used to procure goods, works or services these Contract Regulations do apply. Further guidance on the governance of and approval of grants is set out in Procurement Code.
  - (ii) Contracts of employment.
  - (iii) Land Transactions (such as leases where interest solely relates to the land).
  - (iv) Contracts with agencies or suppliers for the provision of staff, where it is agreed by the Director of HR and OD that the use of vendor managed service is not appropriate.
  - (v) Public service contracts that are either excluded under Regulation 10 of the PCR 2015 or are an exempted contract under Schedule 2 of the PA 2023. Contracts entered into by school governing bodies are covered by separate regulations.

- (vi) Professional subscriptions such as professional fees for the registration of qualifications or professions.

### **3 Recording of Decisions**

- 3.01 Any decision relating to the planning for a procurement or commissioning activity, or award of a procured contract, or extension of or modification of an existing contract taken by the Council must be recorded and approved in line with Governance requirements detailed in the Procurement Code and Constitution.
- 3.02 A decision may be delegated to an officer, an Executive Decision or a Key Decision.
- 3.03 The procedures for Key Decisions and Executive Decisions as set out in Part 4 Section 1 of the Constitution must be followed.
- 3.04 Any decision taken must comply with the Governance Requirements as detailed in the Procurement Code and Constitution.

### **4 Roles and Responsibilities**

- 4.01 Executive Directors have responsibility for all contracts let by their Directorate with the Council's Section 151 Officer having oversight of all contracting activity across the Council.
- 4.02 Executive Directors are responsible for ensuring that the Council:
  - (i) Adheres to legal processes and Council Policy;
  - (ii) Follows good practice; and,
  - (iii) Takes immediate action in the event of a breach of the Contract Regulations within their area.
- 4.03 The Tri-Borough Director of Audit, Fraud, Risk and Insurance is responsible for ensuring that relevant processes and procedures are in place in relation to endorsement and approval of any procurement or commissioning related decision as defined in Tables 1, 2 and 3 and the Procurement Code and for reporting on compliance as required. waivers should be sought and approved in line with section 14 and Table 2 below.
- 4.04 Officers are required to:
  - (i) Follow the processes set out in the Contract Regulations and associated guidance as detailed in the Procurement Code as well as plan sufficient time and resource to procure the requirement;

- (ii) Declare and record relevant conflicts of interest and manage and review these throughout the life of contracts;
- (iii) Record and maintain the record of all contracts in the Council's Corporate Contracts Register;
- (iv) Maintain an effective audit trail for all procurement actions and decisions.
- (v) Publish all tenders through the Council's e-tendering system unless otherwise agreed with the Strategic Procurement team; and,
- (vi) Ensure the correct application of relevant regulations and Council policies, including but not limited to: Equality, Diversity and Inclusion, London Living Wage, Modern Slavery, Social Value, Cyber Security, National Procurement Policy Statement, The Council Plan, Data Protection and the Climate Emergency Action Plan 2022-27.

## **Requirement for all Procurements and Contracts**

### **5 Estimating Contract Values**

- 5.01 When planning for a procurement or before entering any contract an estimate of contract value must be calculated. Contracts must not be artificially split to avoid the application of the key Tendering Thresholds contained within Table One of these Regulations. The estimated value is to be based on the total amount payable to the supplier over the whole contract period, inclusive of any VAT payable. This contract value shall include any option(s) to extend the contract as set out in the procurement documents.
- 5.02 In the case of contracts without a fixed term the estimated value shall be the monthly value multiplied by 48 inclusive of any VAT payable.
- 5.03 The value of concession contracts shall be the estimated total turnover of the concession generated over the duration of the contract, inclusive of any VAT.
- 5.04 For clarity officers should note that the decision-making thresholds within RBKC are exclusive of VAT (as listed in the tables below), whilst the Public Procurement Thresholds (PPT) as set by Government are all inclusive of VAT.

