



**Sandwell**  
Metropolitan Borough Council

**PROCUREMENT**  
**and**  
**CONTRACT**  
**PROCEDURE RULES**  
**2018-2019**

*Reviewed: Spring 2018*

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## **1. Introduction**

- 1.1. As a public body using public resources, Sandwell Council must set and follow the highest possible standards of financial control and stewardship. The council's Procurement and Contract Procedure Rules give elected members and employees procedures to follow which ensure the council's expected standards are met in terms of managing public money and assets.
- 1.2. These rules ensure that value for money is obtained, statutory requirements are met in terms of United Kingdom (UK) and European Union (EU) procurement law, and that the council's affairs are managed prudently and in an appropriately controlled manner. These rules will be subject to any relevant EU directives at the time being in force in the UK.
- 1.3. The council must ensure that all procurement activity is transparent and proportionate, and that all bidders are treated equally and without discrimination throughout its processes.
- 1.4. Non-compliance with these rules could result in a legal challenge to the council. Therefore, any incidence of non-compliance with these rules could constitute a disciplinary offence.
- 1.5. These rules should be read in conjunction with the following:
  - Financial Regulations
  - Scheme of Delegations
  - Member Code of Conduct
  - Officer Code of Conduct
  - Third Sector Grant Funding Guidance and Procedures
  - Social Value Act Policy and Guidance
- 1.6. All procurement activity and sales of council assets, excluding land and buildings, shall comply with these rules unless an exemption is approved under Rule 15. This includes where a partner or consultant has been instructed to invite tenders on behalf of the council.
- 1.7. Advice on any matter within these rules can be obtained from the Procurement Services Manager or the Legal Services Manager.
- 1.8. A glossary of terms is included at the end of this document.

## **2. Scope**

- 2.1. These rules apply to all contracts with outside organisations or people, including agreements with or on behalf of other public sector organisations and partner agencies, where there is an agreement to supply materials, goods, services or works, in return for money or payments in kind, whether that agreement is formal or informal. This includes:
  - a) purchasing of all materials, goods, services or works; and
  - b) instruction of outside experts or consultants under contracts for services.
- 2.2. Where the council enters into a contract as an agent for another authority the agency agreement should specify which rules apply. Where other public bodies are acting as

the lead or contracting body for a procurement that the council will be participating in, then their own Contract Procedure Rules or Contract Standing Orders will apply.

2.3. However, these rules do not apply to the following areas:

- a) Expenditure funded by EU grants – European Procurement Rules must be complied with. Where use of the council's centrally arranged contracts is made then compliance with the European Procurement Rules will be achieved.
- b) Grants that are made by the council to external organisations that do not constitute a contract for services – this expenditure is covered by the Third Sector Grant Funding Guidance and Procedures.
- c) Locally maintained school expenditure operating under the scheme of the delegated budget.
- d) Treasury management transactions, including leasing, exercising borrowing consents, cash management, investments and other transactions in accordance with the Treasury Management Policy.
- e) Disposal, including sale, of council owned land and buildings – this is dealt with under the Sale of Land and Buildings Appendix to the Financial Regulations.

2.4. It should be noted that depending upon the terms and conditions, a Development Agreement entered in to by the council may need to follow the Public Procurement Regulations. Prior advice must be sought from the Monitoring Officer/Chief Legal Officer before steps are taken to negotiate any Development Agreement.

2.5. Advice should be sought from the Procurement Services Manager or Legal Services Manager as to whether proposed activity is covered by the scope of these rules.

### **3. Roles and Responsibilities**

3.1. All officers of the council must adhere to these Rules. The Rules also apply where consultants or third parties are employed to act on behalf of the council.

3.2. Before commencing any procurement activity, officers must ensure that they have appropriate authority and delegated approval to act. It is the responsibility of individual officers leading on a contract/procurement exercise to ensure appropriate authority to act has been obtained and that any necessary budget is available. The officer should consult with Legal Services at the earliest opportunity regarding the proposed form of authority to ensure it is sufficient, but the ultimate responsibility for obtaining appropriate authority rests with the officer. Failure to obtain appropriate authority will cause delay to procurement activity and/or the award of a contract.

3.3. Roles and responsibilities of members and officers across the council are set out below. Definitions of officers are as in the Scheme of Delegations.

#### Members

- a) Set the strategic direction of services, which informs the requirements from the market.
- b) Are not involved in the evaluation of quotations or tenders.
- c) Cabinet awards all contracts with total value above the key decision threshold (£250,000).

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- d) Cabinet approves exemptions from any part of these rules for contracts with a total value above the key decision threshold (£250,000).

### Cabinet Member for Core Council Services

- a) Sets the procurement policy framework across the council.

### Chief Executive

- a) Approves any exemption to these rules for contracts up to a total value of £250,000 which relate to service areas that are the responsibility of the Chief Finance Officer.
- b) Endorses any exemption to these rules for contracts with a total value above £250,000 which relate to service areas that are the responsibility of the Chief Finance Officer.

### Chief Finance Officer

- a) Act as a compulsory consultee on procurement activity above £100,000 in value to ensure appropriate resources are in place and compliant processes have been followed.
- b) Review all monetary limits shown in these Rules annually and report any resulting amendments to the relevant Cabinet Member.
- c) Act as escalation point for any appeals or reviews made by bidders with regard to these Rules.
- d) Approve any exemptions to these Rules for contracts up to a total value of £250,000 relating to services outside of their area of responsibility
- e) Endorse any exemption to these Rules for contracts above a total value of £250,000 relating to services outside of their area of responsibility.

