

5.0 Procurement and Contracts

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Why is this important?

Public money should be spent with demonstrable integrity, transparency and in accordance with the Council's policies. Local authorities have a statutory duty to achieve best value, in part through economy and efficiency. The Council's Procurement Regulations should help to ensure that services obtain value for money from their purchasing arrangements and reduce the following risks.

Risks:

- Goods or services ordered for personal use are paid for by the Council.
- The incorrect volume, number or quality of goods and services may be received.
- The Council may be committed to spending on goods and services for which no budgetary provision has been determined or approval given.

- Officers failing to follow contract and tendering procedures may leave both themselves and the Council open to accusations of favouritism, unfair contract terms and legal challenge.
- Goods or services ordered may fail to meet the Council's environmental, health and safety and other strategies and policies.

5.1 Procurement Regulations

5.1.1 Why do we have procurement regulations?

The Council is obligated by Section 135 of the Local Government Act 1972, to set procurement regulations for the supply of goods or services or for the execution of works.

The purpose of procurement regulations is to provide a framework within which the Council can achieve and evidence value for money when obtaining supplies of goods, services and works.

Officers must comply with these procurement regulations, which lay down minimum requirements for procuring goods, services and works. Guidance on the procurement process can be obtained from the Procurement Team or on the Council's SharePoint site. Officers must always seek advice from the Procurement Team in the first instance and from the Council's Legal Services department when in any doubt. If an authorising officer has any questions about the Procurement Regulations, they should contact Procurement in the first instance.

Every contract made by the Council must comply with these procurement regulations and the overarching Procurement Act 2023 and Procurement Regulations 2024 or Public Contracts Regulations 2015 (PCR) if applicable. Procurement regulations must be followed at all times unless there is a legal duty that makes this impossible.

5.1.2 Who do the procurement regulations apply to?

These procurement regulations apply to:

- All contracts made and to all orders placed by, or on behalf of the Council for the procurement, hire and commissioning of goods, services and works including where the Council is acting on behalf of public bodies.
- All Officers and Members of the Council.
- Any person or organisation engaged to manage a contract or undertake work that involves procurement on behalf of the Council. In each case the requirement to comply with the procurement regulations is to be included in the terms of engagement.
- The selection of sub-contractors where these are nominated by the Council under a main contract.

5.1.3 Reviewing and changing the Procurement Regulations

The Deputy Chief Executive (S151) is responsible for maintaining a continuous review of the procurement regulations and submitting any additions or changes necessary to the Council for approval. The Deputy Chief Executive (S151) is also responsible for reporting, where appropriate, breaches of the procurement regulations to the Council via the Cabinet.

Any non-compliance with the procurement regulations must be reported to the Deputy Chief Executive (S151) or his representative. Any Officer that breaches the procurement regulations may be subject to the Council's disciplinary procedures.

All instances of working outside these rules, including those subject to an approved waiver or an exemption, will be reported to the next meeting of the Cabinet.

5.1.4 Compliance with the Procurement Regulations

Service managers are responsible for ensuring that all of their staff fully complies with the procurement regulations and other internal regulatory documents such as Procurement policies and procedures. The procurement regulations are available on a centrally accessible ICT location and hard copies can also be made available.

Staff required to use procurement regulations as part of their job will be required to confirm that they have read and understood the procurement regulations as part of their induction. If further clarification or training is required, this can be provided by the Procurement Team.

5.1.5 Procurement principles

The Council will adopt the following principles relating to the procurement of goods, services and works:

- Delivering value for money
 - Maximising public benefit
 - Sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions
 - Acting, and being seen to act, with integrity
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- Take a long-term strategic view of how it procures its requirements including the potential for alternative methods of service delivery, innovative funding methods and partnership working.
 - Ensure that sustainability is an important criterion in any procurement activity as far as possible.
 - Where appropriate develop procurement on a partnering basis in which both the Council and the supplier seek to achieve continuous improvements and maximise mutual benefit through longer term clearly worded contracts. These contracts will be based on measurable outcomes and performance that define the obligations of both parties.

- Where appropriate seek to work with others and through legitimate consortia in the procurement of its requirements in order to widen the scope of its experience and focus expertise, maximise purchasing power and harness economies of scale.

The Council acknowledges that cheapest is not always best and shall award the contract based on the Most Advantageous Tender (MAT) (to the Council). This encompasses a number of considerations and can include Best Price Quality Ratio (BPQR) and such other criteria such as environmental and social value. It is important that the criteria for selection and award are made clear in the tender pack, including any sub-criteria.