### **6 Procurement and Contract Evaluation Criteria**

- 6.01 The Council has a statutory duty to achieve best value, and it is in the Council's best interests to spend public money in this way. Therefore, every contract procured by the Council must be for the purpose of achieving the

Council's statutory and / or approved objectives.

- 6.02 Contracts must be awarded on the basis of the most economically advantageous tender (MEAT) where procured under PCR2015 or the most advantageous tender (MAT) where procured under PA2023, quotation or proposal, as determined by such criteria as are relevant to the type of goods, works or services. This will generally cover the optimum combination of whole life costs and benefits, including such factors as quality, social value (as detailed in the Social Value policy), price, running costs and disposal costs.

## **7 Approval of Procurement Decisions**

- 7.01 Before any procurement commences (procurement strategy), which is equal to or over the £100,000 (exclusive of VAT) Executive Decision threshold, endorsement by Commercial Assurance Panel (CAP) or an equivalent internal governance board must be obtained and then approval given by the relevant decision-maker - see Table 1 below which is aligned to the provisions in Part 4 of the Constitution.
- 7.02 Before award of any contract equal to or over the £100,000 (exclusive of VAT) threshold, endorsement by Commercial Assurance Panel or an equivalent internal governance board and approval by the relevant Executive Director or Member must be obtained, in line with the thresholds set out in Table 1 below.
- 7.03 The Executive Director for Housing and Social Investment can approve both procurement strategy and contract award reports under the Project Union Framework Agreements for call-off contracts below £500,000 (exclusive of VAT), without prior endorsement by Commercial Assurance Panel or an equivalent governance board. In such circumstances a Delegated Authority Decision (DAD) is required for contracts below £100,000 (exclusive of VAT) and an Executive Decision report for contracts between £100,000 to £500,000 (exclusive of VAT).
- 7.04 Whilst a separate procurement strategy report would normally be expected for each planned procurement, planned procurements under the Project Union Frameworks (or other corporate frameworks) may be grouped together under one Forward Plan entry and a single Key Decision report where a schedule of planned procurements under the Frameworks is proposed for a defined period (e.g. 6 months). Such reports would be subject to endorsement by CAP or an equivalent governance board and then be approved by the relevant decision-maker – see Table 1 below. The detailed arrangements for presenting procurement strategy schedules in this way is set out in the Procurement Code.



**8 Contract Conditions (including grant expenditure)**

8.01 For all contracts less than £30,000 in value (inclusive of VAT):

- Purchase Order terms and conditions will be used unless it is deemed to be a High-Risk requirement and/or is going to be sourced via an agreed procurement route
- If the contract is sourced through a procurement route and/or is classed as a High-Risk contract, before starting the procurement process, officers must consult with and follow advice from Strategic Procurement and Legal Services and ensure that a written contract is put in place.

8.02 All contracts between £30,000 (inclusive of VAT) and £100,000 (exclusive of VAT) must be in writing except for contracts made in extreme urgency which must be subsequently confirmed in writing and must be signed by one officer authorised by the Financial Procedure Rules.

8.03 The Council's standard terms and conditions must be used for all contracts over the value of £30,000 (inclusive of VAT). This does not apply to call-off contracts made under external frameworks. Any variation or deviation from this must be agreed by the Chief Solicitor and Monitoring Officer. Further legal advice must be sought where necessary.

8.04 Contracts in excess of £100,000 (exclusive of VAT) must be forwarded to Legal Services for execution as a deed unless the Director of Law and Monitoring Officer agrees otherwise. The Director of Law and Monitoring Officer, or another lawyer authorised by her, may decide by what means and in what form (including but not limited to an electronic seal) the common seal is to be used. Contracts must be signed (and sealed) through the Council's electronic signing system which is managed by Legal Services.

8.05 Where the contract is externally funded any contingent liabilities and/ or grant conditions must be considered. Officers having oversight and responsibility for the management of any external grants must understand the risk, restrictions and grant conditions that apply and ensure that the grant conditions and council's governance processes are followed. Where grant conditions have been formally accepted based on certain terms and conditions then they take precedence over the Council's contract regulations (other than the need to adhere to procurement legislation). Reports to the relevant governance boards should document these facts and incorporate comments from legal services.

