

## STANDING ORDERS OF THE COUNCIL

### Summary and explanation

The Council must operate in an **open, fair and transparent** manner in all its procurement and contract management activity.

As such, these Standing Orders have been put together to help staff who need to obtain goods, services or construction work on behalf of the Council, to ensure that the process followed is fair and proportionate.

These Orders are in addition to the Council's decision-making processes under its Constitution.

### What is in this document?

1. Who do these Standing Orders apply to?
2. Commissioning goods, services and construction
3. Do these Standing Orders apply to the proposal?
4. Contract Value
5. Goods, services or construction?
6. Which process applies?
7. Tenders
8. Awarding the contract
9. Contracts register
10. Contract management
11. Waivers of Standing Orders
12. Trading and charging
13. Transparency
14. Glossary of terms

#### 1. Who do these Standing Orders apply to?

**Everyone** is responsible for ensuring that they refer to these Orders when they are applicable. Senior Responsible Officers (SRO) must ensure that all Contracts let by his or her Service comply with these Orders.

All breaches of these Orders will be presented to the Audit and Standards Committee in the form of a report.

## 2. Commissioning goods, services and construction

Before commencing any procurement exercise, it is important to consider whether the Council can deliver the goods, services or works internally. This is called a **'make or buy'** decision and involves consideration of the associated costs, quality, and social value aspects of delivery. It also involves consideration of the Council's level of capability and capacity to deliver the requirements.

Any 'make or buy' considerations must be documented and involve the relevant service area.

All portfolio commissions are required to gain approval following their respective decision-making process and the arrangements for the delegation of functions in Part 3 of the Council's Constitution and engage with Finance & Commercial Services and the Capital Programme Group for all capital projects at the beginning of the Commissioning process.

Additionally, there are a range of factors which may affect the most appropriate commissioning route. These will include the matters below plus any specific factors relating to the commission:

What is the **best way to meet the need?** Is it to make? something bespoke, or to buy an existing product or service?

Which of the Council's **objectives and priorities** does the proposed contract relate to?

Have the relevant **stakeholders** been consulted?

What **approvals** are required? (Consider the Council's Arrangements for Delegation)

How much is it likely to **cost?** Is it **affordable?** Has **budget** been allocated to this activity?

**The requirements:** What are your desired quality standards and outcomes?

If an **in-house service** exists that can fulfil this requirement, it must be used.

Likely **length of the need:** Is it a one off? Is it a recurring need?

Are there any **existing contracts** that meet the requirements?

Consider the **Council's Ethical Procurement Policy**. Does the proposal create any **implications** in relation to:

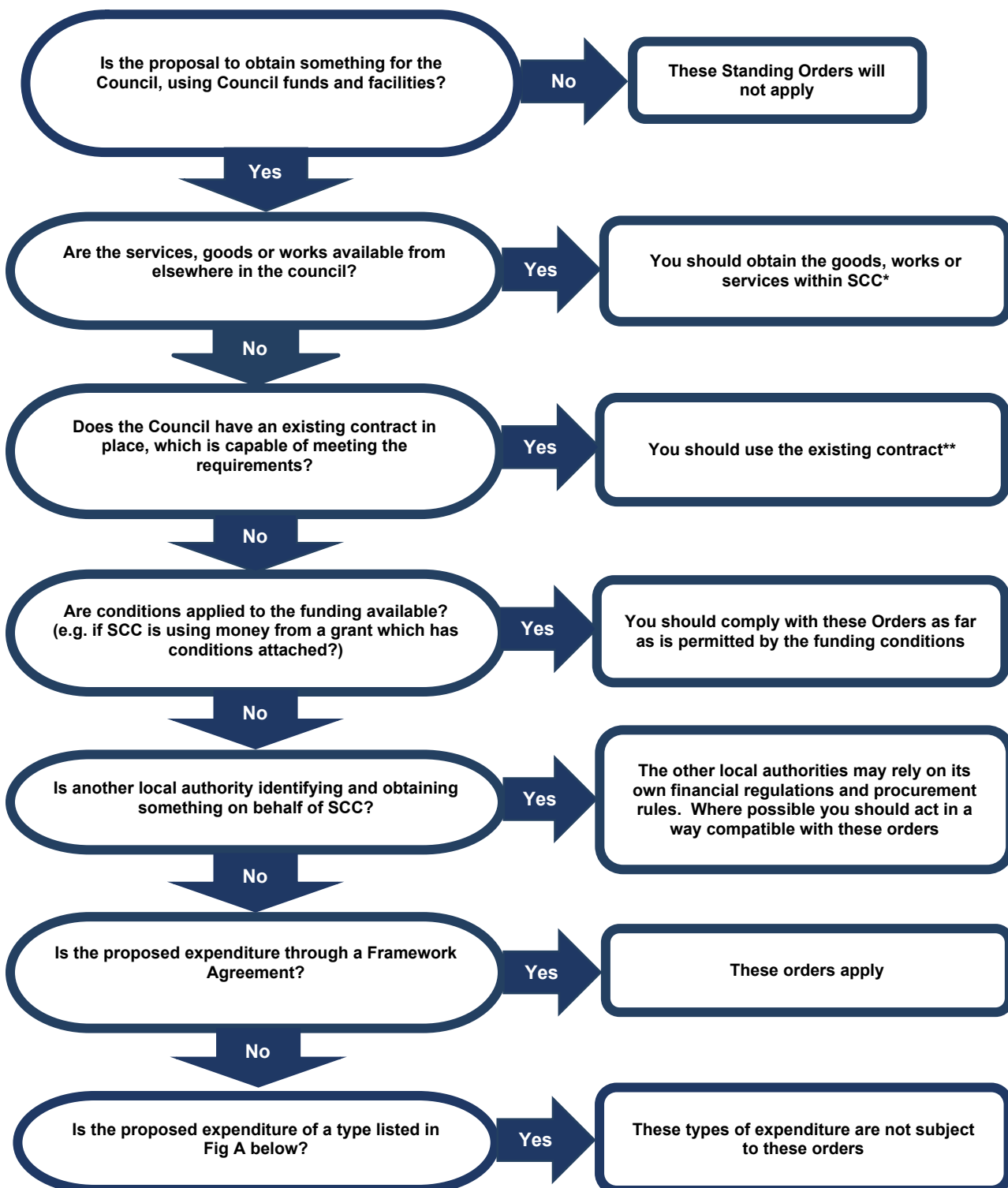
- Human resource?
- Sustainability?
- Climate impact?
- Health and Safety?

- Real Living Wage?
- Legal implications & statutory duties e.g. (Equality Act, Best Value duty, Public Services (Social Value) Act duties, public law consultation duties, requirements of Compact with voluntary sector etc.), Subsidy Control and Public Contracts Regulations