### Chief Officer

- a) Ensure compliance with these Rules across their service areas.
- b) Ensure all strategic procurement projects are properly resourced, and have financial, procurement, legal and (where necessary) HR input from the start.
- c) Ensure delegated authority is obtained as required.
- d) Ensure appropriate cabinet members are briefed on appropriate levels of procurement activity within their portfolios.
- e) Ensure officers are sufficiently trained, experienced and knowledgeable about these Rules and commissioning/procurement activity.
- f) Ensure resources are available to allow compliance with these Rules.
- g) Ensure that the Service Manager – Procurement is notified of all planned procurement activities to include in the Corporate Procurement Plan
- h) Approve the award of contracts relating to their service areas up to a total value of £100,000.
- i) In conjunction with the Chief Finance Officer, approves the award of contracts relating to their services up to a total value of £250,000.
- j) Endorses any exemption to these Rules for contracts relating to their service areas

Monitoring Officer / Chief Legal Officer

- a) Authorise the commissioning/procurement of legal services for all aspects of council business.
- b) Act as a compulsory consultee on procurement activity above £100,000 in value to protect the council's interests and ensure onerous terms and conditions are not entered into.
- c) Act as a compulsory consultee on any Development Agreement.
- d) Enter into contracts on behalf of the authority with delegated authority.
- e) Endorses any exemptions to these rules for expenditure above £100,000 in value

Director of Regeneration & Growth

- a) Authorise the commissioning/procurement of advice relating to the valuation, sale or acquisition of land or property.

Service Manager – Procurement

- a) Review these rules on an annual basis to ensure they are fit for purpose and meet all relevant legislative and policy requirements
- b) Provide advice and guidance on all procurement activity across the council
- c) Endorses any exemptions to these rules, other than those for Minimal Quotes/Tenders.
- d) Ensures that all procurement activity above £50,000 is compliant with these Rules.

Service Manager – ICT

- a) Authorise the commissioning/procurement of ICT systems and support across the council.

All Officers of the council

- a) Comply with these rules, Financial Regulations, Employee Code of Conduct and with all relevant UK and EU legislation.
- b) Make use of council-wide contracts and internal suppliers where available.
- c) Ensure they and any team members they are responsible for are suitably trained to carry out procurement activities.
- d) Ensure that appropriate resources and authorities are in place before commencing procurement activity.
- e) Undertake procurement activity for all requirements below £50,000.
- f) Consult with Legal Services in relation to obtaining authority to award a contract at the earliest opportunity, including obtaining advice from the lawyer who is assigned to the matter on the form and content of the authority (i.e. either in the form of a Cabinet report or delegated authority).
- g) Ensure procurement procedures are commenced as early as possible to ensure compliance with these rules and sufficient pre-market engagement to develop requirements and attract suitable suppliers.

- h) Ensure any agents, consultants and contractual partners acting on their behalf comply with these rules. Legal advice must be obtained by officers where any conflict of interest has potential to impact on a contractual relationship.
- i) Maintain an audit trail of all authorities given and decisions made to show how these rules have been complied with.
- j) Involve Procurement, Finance, Legal Services and (where necessary) HR at the earliest opportunity, and at all stages of a project.
- k) Store all documents electronically and in compliance with any corporate or service specific document management and retention policies.
- l) Ensure that all opportunities are advertised as per procedures set out in this document to achieve value for money.
- m) Monitor contracts for which they are responsible, and manage issues arising to ensure optimum contract performance.

Third Parties commissioned to act on behalf of the council

- a) Must comply with these rules
- b) Must not carry out any procurement activity without prior consultation with the Procurement Services Manager
- c) Ensure any conflict of interest is avoided in the first instance, or declared to the appropriate Chief Officer/Service Manager as soon as possible. Legal advice must be obtained by officers where any conflict has potential to impact on a contractual relationship.

**4. Conduct of Officers, Members and Suppliers**

- 4.1. The council will adopt the necessary processes and procedures to be able to demonstrate a fair and transparent procurement process, providing auditable justification for all decisions made.
- 4.2. Where bidders attempt to influence the outcome of a procurement process other than through proper participation (e.g. by canvassing members), they will be excluded from the procurement process to which such canvassing or approaches relate.
- 4.3. Every elected member and officer of the council shall declare any personal or prejudicial interest in any contract in accordance with the council's Code of Conduct for Councillors and Code of Conduct for Officers. Such interests should be recorded in the Members' or Employee's Registers of Interest.
- 4.4. Any potential conflict of interest in relation to a procurement e.g. a relationship with a bidder or a company operating in the market, or a personal interest in the matter, must be identified and recorded at the earliest opportunity to ensure equal treatment of bidders and a fair and transparent procurement process. Advice should be sought from the Procurement Services Manager and such action should be taken to remove the conflict e.g. employee not taking part in the evaluation of the bid.
- 4.5. No elected member or officer of the council shall in a personal capacity enter into any contract on behalf of the council.

**5. Use of Internal Providers and Council-Wide Contracts**

- 5.1. Where an internal service can provide the goods or service, this must be used in the first instance.
- 5.2. Where the council has corporately procured a contract or framework agreement, these contracts should be used as the council will be obtaining value for money by procuring corporately. The requirements of these rules will have been addressed, value for money ensured, and standard terms and conditions used.
- 5.3. A list of all corporately procured contracts will be maintained by the Corporate Procurement Service and made available on the council's intranet.
- 5.4. As per the Financial Regulations, purchase orders must be raised via the Oracle Financials system (SBS). Where possible, council-wide contracts should be available through catalogues via the Oracle Financials system (SBS).
- 5.5. Subject to any pre-existing exclusivity arrangements which oblige the council to use a pre-existing contract, where the appropriate Chief Officer (in consultation with the Procurement Services Manager) considers that there are specific advantages to be obtained by negotiating a separate contract for corporately procured goods or services, then written approval must be sought from the Procurement Services Manager and retained on the appropriate contract file.
- 5.6. Failure to use existing corporately procured contracts where available can be viewed as a disciplinary offence, unless approval is given as per paragraph 5.5 above.
- 5.7. Where there are no internal suppliers or existing contracts in place, officers must follow the procedures set out in this document to identify external suppliers.

**6. Contracts Relating to Assets**

- 6.1. These Rules do not apply to the sale or disposal of council owned land or buildings. Transactions of this nature must adhere to the Sale of Land and Buildings Protocol within the Financial Regulations.
- 6.2. Where the sale of land also specifies works or services to be carried out by the developer then advice should be sought from Legal Services as the land sale could constitute a public works contract or public services contract which would be subject to these Rules as well as the Sale of Land and Buildings Protocol.
- 6.3. These Rules do apply to the acquisitions, leases, licenses, agreements and other matters relating to land or property, except where they have been expressly varied. Any arrangements must adhere to the Financial Regulations.