- 8.06 Where it is determined that the issuing of a grant is more appropriate than a contract, it is still important that transparency, correct process and due diligence are followed. Thought must also be given as to whether the grant constitutes a subsidy under the Subsidy Control regime.

## **9 Modification and Extension of Conditions of Contracts**

- 9.01 Contracts may be modified or extended, as permitted within the relevant Public Procurement legislation under which they were procured. Legal advice should be sought before any changes are agreed between the parties.
- 9.02 Prior to the modification of a contract, an appropriate report should be prepared (based upon the value of the modification) and subject to endorsement and approval as outlined in Table 3 below. The report must:
- (i) Set out the reasons for the modification and how value for money is demonstrated; and,
  - (ii) Confirm that there is a budget to cover the increased expenditure (where this is the case).
- 9.03 Officers must consult the Strategic Procurement Team and Legal Services where appropriate, on all contract modifications to ensure compliance with the relevant Public Procurement legislation under which the contract was procured. It should be noted that the extent of permitted modifications is limited by law and require specific conditions to be fulfilled.
- 9.04 Where a contract provides for an extension of the contract term to be exercised by the Council ('a Permitted Extension'), approval for such an extension must be given in line with the relevant directorate's scheme of delegation and based upon the value of the extension.
- 9.05 Where a modification is sought which is not a permitted extension, approval must be sought based on value of the modification in accordance with Table 3 below.
- 9.06 Each modification should be assessed on a case-by-case basis and have regard to the relevant Public Procurement legislation under which the contract was procured.
- 9.07 All modifications/extensions must be formally agreed with the provider in writing and appropriate record keeping should be maintained as outlined in the Procurement Code. If the value of any modifications/extensions exceeds £100,000 (exclusive of VAT) it must be signed (and sealed) through the Council's electronic signing system which is managed by Legal Services.



## **10 Contract Novation, Termination and Document Retention**

- 10.01 An Executive Director may agree the novation (transfer) of any contract subject to compliance with the relevant Public Procurement legislation under which the contract was procured and financial due diligence on the incoming contractor having been satisfactorily completed. This decision and change must be documented where the contract is stored and where relevant, the corporate contract register should be updated.
- 10.02 Legal and procurement advice should always be sought where necessary for any proposed novation.
- 10.03 Where a contract needs to be terminated prematurely or for poor performance, Strategic Procurement must be consulted. The final decision will reflect the implications such as but not limited to financial and legal matters arising from the termination. Strategic Procurement will be able to advise which regulatory notices will need publishing should the contract need to be terminated.
- 10.04 All contract records (including those both under and above threshold) must be retained for six years after contract expiry and any contracts under seal for twelve years from the expiry of the contract. Relevant insurance must be maintained by the provider for the duration of the contract.
- 10.05 Unsuccessful tenders must be electronically retained for three years from the point of entering into the contract with the successful tenderer.

## **PROCUREMENT PROCEDURES**

### **11 Tendering Requirements**

- 11.01 Officers shall procure all contracts in accordance with the Tendering Requirements and Approval Requirements as set out in Table 1 - Procurement Thresholds. Strategic Procurement should be consulted on all procurements with a value of £25,000 (excl. VAT) and above.
- 11.02 Approval and Endorsement through the Governance process is outlined in the Governance requirements detailed in the Procurement Code.

### **12 Procurement Approach Hierarchy**

- 12.01 Where a procurement is required, officers should consider the following options before undertaking a tender:
- (i) Use of an existing Corporate Contracts;
  - (ii) Use of an agreed framework already in use within the Council;

- (iii) Use of an externally procured framework.