The method of contract evaluation will be included in the quotation specification or the invitation to tender.

5.1.6 Application and Interpretation of Procurement Regulations

Definitions

Definitions with regard to these procurement regulations can be found in the Glossary.

5.1.7 Aggregation of Orders

No procurement or award of contract shall be made in a manner which seeks falsely to bring the value of the contract below the Public Procurement Thresholds or those set out in these Regulations in order to avoid compliance with the applicable laws and these Regulations. This includes dividing the order(s) or contracts in order to give the appearance of being below the relevant threshold.

5.1.8 Exemption

Exemption from any procurement regulations may be authorised by both the Corporate Manager and Deputy Chief Executive (S151) provided that:

- The Deputy Chief Executive (S151) is satisfied that the exemption is justified by special circumstances; and
- The exemption is reported in writing to the Deputy Chief Executive (S151) specifying which of the following circumstances justify the exemption.

There are Direct Award justifications:

- Prototypes and development
- Single supplier
- Additional or repeat goods, service or works
- Commodities
- Advantageous terms on insolvency
- Urgency –Where the goods, service or works to be supplied under the public contract are strictly necessary for reasons of extreme and unavoidable urgency
- Light touch

5.1.9 Transactions effected through public sector purchasing organisations

Procurement regulations shall still apply to transactions effected through well-established public sector and other purchasing and distribution organisations. A full list of these is kept by the Procurement team. The procedure will depend on the nature of the framework agreement.

Further competition procedure should be used where the statement of requirements when developed, cannot be met by the standard catalogue of goods or services or if there is no such catalogue. The procurement regulations will then apply to the further competition process.

Advice must be sought from the Procurement Team, prior to purchasing through any purchasing organisation or consortia.

Conflict Of Interest

Every officer and Member of the Authority has the responsibility to declare to the Monitoring Officer and procurement team any links or personal interest that they may have with purchasers, suppliers and/or contractors (including sub-contractors) if they are engaged in contractual purchasing decisions on behalf of the Authority in accordance with the appropriate Codes of Conduct.

- An **'actual conflict of interest'** exists where there is a conflict of interest **now**.
- A **'potential conflict of interest'** exists where a conflict of interest will arise in **future** if certain circumstances occur.
- A **'perceived conflict of interest'** exists where there are circumstances which the Contracting Authority considers likely to **cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest**.

Conflicts assessments

Before publishing a tender or transparency notice in relation to a covered procurement, the Authority must prepare a conflicts assessment in relation to the procurement. A conflicts assessment must include details of:

- conflicts or potential conflicts of interest identified in accordance with a duty to identify, and
- any steps the contracting authority has taken or will take for the purposes of a duty to mitigate.

The Authority must:

- keep any conflicts assessment under review,
- revise the assessment as necessary, and
- when publishing any relevant notice, confirm that a conflicts assessment has been prepared and revised.

5.1.10 Contracts and official orders

The table below provides an overview of the approach to be applied to the different thresholds of spend along with a reference to where the process is explained within these regulations:

Value	Form of Agreement	Methodology	Decision Route
<£10,000*	Official Purchase Order	Best endeavours	Budget holder
£10,000 - £29,999.99	Official Purchase Order and Request for Quote	Minimum of 3 Written Quotations submitted by a specified date and time and based on a written specification and evaluation criteria	Budget holder
£30,000 - £99,999.99	Formal Request for Quotation (RFQ) with Terms & Conditions and Official Purchase Order	Formal RFQ using a detailed written specification by a defined deadline using an electronic portal to advertise the opportunity and to post all relevant notices to the Central Digital Platform.	Operations Manager
£100,000 – Public Procurement Thresholds	Formal Written Contract & Purchase Order	Formal Invitation to Tender (ITT) using a detailed written specification by a defined deadline using an electronic portal to advertise the opportunity and to post all relevant notices to the Central Digital Platform.	Assuming that there is agreed budget in place, Corporate Manager + S151 Officer may approve up to the Public Procurement Threshold.
Over Public Procurement Thresholds	Formal Written Contract & Purchase Order	As above.	Contracts in excess of the Public Procurement Threshold will require approval by Cabinet

*For spend under the £10,000.00 this will be reported via the over £500.00 supplier spend report.

Prior to commencing any procurement or raising any order, the Officer must be assured that there is sufficient budget in place for the proposed purchase and establish the expenditure code relating to where the budget is held.