**7. Procurement Cards**

- 7.1. Procurement cards should be used in the following circumstances:
  - a) For all requirements below £250 where there is no contract in place;
  - b) Where purchase orders cannot be used;
  - c) Where there is a requirement to respond to service users' requirements in an emergency or out of normal working hours;
  - d) In place of petty cash as far as possible; or
  - e) Where online procurement routes offer the only or the most value for money option.



- 7.2. Procurement cards will be issued subject to the Procurement Card **Policy (Appendix X to these rules)**. Before a procurement card will be granted to a card holder, Internal Audit must confirm that there are no significant issues that would identify a high risk of inappropriate use by that individual or that service area.
- 7.3. Procurement cards will not be used where an internal provider or a corporately procured contract exists, unless this is in the form of an embedded/virtual procurement card.
- 7.4. Use of procurement cards must be in accordance with the Procurement Card Policy and these Rules, including the use of internal suppliers and corporate contracts (Rule 5) and advertising thresholds (Rule 8). Procurement cards can be used for higher value purchases in emergency situations only.
- 7.5. Failure to adhere to these procedures will constitute a disciplinary offence.
- 7.6. Where a procurement card is used, it is the responsibility of the card holder and their budget manager to ensure that value for money is obtained at all times and spend is in line with business need.

## **8. Values and Advertising Thresholds**

- 8.1. Values (or genuine pre-estimated values) used in the operation of these Rules will normally be the total value of the contract over the whole of the contract term including any extension. The value will be net of VAT.
- 8.2. Where a series of purchases is made for the same or similar purposes, then the value will be the aggregated value of purchases made within any single contract or period of 12 consecutive months. Where a contract is required over a multiple year period, then the total value of that contract must be considered.
- 8.3. Orders or requirements should not be artificially divided to make two or more orders of a lower value to avoid the requirement to obtain quotations or tenders.
- 8.4. Advice should be sought from the Service Manager – Procurement on calculating the estimated value. It may be appropriate to obtain an independently verified estimated before commencing the procurement activity. If an external expert is required, the appointment of that expert must be in line with these rules.
- 8.5. The value (or genuine pre-estimated value) will determine the procurement method used, as set out in Table 1 below. The value of the contract will depend upon the specification of the goods, services or works required. Details of how estimated figures have been calculated must be kept on the relevant contract file.
- 8.6. Should the lowest quotation/bid received be above the estimated cost and the value dictates that an alternative procurement method should have been used, Chief Officer approval is required to accept the bids and award the contract after evaluation. Should the lowest tender received be above £250,000 in total value then Cabinet approval will be required to award the contract after evaluation.
- 8.7. Table 1 below sets out the procurement thresholds, minimum number of bids required and the responsibility for obtaining those bids:

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Table 1: Advertising Procurement Thresholds

Estimated value of goods, services or works (Including Aggregation)	Minimum number of bid/s required	Method of obtaining bids	Responsibility for obtaining bids	Written Records required
£0-£250	No bids required  All non-contractual purchases to be made via procurement card	n/a	n/a  Purchaser must ensure value for money is being obtained	n/a
£250-£5,000  To be treated as a one-off non-recurring requirement.	One quotation	Verbal enquiries, email confirmation required	Council officers; purchaser must ensure value for money is being obtained	Written quotation from supplier(s) – email acceptable
£5,000-£50,000	Three quotations to be obtained	Advertisement is required via e-Tendering portal.  Specification and selection/award criteria to be included in the invitation to quote (Rule 11).	Council Officers within services;	Invitation to Quote, specification documents, quotations and communications from suppliers
£50,001-£100,000	Three quotations to be obtained	Advertisement is required via e-Tendering portal.  Specification and selection/award criteria to be included in the invitation to quote (Rule 11).	Corporate Procurement Team (excluding Social Care and Public Health Requirements)	Invitation to Quote, specification documents, quotations and communications from suppliers
£100,000 and above	Three tenders to be obtained  Where restricted procedures under the Public Contract	Advertisement required via e-Tendering portal and Contracts Finder.	Corporate Procurement Team (excluding Social Care and Public Health Requirements)	Invitation to Tender, tender schedules, bids and communications from suppliers

Estimated value of goods, services or works (Including Aggregation)	Minimum number of bid/s required	Method of obtaining bids	Responsibility for obtaining bids	Written Records required
	<p>Regulations 2015 are used at least 5 bids to be invited</p> <p>Where competitive procedure with negotiation, or the competitive dialogue procedure or the innovation partnership procedure is used under the Public Contract Regulations 2015 the minimum number of candidates shall be 3.</p>	Sealed or electronic bids		

- 8.8. The thresholds set out in Table 1 apply to all procurement activities carried out by Sandwell Council, including those for construction and works.
- 8.9. Where the value determines that a tender is required, advice must be sought from the Procurement Services Manager or Legal Services Manager on the most appropriate tendering procedure. Where requirements relate to social care or public health services, then advice must be sought from the delegated teams in those areas.
- 8.10. If the minimum number of bids required as set out in Table 1 has not been obtained, but at least two bids have been received, approval of the Chief Officer will be required to enable the process to proceed. Cabinet approval will be required for all contracts above £250,000. Approval must include details on why the bids received represent value for money and any information on process carried out to attract sufficient bids. Details of correspondence must be kept on the relevant contract file to evidence that value for money has still been obtained.
- 8.11. If only one bid is received for requirements over £5,000, an exemption will be required to award the contract as per Rule 15. The report must set out how the received bid represents value for money.
- 8.12. If a Framework is used, then the requirements of the mini competition clauses within that agreement must be met.