### **13 Shared Services**

- 13.01 Where the requirement is part of a Bi-Borough or other shared service, approvals should be sought in line with Contract Regulations where:
- (i) the value contributed by RBKC is equal to or more than £100,000 (exclusive of VAT); or
  - (ii) the level of interest is determined as significant or material by the relevant Executive Director.
- 13.02 Westminster Council's Procurement Team typically lead on contracts procured for the bi-borough services, where the Commercial Governance Review Board (CGRB) performs a parallel role to the Commercial Assurance Panel. CGRB includes a representative from the Council's Strategic Procurement Team where any bi-borough contracts or sovereign contracts for both Councils are being procured.

### **14 Waiver Limits (exclusive of VAT) - refer to Table 2 below**

- 14.01 At all times the relevant Public Procurement Legislation must be complied with and cannot be waived by the Council. Waivers relating to new contracts with a total value between £5,000 (exclusive of VAT) and £100,000 (exclusive of VAT) need to follow the process as set out in Table 2.
- 14.02 Waivers relating to new contracts with a total value over £100,000 (exclusive of VAT), up to a maximum of £500,000 (exclusive of VAT) need to follow the process as set out in Table 2.
- 14.03 If the waiver is requested by the Executive Director of Resources another Executive Director must approve the waiver.
- 14.04 For waivers relating to new contracts with a total value that exceeds £500,000 (exclusive of VAT) additional agreement must be sought.
- 14.05 If it is between £500,000 (exclusive of VAT) and £1.5million (exclusive of VAT) the relevant Lead Member must be consulted before the Executive Director can agree via an Executive Decision.
- 14.06 If it is over £1.5 million (exclusive of VAT) then the Lead Member or the Leadership Team must agree via a Key Decision.

### **15 Grounds for Waivers**

- 15.01 At all times the relevant Public Procurement Legislation must be complied with and cannot be waived by the Council.

- 15.02 No waiver to these Contract Regulations may be permitted unless the authoriser (in line with section 14 above) is satisfied that:
- (i) there are exceptional circumstances that have led to a need to depart from the Contract Regulations and evidence has been provided which demonstrates the waiver is necessary to achieve the Council's objectives; and
  - (ii) the nature of the market for the works to be carried out, or the services or supplies to be provided, has been investigated and it has been demonstrated that due to a lack of competition in the market, a departure from the requirements of Contract Regulations is justifiable; or
  - (iii) the contract is for works, services or supplies that are required in circumstances of an emergency and as such could not reasonably have been foreseen (such as safety first).
- 15.03 Due regard must be given to the grounds for direct award as set out in the relevant Public Procurement legislation under which the contract was awarded.

## **16 Standards of Conduct**

- 16.01 All Council Officers must comply with the Council's Officer's Code of Conduct, Conflicts of Interest Policy and Confidentiality Policy.

## **17 Registering Conflicts of Interest**

- 17.01 All Council officers and any parties acting on behalf of the Council involved in tenders and contract management must take all reasonable steps to identify and mitigate any direct and indirect conflicts of interest or potential and perceived conflicts of interest. Those must be declared in writing to the project or procurement lead. Records must be retained on file and continue to be assessed throughout the life of the contract and so this must be overseen and managed by the contract manager throughout.
- 17.02 The Council will require interests, employment or relationships so declared to be entered in a register of interests of staff and for declarations of interest to be made by those designing the invitation to tender at the commencement of the tender exercise and the members of the evaluation panel prior to the evaluation process commencing.

## **18 Contract Management**

18.01 The effective management of contracts is key to ensure that the Council's contracts continue to deliver best value. The Public Procurement Legislation is changing, come February 2025, and one of the key changes is that the new regulations relate to whole contract life and not just the way the procurement process is conducted. Under the new legislation there will be requirements on officers to publish notices relating to:

- How strategic contracts are performing (annual publication of Key Performance Indicators) alongside a redacted copy of the contract;
- When contracts are terminated or modified;
- Future procurement pipeline plans which set out which strategic contracts will be procured over the next 18-month period; and,
- The prompt payment of valid invoices from suppliers.