Consideration to both the value of the contract and the risk of exposure to the Council should be made by the relevant Corporate Manager when deciding whether to execute a formal written contract.

In the case of goods, where the Authority purchases a significant number of items and the aggregate total spend exceed £10,000 per year, prices must be renegotiated with the supplier annually. If the total spend exceeds £100,000 per year, a contract should be executed in line with the **tender process** below.

In the case of works or services, where the Authority appoints a supplier for a significant number of low value jobs and the aggregate total spend exceeds £10,000 per year, quotations for rates should be obtained in line with the **quotation process** outlined below. If the total spend exceeds £100,000 per year, a contract should be executed in line with the **tender process** below.

5.1.11 Estimated Contract value less than £10,000.00

In the case of a contract whose total does not exceed £10,000.00 the officer may place a single order without inviting quotations provided they are satisfied that they have used their best endeavours to ensure that the most favourable prices and terms are obtained, having regard to the principles of value for money and that the supplier is financially sound and technically competent.

If the contract is related to a service or works provision, appropriate pre-qualification of suppliers must be carried out to ensure that their status in relation to health and safety, financial standing, customer care, data protection, equalities, contract management and provision of insurance is suitable for the level of the contract.

Pre-qualification through an industry recognised method such as Construction Line, Standing List of Approved Contractors (SLoAC) or Exor will be deemed acceptable although the relevant Corporate Manager may require further checks to be carried out in this regard.

In the event that competitive tenders or quotations are sought, these shall be obtained from such number of contractors/suppliers as the Procurement Regulations deems appropriate having regard to the principles of Best Value.

The officer is required to obtain written evidence of the quotations and the evidence is required to be kept in accordance with the Council's document retention guidance. This is 12 months or the life of the contract, whichever is the greater.

5.1.12 Estimated Contract value between £10,000.00 and £29,999.99

All contract/agreements exceeding £10,000 must have a Procurement Notification Form completed and submitted to Procurement – [Procurement Notification Form \(PNF\)](#)

Competitive quotations shall be sought from three contractors in writing For further details on quotations refer to the section on the quotation process below.

The officer is required to obtain written evidence of the quotations and the evidence is required to be kept in accordance with the Councils Document Retention guidance.

5.1.13 Estimated Contract value between £30,000.00 and 99,999.99

For all contract/agreements exceeding £30,000, formal Requests for Quotation (RFQ) are required using a detailed written specification by a defined deadline using an electronic portal to advertise the opportunity and to post all relevant notices to the Central Digital Platform.

5.1.14 Estimated Contract value between £100,000.00 and up to the Public Procurement Threshold

Please contact the procurement team to find out what the current Public Procurement Thresholds are. The rates are available on SharePoint under Procurement then site pages.

The contract opportunity shall be advertised on the Council's eTendering portal and on the Central Digital Platform in line with the PCR 2015 and PA 23.

Competitive tenders shall be invited. Where possible tenders shall be invited from four contractors, however in line with PCR 2015 no shortlisting will be allowed on contract values below the Public Procurement Thresholds. This means that all compliant bids will be evaluated.

5.1.15 Estimated Contract value exceeds Public Procurement Thresholds

Please contact the procurement team. The opportunity will be advertised on the Central Digital Platform service and all legislative requirements must be met.

5.1.16 Quotation Process

Where possible at least three written quotations must be sought.

The officer is required to obtain written evidence of the quotations and the evidence is required to be kept in accordance with the Council's document retention guidance. This is 12 months or the life of the contract, whichever is the greater.

The Service Manager will ensure all appropriate documentation is provided. The [FIN301 Request for Quotation form](#) should be used; however this may be supported by additional supplementary information which will further assist the supplier in providing their quotation. The Service Manager should ensure that such contract documentation shall be approved by Legal Services if required before quotations are requested.

The information contained in the request for a quotation will state:

- The description or specification of the requirement avoiding the use of proprietary or brand names and using available recognised standards.
- The quantity required.
- The delivery time and place.
- The basis of the price to be quoted.
- Which conditions or contract or other approved condition will apply to any order.

- The date by which quotations are to be received by the Council this will normally be not less than 5 working days from the date of the request.
- The evaluation criteria the quote will be assessed upon.

Suppliers shall be required to address their quotations to the Service Manager.

Quotations may be requested and received using recommended electronic methods. The retention and administration is dealt with under the document retention policy.