## **9. Advertising Requirements and Timescales**

- 9.1. Unless making a call-off from a properly procured Framework Agreement to a single supplier or a direct award, all requirements above £5,000 in total value must be advertised on the council's agreed portal. This ensures compliance with the government's Transparency Agenda.
- 9.2. All adverts for council requirements will be placed on the council's e-Tendering portal, which will ensure that the advert is also placed on Contracts Finder. Responsibility for placing the advert will depend on the value and nature of the requirement:
- a) £5,000-£50,000 – adverts to be placed by council officer responsible for procurement;
  - b) £50,001 and above – adverts to be placed by Procurement Services;
  - c) Social care and public health – adverts to be placed by designated procurement teams.
- 9.3. As a minimum, adverts must include the following:
- a) Specification
  - b) Selection and award criteria
  - c) Closing date and time for responses
  - d) Total contract period, including any optional extension period
  - e) Whether variant bids will be accepted as part of tender submissions
  - f) If the requirements have been divided into lots and if it is the intention to appoint a single supplier or multiple suppliers (Rule10.3).
- 9.4. Time limits for the return of quotations/tenders will vary dependent upon the value and complexity of the requirements and the process in question. It is the responsibility of the procuring officer, following advice from the Procurement Services Manager, to decide the most appropriate timescale for the return of quotations/tenders. However, this must be set to attract the minimum number of quotations/tenders to ensure that suppliers have a sufficient but not disproportionate period to respond and that value for money has been achieved.
- 9.5. In all cases, opportunities must be advertised for a minimum of five working days via the council's e-Tendering Portal. In order to demonstrate value for money, a longer advertising period should be considered. Where the OJEU procedure is to be followed, there are prescribed timescales that must be adhered to.
- 9.6. No quotation/tender/bid received after the closing date/time shall be accepted or considered under any circumstances. Details of the closing date/time must be clearly stated within all invitation to quote/tender documentation.

## **10. Provisions Applicable to All Procurement Activity and Contracts**

- 10.1. Pre-Market Research, Engagement and Consultation
- a) Officers should ensure that the Borough of Sandwell receives the maximum benefits possible from the expenditure made by Sandwell Council. While procurement has been traditionally used as a mechanism to achieve desired outcomes, this may not be the most advantageous route to achieve the ambitions of Vision 2030.

- b) Therefore, an options appraisal should be undertaken, by the relevant Service Manager to ascertain what is the most appropriate route to achieving the desired outcomes of the service or project. The appraisal must be approved by the Chief Officer responsible for the service in consultation with the Chief Finance and Monitoring Officer (Cabinet approval is required for requirements above £250k).
- c) When carrying out this options appraisal full consideration should be given to:
  - o Vision 2030;
  - o Public Services (Social Value) Act 2012;
  - o Working with partners and/or service users through co-design or co-production.
- d) To achieve this market consultations may be conducted while producing the options appraisal and prior to commencing any procurement exercise, in order to ensure that the best possible outcomes are achieved and benefits to the local community are maximised. Findings from this consultation may be used in the planning and conduct of a procurement procedure, provided that this adheres to the council's procurement principles of transparency, equal treatment and non-discrimination of all bidders.
- e) Independent external organisations may be appointed to assist with market consultations. However, it remains the council's responsibility to ensure that this does not result in distorted competition (e.g. through the sharing of all relevant information or the setting of adequate timescales for submission of bids).

#### 10.2. Allocation of Resources and Authority to Act

- a) Prior to commencing procurement activity, council officers must ensure that sufficient resources are in place to cover the life of the contract/requirement. Should additional resources be required, these must be sought in line with Financial Regulations.
- b) Prior to commencing procurement activity, council officers must ensure that they have sufficient authority to act. This will be dependent upon the value of the requirement, and whether it has been included in the Corporate Procurement Plan. Advice should be sought from the Service Manager – Procurement and Legal Services on the necessary authority required.

#### 10.3. Specification

- a) Officers within the service area must develop a specification for the goods, services or works required prior to commencement of a procurement activity. The level of detail will depend upon the (estimated) value of goods, services or works required.
- b) Specification must include as a minimum:
  - i. Details of the goods, services or works required, including outcomes to be achieved;
  - ii. Timescale for delivery/completion;
  - iii. Expected levels of performance or quality, including links to Social Value that are a requirement; and
  - iv. Additional desired outcomes to be achieved through Social Value on top of the requirements.

#### 10.4. Division into Lots

- a) To make procurement opportunities more accessible to small and medium sized enterprises or to voluntary/community sector organisations, consideration should be made to dividing contracts into separate lots where appropriate.
- b) Advice must be sought from the Procurement Services Manager where consideration is made to dividing contracts into separate lots, especially where the contract value is above the OJEU Threshold.
- c) Records of all discussions and decisions must be kept on the relevant contract file.
- d) The intention to award lots or to award to a single contractor must be specified in the advertisement and all procurement documentation.

#### 10.5. Period of Contract

- a) No contract for the supply of goods, materials, services or works shall exceed four years, including any extension, without prior written approval from Cabinet or from the Procurement Services Manager. This also applies to a framework agreement unless in exceptional circumstances.
- b) Details of the total contract period, including any potential extensions, must be included in the initial advertisement and quotation/tender documentation. Allowance for extension of times to projects with defined Completion Dates must be included in the documentation.
- c) Prior to the extension of any contract, officers must ensure that the requirements of Rule 13 have been met.
- d) If an additional extension is required, advice must be sought from the Procurement Services Manager and Legal Services Manager, prior to the submission of an exemption request as per Rule 15.

#### 10.6. Electronic Quotation, Tendering, Communications and Opening of Tenders

- a) All quotation and tendering activity must be via the council's e-Tendering portal to ensure a fully compliant and auditable quotation and tendering process. This includes the opening of quotations and tenders submitted through the e-Tendering portal, which ensures sufficient reporting mechanisms and audit trails are in place.
- b) Any communication relating to procurement will be via the e-Tendering portal.
- c) This process will be managed by Corporate Procurement Services, with the exception of:
  - i. Requirements up to a value of £50,000 which will be managed by officers within services; and
  - ii. social care or public health requirements, which will be managed by those dedicated procurement teams.
- d) Where the council's e-Tendering portal is not used (i.e. for sale of land, assets or property), then tenders for contracts above £100,000 must be opened in the presence of a minimum of two officers, including a nominated officer of the Democratic Services Unit and an officer of the service area requesting the tender opening delegated this task by the relevant Chief Officer.
- e) A record shall be completed at the time of opening tenders detailing:
  - i. Nature of the goods/materials/services to be supplied or work to be executed, or the title of the land/asset to be disposed of;
  - ii. Name of each person by on whose behalf the tender was submitted

- iii. Date and time of receipt of tender recorded on the envelope/electronic tender system;
- iv. Date and time of opening the tenders;
- v. Names of all persons present at the opening of the tenders; and
- vi. Tender or offer figure (if practicable).