18.02 To assist the Council in the monitoring of the effectiveness of contract management and to also promote best practice, contracts will be reviewed (in terms of performance and management) through a sub-group of the Commercial Assurance Panel (via Gateway 3 reports). Contract Managers responsible for the Council's most strategic contracts (namely platinum and gold) will be asked to report to the sub-group, and present on how the contract is being effectively managed and how it is performing in line with the specification and the tender submission. These reports will also afford the opportunity to discuss and review how the recommendations around the banning of particular suppliers, and materials in construction/works contracts are being implemented.

**Table 1 Procurement Thresholds**

<b>Level 1 Quotes: Anticipated Spend up to £5,000 (Self-service) - exclusive of VAT</b>
<p>1 quotation – Approved by budget holder or delegated officer on the assurance that value for money has been achieved. Where possible a locally based supplier should be utilised. Where a Purchasing Card (P-Card) is available then low value purchases should be made through this means with the appropriate quotation held on record (subject to the cardholder's authorised limits).</p> <p>Please note that recurring purchases from a single supplier that means expenditure is above £5,000 should be considering the aggregate value of expenditure and putting in place a more formal contract.</p> <p>A copy of the quote should be attached to the requisition in the Council's ERP system.</p>

**Level 2 Quotes: Anticipated Spend – £5,000 up to £25,000 (exclusive of VAT)**

- 2 Minimum of 3 quotations requested (self-service), including one small and medium-sized enterprise (SME) or local supplier contacted where possible; or
- 3 Direct call-off (where a compliant option) or mini competition via an established framework can be considered.

**Approval to Award**

Approval by Head of Service, or budget holder or delegated officer (in line with directorate scheme of delegation).

The Contract must be recorded on the Council's Corporate Contract Register.

**Level 3: Quotes (incorporating Price / Quality criteria where required)**

**£25k (exclusive of VAT) up to £100k (exclusive of VAT)**

- Minimum of 3 quotations requested (self-service) via the e-Sourcing system or via direct request for quotes or advertised on the Central Digital Platform (CDP). To include one SME or local supplier contacted where possible. Please note that quotes/tender opportunities for contracts below £100k may be reserved for locally based suppliers where there is a proven local market.
- Call-off from an established framework (direct call-off or mini-competition depending on the terms of the framework)

Where quotes are requested via the Government Central Digital Platform (CDP) please contact Strategic Procurement to discuss which mandatory notices need to be published. Where quotes are not requested through the CDP then quotes received (evidence to support a minimum of three are requested) need to be attached to the requisition in the Council's ERP system.

Self Service via the e-Sourcing system or via direct request for quotes from suppliers or

Advertised on the Central Digital Platform (CDP) or

Call-off from an established framework (direct call-off or mini-competition depending on the terms of the framework)

**Approval to Award**

Service Director, or delegated officer sign off following consultation with Senior Commercial Manager in Strategic Procurement.

Where advertised on the Central Digital Platform, a Contract Details Notice needs to be published on the Central Digital Platform. Where award is through an established framework, publication of a contract notice is not required.

The contract must be recorded on the Council's Corporate Contract Register.

**Level 4: TENDER (incorporating Price / Quality / Social Value criteria in line with Procurement Code)**

Public Procurement Thresholds (PPT) means the public covered procurement thresholds (as amended every two years). [Procurement Policy Note 11/23 – New Thresholds](#)

The Contract must be retained on the Council's Corporate Contract Register.

As part of the procurement strategy report, consideration should be given to reserve below threshold procurement opportunities for those suppliers that are deemed to be 'local' and where we can evidence a strong local supplier market and therefore robust competition.