Quotations received late will be disallowed. They will be retained unopened until after the quotations properly received have been opened and will be returned to the sender with an explanation.

The quotation from the supplier who has offered the lowest acceptable price taking into consideration the required quality, delivery, cost of use and cost of disposal will normally be accepted provided this is within the estimated total cost.

Written acceptance will be notified to the supplier by the officer from the service dealing with the procurement. They will also be responsible for notifying the Procurement Team in order for them to update their records with details of the contract and how they have selected the chosen supplier.

If the contract is for goods currently maintained or which are going to be maintained on the eProcurement catalogue, a full list of products should be forwarded to procurement on the [FIN302 Product Upload Template](#) to allow them to be added to the catalogue prior to ordering.

The relevant Service Manager may accept a quotation other than the lowest where it is in the best interest of the Council and best value is achieved. Such a decision and its reasons shall be recorded and this information submitted to the Procurement Team.

An order will be raised on the Council's eProcurement system at the point of awarding the contract.

If requested the unsuccessful suppliers can be notified and given reasons without breaching the commercial confidentiality of the other suppliers.

5.1.17 The Tender Process

Before starting a tender process, and with a minimum of 3 months' notice, the relevant Officer will inform the Procurement Team of the proposed contract details using a Procurement Notification Form. All draft contract documents to be sent out with a request for tender shall be approved by Legal Services prior to being sent to any supplier.

Consultation will occur between the Procurement Team, Corporate Manager and where necessary Legal Services, and where relevant agree:

- The roles and responsibilities in respect of:

- the selection process (above Public Procurement Thresholds only)
 - the tender process
 - the evaluation of the outcomes
 - post tender negotiations
 - the contract award
 - contract management
- A procurement plan that:
 - identifies scope for working with others
 - identifies the use of the best practice contracting and procurement methods including partnerships and partnering
 - reflects any additional requirements and choice of procedure for a contract that exceeds the Public Procurement Thresholds
 - identifies the use of UK standards where these are available
 - details timescales and major events
 - identifies and allocates responsibilities
 - identifies whether any property, plant, equipment and/or land are part of the contract
- The selection criteria (to be used above Public Procurement Thresholds only) for suppliers to be invited to tender are based on commercial consideration and include:
 - financial viability and capacity
 - operational capacity
 - technical competence and capacity
 - relevant environmental issues
 - the Council's policies
 - legislative compliance
 - health and safety
 - data protection
 - equalities
- The evaluation and award criteria for the contract to achieve Value for Money or Most Advantageous Tender (MAT) taking into account such aspects as:
 - proposed methods and approach
 - total costs to the Council over the life of the contract including disposal costs
 - quality
 - delivery
 - sustainability
 - risk including the suppliers insurance details
 - health and safety
 - social value

The evaluation and award criteria to be used for award will be agreed in advance of the Invitation to Tender being issued, by the Corporate Manager and relevant Cabinet Member.

Tenders will be advertised and will be only considered if it is submitted electronically via Advantage South West Portal using the Council's Standard Form of Tender. Any amendment to this form must be approved in advance by Legal Services.

5.1.18 Tenders – Procedures for opening

All tenders for a Contract shall be opened via the verification process within the eTendering portal.

Only those Officers delegated with Verifier status will be able to access the tenders and remove the Tender seal.

The tenders may then be accepted and released for evaluation or declined and reasons given.

Documentation from the eTendering portals audit log should be produced to show the following:

- The name of the Tenderers who submitted their tender on-time.
- The name of the Tenderers who submitted their tender late.
- The name of the Tenderers who opted out of the Tender process and the opt out reason (if supplied).
- The date and time of the submission.
- The Tendered price for each on-time submission as it appears on the Form of Tender.

5.1.19 Tenders – Procedures for acceptance

The winning tender will be defined as the one who scores highest based on the pre-defined evaluation criteria which was agreed and published with the Invitation to Tender.

Contracts for Works

For Works Contracts above £250,000.00 the Corporate Manager, Director and Cabinet Member will authorise the contract award, following approval from Cabinet.

For Works Contracts under £250,000.00 the Corporate Manager will authorise the contract award.

For contracts where there is 10% excess on the budgeted tender provision, the Corporate Manager, Director and Cabinet Member will authorise the contract award.

Contracts for Goods & Service

For Goods and Service contracts above the Public Procurement Threshold, , the Corporate Manager, Director and Cabinet Member will authorise the contract award, following approval from Cabinet.