10.7. Risk Assessment

- a) Where a contract is awarded with a value in excess of £100,000 or relates to a business critical activity, a risk register should be drawn up for the letting, award and management of the contract in accordance with the [Corporate Risk Management Strategy](#).
- b) Further advice should be sought from the Procurement Services Manager, Risk & Insurance Manager and Legal Services Manager.

10.8. Business Continuity:

- a) Evidence of compliant business continuity plans are required for:
  - i. Any contract in excess of £100,000; or
  - ii. For any contract identified by the relevant service manager as relating to a business critical activity.
- b) Specifications and contracts must include clauses requiring evidence of the contractor's business continuity plans and the council's right of an independent audit on any or all business continuity.

10.9. Freedom of Information Act 2000:

- a) All tender documents shall set out the council's statement, in a form approved by the Monitoring Officer, concerning the supplier's participating in the tender process and the council's intention to comply with the Freedom of Information Act 2000.

10.10. Public Services (Social Value) Act 2012:

- a) All procurement activity carried out under these rules must consider the inclusion of appropriate social value award criteria, taking into account where social value is incorporated into the requirements of the specification
- b) The Act requires these criteria to be relevant to the subject matter of the contract and proportionate to the value and potential impact that could be achieved.
- c) Further guidance: [Public Services \(Social Value\) Act Guidance Document](#).
- d) Any procurement activity undertaken on behalf of the Combined Authority should follow the approved Policy.

10.11 General Data Protection Regulation:

- a) All tender documents shall set out the requirements, in a form approved by the Monitoring Officer, concerning the expectations relating to the General Data Protection Regulation (GDPR).

**11 Selection, Contract Award Criteria and Evaluation**

11.1 Use of Selection Questionnaires / Selection Criteria

- a) Selection Questionnaires must not be used for procurements below the OJEU Threshold for supplies and services, other than where deemed appropriate for construction related procurements.
- b) Reasonable and proportionate questions should be asked as part of the tender process to assess the requirements or minimum standards of suitability, capability, legal status or financial standing. of a potential supplier
- c) Where a Selection Questionnaire is required, this must use the Cabinet Office standard documentation,
- d) Selection criteria must be considered prior to publication of quotation/tender and included in the documentation.

#### 11.2 Contract Award Criteria

- a) Where a framework is used, any further competition procedures must adhere to the selection and award criteria set by the framework.
- b) All invitations for quotations or tenders must be in writing and specify whether a contract or offer is to be awarded on the basis of an offer which either:
  - i. Offers the lower price when purchasing goods/services/works, or the highest price when disposing of council assets/land/property; or
  - ii. Is the most advantageous by reference to price and quality criteria. The criteria could include price, running costs, profitability, period for completion or delivery, technical merit, aesthetic and functional characteristics, after sales service, technical assistance, outcomes for service users, social value impact, etc.
- c) Where bids are evaluated on price and quality, the quality element of the Award Criteria must not exceed 40%, Social Value should account for 5%-30% of this as per Public Services (Social Value) Act Guidance Document (unless the requirement has been included within the specification).
- d) Where the quality element of the Award Criteria needs to be higher, agreement must be sought from the Procurement Service Manager and records kept on the relevant contract file.
- e) Details justifying all elements of the Award Criteria must be kept on the relevant contract file.
- f) Award Criteria must be set out in the quotation/tender documentation in descending order and must be adhered to without alteration throughout the process.

#### 11.3 Evaluation of Quotations and Tenders

- a) All quotations or tenders submitted in response to an advertisement under Rule 9 must be evaluated in accordance with the principles of transparency equal treatment and non-discrimination, as well as the selection and award criteria disclosed in the invitation as per Rule 11 (Selection Criteria and Award Criteria). Advice must be sought from the Procurement Services Manager on the evaluation and moderation process.
- b) Officers must ensure that all evaluations are undertaken in compliance with the Public Contracts Regulations and EU Procurement Directives.



- c) Variable bids will not be accepted unless stated within the advertisement and invitation to tender documents.
- d) Where examination of quotations/tender submissions reveals an error or omission, the bidder shall be notified only that the submission contains an error or omission. The bidder shall be given the opportunity of either confirming or withdrawing the submission.

## **12 Construction and Engineering Contracts**

- 12.2 Construction and engineering works valued below the OJEU threshold for Works must make use of Constructionline and contractors approved for health and safety by organisations list by Safety Schemes in Procurement (SSIP).
- 12.3 Instructions on how to access details of the lists of contractors contained within these databases can be obtained from Corporate Procurement Services.
- 12.4 Advertisements for these contracts must include:
  - a) Scope of contract;
  - b) Registration requirements with Constructionline and SSIP; and
  - c) How shortlisting will take place
- 12.5 If the successful company does not meet the required standard, then a suitable time period should be given to ensure compliance during the contract period.