**Services & Supplies Contracts**

**£100k exclusive of VAT (Key Decision) – up to PPT (inclusive of VAT)**

Commercial Assurance Panel or equivalent endorsement and Executive Director approval for both the:

- a) Executive Decision - Procurement Strategy
- b) Delegated Authority Decision – Contract Award

This requires a single 'Forward Plan' entry for both reports, which will be published on Council's [list of forthcoming decisions](#)

Advertised on Central Digital Platform or call-off from established framework- (direct call-off or mini-competition depending on the terms of the framework)

**PPT (inclusive of VAT) – up to £500k (exclusive of VAT)**

Commercial Assurance Panel (CAP) or equivalent endorsement and Executive Director approval following consultation with the Lead Member for both the:

- a) Executive Decision - Procurement Strategy
- b) Delegated Authority Decision – Contract Award

This requires a single 'Forward Plan' entry for both reports, which will be published on Council's [list of forthcoming decisions](#)

Procedures relating to a 'Covered Procurement' under the Procurement Act must adhere to the relevant notices published on the Central Digital Platform.

**£500k (exclusive of VAT) – up to £1.5m (exclusive of VAT)**

Commercial Assurance Panel (CAP) or equivalent governance board endorsement and Executive Director approval following consultation with the Lead Member for both the:

- a) Executive Decision – Procurement Strategy

b) Delegated Authority Decision – Contract Award

This requires a single 'Forward Plan' entry for both reports, which will be published on Council's [list of forthcoming decisions](#)

Procedures relating to a 'Covered Procurement' under the Procurement Act must adhere to the relevant notices published on the Central Digital Platform.

**£1.5m (exclusive of VAT) and above**

As above process (for **£500k – up to £1.5m**) with the Key Decision Procurement Strategy requiring endorsement by:

- Commercial Assurance Panel or equivalent governance board,
- Executive Director, and
- Approval by the Lead Member or Leadership Team

The contract award may be by a Key Decision or delegation to the Executive Director (Delegated Authority Decision). If it is a Key Decision, please follow the above process.

If authority to award has been delegated, the Delegated Authority Decision requires

- Commercial Assurance Panel or equivalent governance board endorsement,
- Executive Director approval

This requires a single 'Forward Plan' entry for both reports, which will be published on Council's [list of forthcoming decisions](#)

**Works and Concessions Contracts**

**£100k exclusive of VAT (Key Decision) – up to £500k (exclusive of VAT)**

Executive Director approval for both the:

- a) Executive Decision - Procurement Strategy
- b) Delegated Authority Decision – Contract Award

This requires a single 'Forward Plan' entry for both reports, which will be published on Council's [list of forthcoming decisions](#)

Advertised on Central Digital Platform or call-off from established framework (direct call-off or mini-competition depending on the terms of the framework)

**£500k (exclusive of VAT) – up to £1.5m (exclusive of VAT)**

Commercial Assurance Panel (CAP) or equivalent governance board endorsement, and Executive Director approval following consultation with the Lead Member for both the:

- a) Executive Decision - Procurement Strategy



b) Delegated Authority Decision report – Contract Award

Requires a Forward Plan entry and both reports require publication on the Council's [Decision Register](#)

Advertised on Central Digital Platform or call-off from established framework (mini-competition)

**£1.5m (exclusive of VAT) – up to PPT (inclusive of VAT)**

As above process (for **£500k – up to £1.5m**) with the Key Decision Procurement Strategy requiring endorsement by;

- Commercial Assurance Panel or equivalent governance board,
- Executive Director, and
- Approval by the Lead Member or Leadership Team

The contract award may be by a Key Decision or delegation to the Executive Director (Delegated Authority Decision). If it is a Key Decision, please follow the above process.

If authority to award has been delegated, the Delegated Authority Decision requires

- Commercial Assurance Panel or equivalent governance board endorsement,
- Executive Director approval

This requires a single 'Forward Plan' entry for both reports, which will be published on Council's [list of forthcoming decisions](#)

**PPT (inclusive of VAT) and above**

As above process (for **£1.5m – up to PPT**) plus:

Procedures relating to a 'Covered Procurement' under the Procurement Act must adhere to the relevant notices published on the Central Digital Platform

**Light Touch Regime**

**£100k exclusive of VAT (Key Decision) – up to £500k (exclusive of VAT)**

Commercial Assurance Panel (CAP) or equivalent governance board endorsement and Executive Director approval for both the:

- a) Executive Decision - Procurement Strategy

b) Delegated Authority Decision – Contract Award

This requires a single 'Forward Plan' entry for both reports, which will be published on Council's [list of forthcoming decisions](#)

Advertised on Central Digital Platform or call-off from established framework (direct call-off or mini-competition depending on the terms of the framework)

**£500k (exclusive of VAT) – up to PPT (inclusive of VAT)**

Commercial Assurance Panel (CAP) or equivalent governance board endorsement and Executive Director approval following consultation with the Lead Member for both the:

- a) Executive Decision - Procurement Strategy
- b) Delegated Authority Decision – Contract Award

This requires a single 'Forward Plan' entry for both reports, which will be published on Council's [list of forthcoming decisions](#)

Advertised on Central Digital Platform or call-off from established framework (direct call-off or mini-competition depending on the terms of the framework)

**PPT (inclusive of VAT) – up to £1.5m (exclusive of VAT)**

As above process (for **£500k – up to PPT**) plus:

Procedures relating to a 'Covered Procurement' under the Procurement Act must adhere with the relevant notices published on the Central Digital Platform.

Advertised on Central Digital Platform or call-off from established framework (mini-competition)

**£1.5m (exclusive of VAT) and above**

As above process (for **£500k – up to £1.5m**) with the Key Decision Procurement Strategy requiring endorsement by;

- Commercial Assurance Panel or equivalent governance board,
- Executive Director, and
- Approval by the Lead Member or Leadership Team

The contract award may be by a Key Decision or delegation to the Executive Director (Delegated Authority Decision). If it is a Key Decision, please follow the above process.

If authority to award has been delegated, the Delegated Authority Decision requires

- Commercial Assurance Panel or equivalent body endorsement,
- Executive Director approval

This requires a single 'Forward Plan' entry for both reports, which will be published

on Council's [list of forthcoming decisions](#)

Advertised on Central Digital Platform or call-off from established framework (mini-competition)

## **Waiver Requirements**

### **Direct Awards**

- Direct Awards are permitted where they:
  - Meet the Grounds set out under the Procurement Act 2023 ([Schedule 5](#)); or
  - In 'Special Cases' (defined by the Procurement Act) including to 'protect human, animal or plant life or health, or protect public order or safety'; or
  - Where the Authority has not received any suitable tenders
- Direct Awards (for contracts above £100k (exclusive of VAT)) must be approved and endorsed following the process detailed Table 1 – Level 4.
- A Mandatory Transparency Notice must be published on the Central Digital Platform.
- For health-related contracts then the requirements as set out in the Provider Selection Regime must be followed

Direct Awards must follow the Council waiver process below based on the individual value of that particular Direct Award.

**Table 2 Waiver Requirements**

<b>Waivers (note all values below are exclusive of VAT)</b>			
<b>Up to £100k</b>	<b>£100k – up to £500k</b>	<b>£500k – up to £1.5m</b>	<b>£1.5m and above</b>
<p>Request sent to Strategic Procurement and Legal Services for consideration and endorsement.</p> <p>May be granted by the relevant Director, subject to endorsement by the Tri-Borough Director of Audit, Fraud, Risk and Insurance, or Head of Strategic Procurement</p>	<p>Commercial Assurance Panel (CAP) or equivalent governance board endorsement and Executive Director approval for the combined:</p> <p>Executive Decision Procurement Strategy &amp; Contract Award</p> <p>Subject to the approval of the Executive Director of Resources, with endorsement by the Tri-Borough Director of Audit, Fraud, Risk and Insurance</p> <p>Requires a Forward Plan entry and both reports require publication on the Council's <a href="#">Decision Register</a></p>	<p>Commercial Assurance Panel (CAP) or equivalent governance board endorsement and Executive Director approval following consultation with the Lead Member for the combined:</p> <p>Executive Decision Procurement Strategy &amp; Contract Award</p> <p>Requires a Forward Plan entry and both reports require publication on the Council's <a href="#">Decision Register</a></p>	<p>As process for <b>£500k – up to £1.5m</b> with the combined Key Decision Procurement Strategy and Award or Delegated Authority Decision Contract Award requiring endorsement by;</p> <p>04 CAP or equivalent governance board,</p> <p>05 Executive Director, and</p> <p>06 Approved by Lead Member or Leadership Team (procurement strategy only)</p> <p>07 Following consultation with the Lead Member (Delegated Authority Decision only).</p> <p>Requires a Forward Plan entry and both reports require publication on the Council's</p>