For Goods and Service contracts below the Public Procurement Threshold but above £100,000.00, the Corporate Manager will authorise the contract award.

For contracts where there is 10% excess on the budgeted tender provision, the Corporate Manager, Director and Cabinet Member will authorise the contract award.

5.1.20 Tenders - Record Retention

A full record of the procurement process followed for quotation and tenders will be maintained, including but not limited to:

- Quotations:
 - invitation to quote
 - submitted quotation
 - reason for not accepting lowest price and post quotation clarification including establishing value for money
 - communication with successful supplier
 - feedback (if requested) supplied to unsuccessful suppliers

- Tenders:
 - business case
 - pre-tender market research
 - method of obtaining bids
 - contracting decisions/ reasons
 - award criteria
 - tender documents
 - tender submissions
 - post tender clarification and establishing value for money
 - legal advice
 - evaluation
 - post contract monitoring

5.1.21 Orders for Goods, Works and Services

Once a contract has been awarded or a quotation accepted, the following rules in relation to transactional process of ordering through to payment should be followed.

Rules:

The system to be used for the ordering of works, goods and services shall be the eProcurement Corporate Finance System or any successor system as agreed by the Deputy Chief Executive (S151). Only orders in a format agreed by the Deputy Chief Executive (S151) shall be used.

This includes:

- Hire/ rent/ lease of property, plant, equipment and/or land (See 6.6 Asset Leasing arrangements)
- Delivery of recruitment/ consultancy
- Appointment of Counsel

- Obtaining Finance

Any amendments or changes in procedure to the agreed system must be approved by the Deputy Chief Executive (S151) in consultation with the Head of Digital Transformation and Customer Services if appropriate, prior to being updated.

5.1.22 Ordering

Official orders, either in whole or in part, must not be used to obtain goods or services for private use. Any officer found to be breaching this Rule, will be subject to disciplinary proceedings.

Official eProcurement orders must be raised for all work, goods and services to be supplied to the Council. No work is to be placed to an outside contractor without an order being raised.

Orders must carry a full description of what has been ordered. The use of 'as per quote' or 'as per estimate' is not acceptable.

All ordering must be conducted through the Procurement Team. No verbal orders are to be placed.

In the case of an emergency situation, the order must be placed as soon as possible and in all cases prior to the supplier submitting their invoice.

Guidance must be sought from the Procurement Team for any officers placing an emergency order or orders relating to exceptional circumstances.

Prior to engaging any new supplier, Officers should consult with the Procurement Team to ensure that there is not already a contract in place which could meet their requirement.

To use the new supplier, a Request for Supplier set up form should be completed with all relevant details for verification with HMRC including where applicable:

- UTR (unique tax reference)
- National Insurance number
- Company registration number/VAT registration number

Consideration of employment status, see 5.2 below and if the work involves construction, 5.3 below, also needs to be made before a new supplier is created.

All orders must be raised, in advance of the works, goods or services being received by the Council. A designated authorised signatory will need to authorise orders prior to the order being raised and placed by the Procurement Team.

It is the responsibility of the designated service Authoriser to confirm with the relevant budget holder and / or Finance Business Partner as to whether there is budget available prior to requisitioning the works, goods or services.

Spending limits must be observed at all times and officers must use the correct expenditure code on all orders.

Officers initiating an order must consult the appropriate Finance Business Partner and jointly decide if a virement is required from an underspent code to the correct code before the ordering process continues. Any doubt or difficulty in correctly coding an order shall be referred to the appropriate Finance Business Partner for advice.

Orders are not to be split into smaller orders solely to avoid the value limits and procedures laid down in the Council's Procurement Regulations. The procurement team will run weekly reports to review cumulative spend and refer any breaches to limits to the corporate managers to ensure the procurement procedures are followed.

Orders are not required for:

- Rents
- Rates
- Supply of Utility Services (Gas, Mains Water, Electric, Telephone)
- Petty Cash reimbursements
- S151 treasury transfers.

Variations to official orders can be made by sending an email to the Procurement Team procurementoffice@middevon.gov.uk putting subject line - Order uplift request: 'Order reference'

Alteration to:	Order no.
Approver:	
Type of alteration	<i>Uplift/additional line/amendment</i>
Line no.	Line 1
Reason for alteration	
Value of alteration	
Revised Order total	

Full details of how to use the eProcurement system can be found in the eProcurement User Guide which is available on SharePoint.