## **13 Contract Extensions**

- 13.2 Following compliance with instructions on permitted contracting periods for goods, services and works specified in Rule 10, negotiations may only be undertaken to extend contracts provided that the following requirements are met:
  - a) provision was made in the original advertisement and documentation that it may be subject to an extension – this includes where more than one extension of the contract has been included in the original advertisement;
  - b) benchmarking with similar organizations has been undertaken to prove that the contract continues to provide value for money;
  - c) the contract has been monitored and no concerns have been raised with regard to the level of service/quality of goods supplied or sufficient mechanisms, such as a robust improvement plan, are in place that ensure that any identified issues will be resolved;
  - d) any price increases are in accordance with the relevant contractual provision (e.g. in line with an appropriate published index) and as permitted under EU Procurement Regulations;
  - e) The appropriate Chief Officer and the Procurement Services Manager are satisfied that no better terms could be obtained by competitive tendering or that the nature or urgency of the work makes it desirable that the same Contractor is employed. Comments of the Chief Officer and the Procurement Services Manager are to be kept on the contract file;
  - f) The Legal Services Manager has been consulted to ensure that the extension does not result in a material change to the Contract; and
  - g) No variations are being made.

h) Evidence of these requirements being met must be recorded

13.3 The approval to extend any contract should be confirmed in writing by the appropriate Chief Officer and Procurement Services Manager. If provision to extend the contract was not included in the original advertisement and documentation, and the extension to the contract means that the total contract value is over £250,000, then Cabinet authority is required to extend the contract.

#### **14 Contract Variations**

14.2 Any changes to an existing contract that materially affects the original requirements (whether financial and/or services, goods etc.) may effectively amount to the award of a new contract and so should be subject to a fresh procurement exercise.

14.3 There are six permitted circumstances where variations are permitted to existing contracts and frameworks. Advice should be sought from Legal Services on whether these circumstances apply:

- a) Amendments that are clearly provided for in the original procurement and contract documents.
- b) Necessary amendments where a change of contractor cannot be made.
- c) Unforeseen circumstances have arisen which the authority acting “diligently” could not have foreseen.
- d) Amendments to deal with a new contractor replacing the original contractor and this is permitted in the contract or procurement documents.
- e) The amendments are “not substantial”.
- f) Low value amendments:
  - i. Falls below the procurement threshold for works and services; and
  - ii. Is less than 10% of the original contract value for supplies or services and 15% for a works contract; and
  - iii. The amendment does not alter the overall nature of the contract.

14.4 The advice of the Legal Services Manager should be sought at an early stage and in any event prior to the submission of any report for an exemption to these rules when any changes to an existing contract are being considered.

14.5 For construction related contracts, paragraph 12 applies unless the terms and conditions of the contract entered into allows for Contract Variations.

14.6 Records of all decisions and supporting evidence must be kept on the contract file.

14.7 Where a variation to a contract increases the total value to £250,000 or above, Cabinet approval is required.

#### **15 Exemptions to the Procurement and Contract Procedure Rules**

15.2 An exemption to these rules are not an exemption from the legislative requirements and cannot be granted where a breach of any UK or EU legislation would be incurred.

15.3 The following table sets out the authority to grant exemptions to the Procurement and Contract Procedure Rules and the records required:

*Procurement and Contract Procedure Rules 2018-2019*

<b>Value of Exemption</b>	<b>Authority to Grant Exemption</b>	<b>Records Required</b>
Up to £50,000	Chief Officer following endorsement from Procurement Service Manager	The request for an exemption must be made in writing setting out the special circumstances justifying the exemption, demonstrate how the action achieves best value for money, and indicate any remedial action that may be required.  Approval via email acceptable.
£50,001 to £250,000	Chief Officer and Chief Finance Officer (S151), following endorsement from Procurement Services Manager  Where an exemption is for a contract above £100,000, the endorsement of Legal Services is required	The request for an exemption must be made and approved in report format, signed by the Chief Officer and Chief Financial Officer. The request must specify the special circumstances justifying the exemption, demonstrate how the action achieves best value for money, and indicate any remedial action that may be required.  Advice must be sought from Procurement and Legal Services at the earliest opportunity. The comments of the Service Manager – Procurement and Legal Services must be included in the report.
Above £250,000 (KEY DECISION)	Cabinet	Report to Cabinet including content above.  Notice must be included in the Forward Plan within sufficient time to ensure necessary public notice of the decision.

- 15.4 Any exemption relating to ICT requirements must include comments from the ICT Service Manager.
- 15.5 An exemption request can only be endorsed / approved by the Chief Finance Officer (S151) where they are independent from the original decision making process. Where the exemption applies to a service that is the responsibility of the Chief Finance Officer (S151), the exemption must be approved by the Chief Executive.
- 15.6 Any exemption must be sought within a timescale to allow for the possibility that the request may not be approved. The Service Manager – Procurement will arrange for the exemption request to be presented to the Chief Finance Officer for approval.
- 15.7 A record of all exemptions approved by the Chief Financial Officer shall be provided to the Cabinet Member for Core Council Services on a quarterly basis for their information.
- 15.8 Any exceptions to this rule are included in Appendix A, which lists the type of contract/activity where an automatic exemption is given. This list will be updated and approved by the Chief Finance Officer and Monitoring Officer on a quarterly basis and reported to the Cabinet Member for Core Council Services. In general terms, the list includes:
- a) 'genuine sole suppliers' for certain goods, service or works where it can be evidenced that there is no benefit in undertaking a procurement exercise,

- b) Certain social care contracts;
- c) Public health contracts linked to care pathways or patient choice.

Inclusion within this list does not remove the need to ensure that a suitable contract is in place with these suppliers and value for money evidenced (Benchmarking can be undertaken).

## 16 Contract Award and Contracting Procedures

### 16.2 Contract Award

- a) It is imperative to ensure that the appropriate council authority exists to enter into a contract. This may be formal authority granted by the Cabinet or other delegated authority given to Chief Officers as set out in the Scheme of Delegations to Officers
- b) Table 2 sets out the authority to award contracts and the records required:

Table 2: Contract Award Thresholders

Contract Value	Authority to Award Contract	Records Required
Under £50,000	Chief Officer or delegated budget holder in accordance with Financial Regulations (especially 4.12 and 4.13).	Award of contract in email or report format.  Under Raising of Purchase Order via SBS will constitute approval to award contract.  A record of all contracts awarded must be sent to the Service Manager – Procurement for inclusion in the Contracts Register.
£50,000 - £100,000	Chief Officer or delegated budget holder in accordance with Financial Regulations (especially 4.12 and 4.13).	Award of contract in email or report format.  A record of all contracts awarded must be sent to the Service Manager – Procurement for inclusion in the Contracts Register.
£100,000 - £250,000	Chief Officer, in consultation with the Chief Finance Officer (S151)	Awarding of a contract must be in report format, setting out the procurement process followed, details of quotations/tenders received, the evaluation methodology and naming the supplier(s) who have made the most economic advantageous offer. Report must be signed by both the Chief Officer(s) set out in this table.  Report will also be required in the event that prior authority has been given by Cabinet to a Chief Officer to award a contract above a total value of £250,000.
Above £250,000 (KEY DECISION)	Cabinet	Report to Cabinet including content above, including where any exemptions to these rules are required.  Notice must be included in the Forward Plan within sufficient time to ensure necessary public notice of the decision.