			<a href="#">Decision Register</a>
Direct Awards greater than £100k must be signed and sealed through the Council's electronic signing system managed by Legal Services.			

## Contract Modifications

Contract modifications are permitted where they meet certain criteria as set out within the relevant public procurement legislation (being the procurement legislation under which the contract was procured).

Officers must contact Strategic Procurement and Legal Services to seek the appropriate advice around what is permissible and what mandatory notices also need to be published.

Please note that the tables below relate to the 1<sup>st</sup> modification of an existing contract. If there have already been modifications to an existing contract, then please contact legal services and strategic procurement for advice and guidance as the value of previous modifications may need to be taken into account and aggregated.

If the modification relates to a Permitted Extension, then approval should be via the directorate's scheme of delegation.

The current **public procurement thresholds** are as follows (inclusive of VAT):

- Works - £5,372,609
- Light Touch - £663,540 (social/educational/healthcare)
- Services/Goods - £214,904

Approval for modifications should be sought in accordance with Table 3:

**Table 3 Contact Modifications**

<b>Contact Modifications</b>		
Where the value of modification is above £1.5m		<p>Where the value of the modification is more than 10% of the original value:</p> <ul style="list-style-type: none"> <li>• Seek advice from Strategic Procurement and Legal Services; and</li> <li>• Request for approval to be endorsed by Commercial Assurance Panel (or equivalent governance board)</li> </ul> <p>For all contracts:</p> <ul style="list-style-type: none"> <li>• Approval by Lead Member or Leadership Team</li> </ul>
Where value of modification is below £1.5m AND	Value of original contract plus modification is under £1.5m	<p>Where the value of the modification is more than 10% of the original value:</p> <ul style="list-style-type: none"> <li>• Seek advice from Strategic Procurement and Legal Services; and</li> <li>• Request for approval to be endorsed by Commercial Assurance Panel (or equivalent governance board)</li> </ul> <p>For all contracts:</p> <ul style="list-style-type: none"> <li>• Approval by ED or as delegated in line with relevant directorate's scheme of delegation</li> </ul>
	Value of original contract was below £1.5m but value of original contract plus modification is over £1.5m	<p>Where the value of the modification is more than 10% of the original value:</p> <ul style="list-style-type: none"> <li>• Seek advice from Strategic Procurement and Legal Services; and</li> <li>• Request for approval to be endorsed by Commercial Assurance Panel (or equivalent governance board)</li> </ul> <p>For all contracts:</p> <ul style="list-style-type: none"> <li>• Approval by Lead Member or Leadership Team</li> </ul>
	Value of original	Where the value of the modification is more

*Constitution - Part Eight – Procedures - Section Five – Contract Regulations*

	contract was above £1.5m	<p>than 10% of the original value:</p> <ul style="list-style-type: none"> <li>• Seek advice from Strategic Procurement and Legal Services; and</li> <li>• Request for approval to be endorsed by Commercial Assurance Panel (or equivalent governance board)</li> </ul> <p>For all contracts: Approval by ED or as delegated in line with relevant directorate's scheme of delegation</p>
Value of original contract below relevant Public Procurement Threshold but the proposed modification will bring the total value of the contract above such threshold (a convertible contract under the PA23)		<ul style="list-style-type: none"> <li>• Seek advice from Strategic Procurement and Legal Services; and</li> <li>• Request for approval to be endorsed by Commercial Assurance Panel (or equivalent governance board)</li> <li>• Approval to be sought in line with the table above based on the value of both the original contract and the modification.</li> </ul>