16.3 Signing of Contracts

- a) The signing of contracts will be carried out as per the Article 14 of the council's Constitution (Finance, Contracts and Legal Matters).
- b) Contracts up to the value of £100,000 can be signed by the appropriate Chief Officer.
- c) Contracts of £100,000 or above must be in writing and be signed by the Chief Legal Officer or by the Chief Executive and a Legal Services Manager, or sealed with the common seal of the council.

16.4 Notification to Tenders

- a) Notifications to successful and unsuccessful tendered, including debriefing, must be in writing and adhere to the Public Contracts Regulations and EU Public Procurement Directive. Advice should be sought from the Procurement Services Manager.
- b) Notification of acceptance of a tender which requires a formal contract must be given in writing clearly marked 'subject to contract' and should advise that contract documents are to follow.
- c) All unsuccessful tenderers are to be notified in writing that they have been unsuccessful.

16.5 Standstill Period

- a) For above OJEU threshold procurements, no formal contract or framework agreement shall be entered into before the end of the standstill period of a minimum of 10 days from the date of notification.

**17 Contents of Contracts**

17.2 Standard terms and conditions of contracts are available; however, each contract should be considered on its own merit. Advice from the Chief Legal Officer should be sought as to the terms and conditions that should be used.

17.3 The council shall avoid entering into contracts under a tenderer's/contractor's terms and conditions. However, contractor's own terms may be included in contracts where they are acceptable to the council

17.4 Contracts must include the following as a minimum:

- a) Specification of goods/services to be supplied or works to be executed or land/asset being disposed of, and the conditions that will apply.
- b) Price to be paid or the rates on which price is calculated, milestones for payments and a statement of discounts or other deductions. If the contract term exceeds 12 months, future pricing structure must be included. If a price fluctuation clause is to be included, then it must make reference to a published index.
- c) Contract period, delivery date or times within which outputs of the contract must be completed.
- d) Details of any extension period and basis upon which this will be agreed.
- e) Required performance levels and details of monitoring/governance arrangements, including those relating to Social Value outcomes.

- f) Details of any indemnities required and how any claims arising will be dealt with and by whom
- g) Provision for audit inspection
- h) Clauses requiring evidence of the contractor's business continuity plans and the council's right of an independent audit on any or all business continuity
- i) Compliance with Data Protection Act, Freedom of Information Act, Modern Slavery Act and General Data Protection Regulation.
- j) Contractor to comply with council's Confidential Reporting Code
- k) Termination of contract, other than through the expiration of the contract term.
- l) Insurance cover requirements

## **18 Reporting**

- 18.2 Records of all activity and decisions must be retained by the client officer.
- 18.3 Details of all planned tendering activity must be forwarded to the Procurement Services Manager for inclusion in the Corporate Procurement Plan.
- 18.4 Details of all contracts awarded over £5,000 in value must be forwarded to Procurement Services Manager for inclusion in the contracts register.
- 18.5 All contracts awarded over £5,000 in value, and all spend via procurement cards, must be published on the council's internet. Publishing this information will be the responsibility of the Corporate Procurement Service.

## **19 Employment of Agency Staff, Consultants and Interim Managers and Use of Personal Service Companies**

- 19.2 All temporary or agency workers must be engaged through either the Templink service or the Resourcing team. Any agencies used must be included on the agreed framework; failure to comply with this requirement, without approval from the Chief Executive, will be treated as a disciplinary matter.
- 19.3 All temporary or agency worker engagements or extensions / redeployments of existing workers must be approved by HR, as delegated by the Chief Executive.
- 19.4 The likelihood of temporary or agency worker engagements being approved will be greatly increased where the following business case is provided, covering:
  - a) a rational explanation as to why the engagement is required;
  - b) an explanation in regard of why a permanent appointment has not been made; and
  - c) what steps will be taken to ensure that the temporary or agency worker engagement is kept to a limited time period
- 19.5 Prior to seeking approval to engage temporary or agency workers, managers should liaise with HR Business Partners in regard of identifying/investigating alternative approaches that may be taken to address any resourcing gaps, thus negating the need to engage temporary or agency workers. Contact details for HR Business Partners are as follows:

- **Performance and Children's Services** - Louise Lawrence 0121 569 3845
- **Adults Services and Public Health** - Jacquie Sergent 0121 569 5483
- **Place** – Debbie Sant 0121 569 2378 or Manjit Gill 0121 569 5422

- 19.6 The procurement method used, if not Templink or in accordance with the council's recruitment and selection procedures, for agency staff, consultants, interim managers and personal service companies shall comply with these rules as above.
- 19.7 Individuals contracted through the Templink service, the internal agency service or an external agency provider should be limited to a contract period of three months. Contracts for longer than three months are only allowed in exceptional circumstances that must be included in the report to HR.
- 19.8 Any agency staff, consultants, interim managers and personal service companies employed by the council shall comply with these rules as though he/she were an officer of the council.

## **20 Social Care and Public Health Contracts**

- 20.2 Officers procuring care and public health contracts should follow these rules. The nature of the adult and children's social care and public health services market and commissioning arrangements may require exceptions, as per Appendix A. However, in all instances the procuring/commissioning officer should always ensure that value for money is obtained for both the council and clients.
- 20.3 Any Social Services and Public Health related contract, with the total value above the EU threshold for these contracts for must be procured using a procedure that is at least sufficient to ensure compliance with the principles of transparency, equal treatment and non-discrimination. An OJEU Notice (or a PIN) must be published.
- 20.4 Residential and nursing care
- a) Where there is no standard fee then the service needs to ensure that value for money is provided.
  - b) Where clients select accommodation costing in excess of the standard fee, placements can be made provided a third party is willing to pay the difference where the service is one where a third party contribution applies. Suitable records must be maintained demonstrating that the client was given a choice and that it was the client or their authorised representative who exercised that right.
  - c) Where a placement is to be made where it is not subject to a standard fee, it will not be necessary to obtain competitive quotations provided that the client or his/her representative has chosen the home and/or the social work budget holder (or panel where it exists) has approved the placement. To ensure that value for money is obtained, the council's approved fee calculating mechanism will be used to determine the cost of the placement. If the fee is more than the fee calculated using the approved mechanism, then this must be justified and approved by an Operations Manager (or equivalent) independent from the original decision making process. Records must be kept of the circumstances justifying the placement.
  - d) Where residential placements are made for Public Health services, placement selection must be based on client needs and risk factors. Consideration of market rates for similar provision must also be made to ensure value for money.

20.5 Domiciliary Care

- a) It will be necessary to obtain competitive quotations for domiciliary care or non-residential services where there is no standard rate set by the council. Three quotations should be sought and the cheapest provider should be used. Where the cheapest provider is not used, the package request must be approved by an Operations Manager (or equivalent) independent from the original decision making process confirming the package is justified by special circumstances. A record should be kept of the circumstances justifying the package of care.
- b) Where the client does not wish to receive a service from the provider deemed the cheapest through the competitive exercise, a direct payment should be offered to the client who will be able to procure the service directly his/herself subject to all of the identified needs being met.

20.6 Specialist Services

- a) In some cases, the specialist nature of the assessed service or temporary limitations in the availability of providers will limit the range of alternative suppliers. Where there are no alternative providers such services will be treated as an exception to these rules (Appendix A).
- b) It will be the responsibility of the appropriate Chief Officer and Commissioning Manager (or equivalent) to maintain suitable records to demonstrate the appropriateness of this approach and the involvement of more than one officer in the process.
- c) Where it is possible to obtain the service from more than one provider, quotations/tenders must be obtained in accordance with Rule 11 and the service commissioned in accordance with Rule 16.

20.7 Public Health Contracts

- a) Where the public health service is subject to patient choice from NHS providers and the selection of provider is determined by where patients elect to receive treatment records must be kept to evidence that patients have chosen their healthcare provider. If the expectation is that the provider will deliver services over £100,000 the council will aim to enter into a contract. Suitable evidence will be kept to substantiate this expectation. Where the council enters into a contract Rule 16.2 shall apply.
- b) Officers should ensure that, where national tariffs are not utilised, that negotiation has been undertaken with healthcare providers to ensure that value for money is achieved. As a minimum, officers should benchmark to give assurances that best value is obtained.

20.8 Sole Provider, Emergency Placements or Emergency Care

- a) Where an Exception (Appendix A) has been identified It shall, be the responsibility of the appropriate Chief Officer and Commissioning Manager to regularly review the situation and, should any of the circumstances change, communicate any changes of placement or policy to all appropriate parties.
- b) In such cases it shall not be necessary to obtain tenders but the appropriate authorization shall be obtained in accordance with Rule 15.
- c) The decision process concerning where the adult or child is to be placed should involve more than one person and this process together with the names of the officers concerned should be evidenced in relevant directorate records.



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- d) Specifications and agreements should include for exit clauses when it is assessed that the care requirements are no longer required.
- e) Agreements should be reviewed on a regular basis and reports placed on the contract file detailing the findings and required action.

**21 Annex – Definitions**

- Council - means the Sandwell Metropolitan Borough Council, the Executive, a Standing Body or person(s) acting in accordance with authority delegated by the council.
- Contract - means any agreement (Including Framework Agreements) between the council and a third party for the provision of any goods, materials, services or works for whatever value. All contract documentation shall be worded and in such form so as to protect the council's interests, in accordance with advice from the Chief Legal Officer and standard contract documentation.
- Contract price in relation to all contracts - means the aggregated cost (including fees) for the whole of the period of the contract. Where a Chief Officer knows that a similar service, supply or type of work is to be ordered during a twelve-month period, this should be taken into account and used for the purposes of the estimated contract price.
- Any transaction for the supply or disposal of goods or materials; provision of services or the execution of works which forms part of a larger transaction shall not be regarded as a separate contract but shall be included in the calculation of the contract price.
- Chief Officer - is defined as a Director and above as per the Scheme of Delegations.
- Chief Officer and appropriate Chief Officer – means a Chief Officer or any subordinate officer nominated by their Chief Officer, but the Chief Officer is at all times responsible for the actions undertaken by the subordinate officer.
- Chief Financial Officer - the title is used as a generic term for the officer with Section 151 responsibilities and is included in recognition that Section 151 responsibility may be undertaken by another Chief Officer who is a qualified accountant.
- Budget - means revenue budgets, capital budgets and other spending programmes approved by the council.
- Grant – Is the payment of money or some other thing, without the expectation of goods or services in return (this could include making a financial contribution to the independent work of the Voluntary or Community Organisation). A grant is usually provided subject to conditions that state how the grant can be used. The grant aided organisation may use or offer to use the grant to provide goods or services that meet their objectives.
- Programme - A set of component projects/work streams which have been brought together under one management process to achieve an overall strategic objective/beneficial change and ensure robust governance.
- Project - a component of a programme which has a predetermined outcome or result at a pre-specified time using predetermined resources.

Appendix A : Exceptions

Social Care and Public Health Contracts where a Care Pathway is in place - a) . Where associated clinical services are already provided by an NHS provider, records must be maintained, demonstrating the connection between the public health service and the associated clinical service(s) within the care pathway.

ICT Licenses and support costs (where systems are already in place);

Patient or Pupil choice;

Sole Suppliers/Providers;

Emergency Requirements (when a contract cannot be utilized);

Residential, Nursing and Domiciliary and Nursing Care (where the Council pays a standard fee);

Specialist Social/Public Health Services where alternate providers cannot be identified.