The **type of contract:** eg goods/services/works/purchase order/concession

The **length of time** the service will take to procure, or make and mobilise

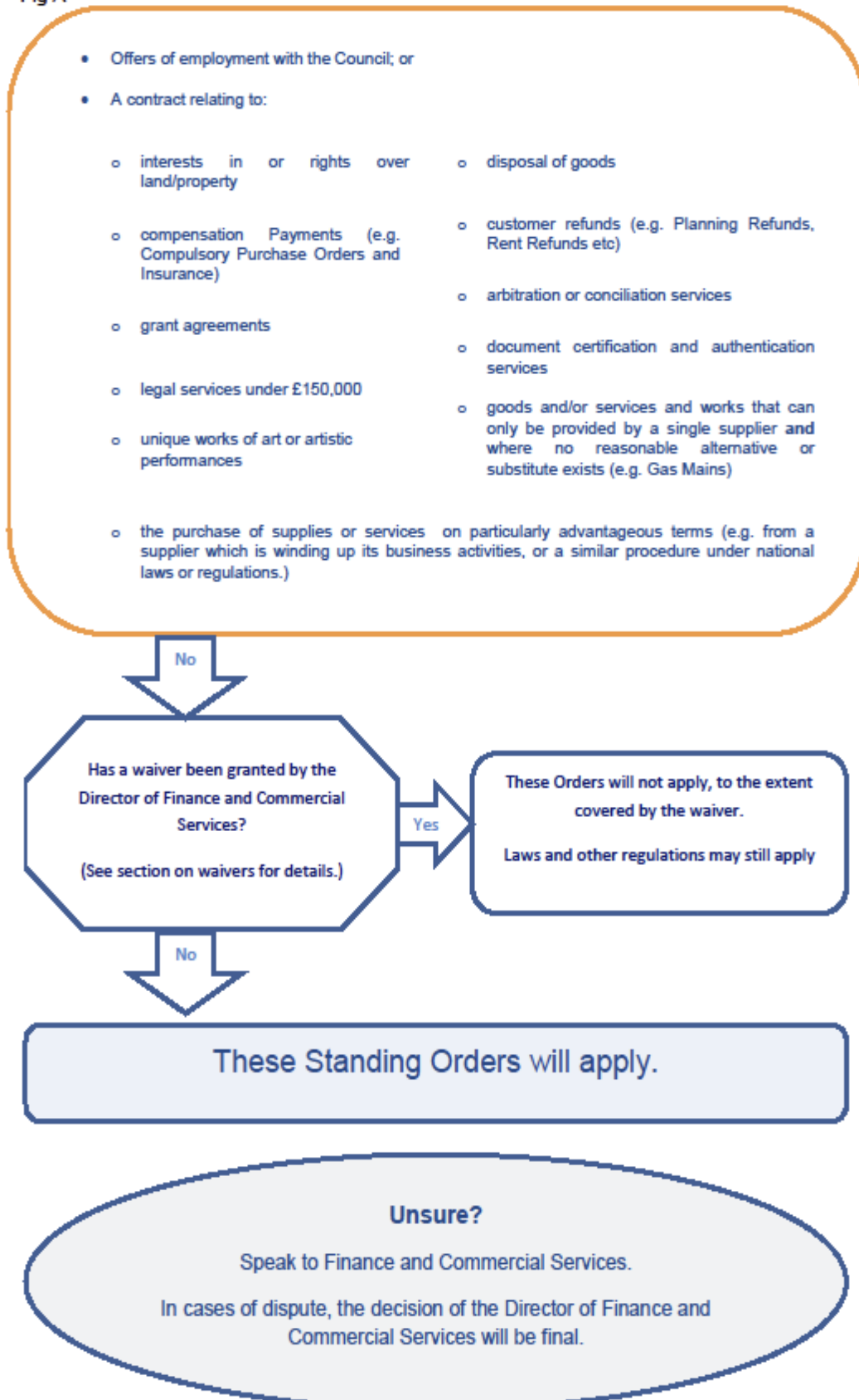
### 3. Do these Standing Orders apply to the proposal?



\* In some circumstances the Director of Finance & Commercial Services will advise on using an external provider. Benchmarking and a competitive process will likely apply

\*\* A list of existing contracts is held by Finance & Commercial Services and published at [YORtender \(eu-supply.com\)](https://www.yortender.com)

Fig A



#### 4. Contract Value

An estimated Contract Value must be established at the start of every procurement process. This will help ensure that you seek the appropriate level of support and approvals are gained for the procurement.

The Contract Value is the estimated total value of the contract over its full duration (not just one year) and must include any extension options and permissible variations.

Where the duration of the Contract cannot be determined, the Contract Value must be the estimated value of the Contract over 48 months.

#### For example...

A contract for goods or services which is £4000 per month:

- £4000 x 48 = £192,000
- The Contract Value is £192,000 and would therefore be subject to the Public Contracts Regulations

The Contract Value must be referenced in any relevant reports required for approval as part of the Council's Arrangements for Delegation.

The Contract Value will also inform the procurement strategy and the appropriate contract award forms.

For **Concession Contracts**, the relevant contract value is the anticipated turnover of the provider. Estimates of the benefit to the Council must be realistic.

If the procurement relates to a recurring need or service (e.g. stationery supplies), or is for goods, services or works which may also be procured by another part of the Council, it could affect the Contract Value and the requirements for aggregation may apply. Officers should obtain guidance from Finance and Commercial Services before commencing any procurement activity for **related services**.

The value of Contracts must never be deliberately or artificially underestimated or split.

Deliberately or artificially underestimating or disaggregating the Contract value as part of any procurement procedure is a clear breach of Procurement Contract Regulations and these Orders.

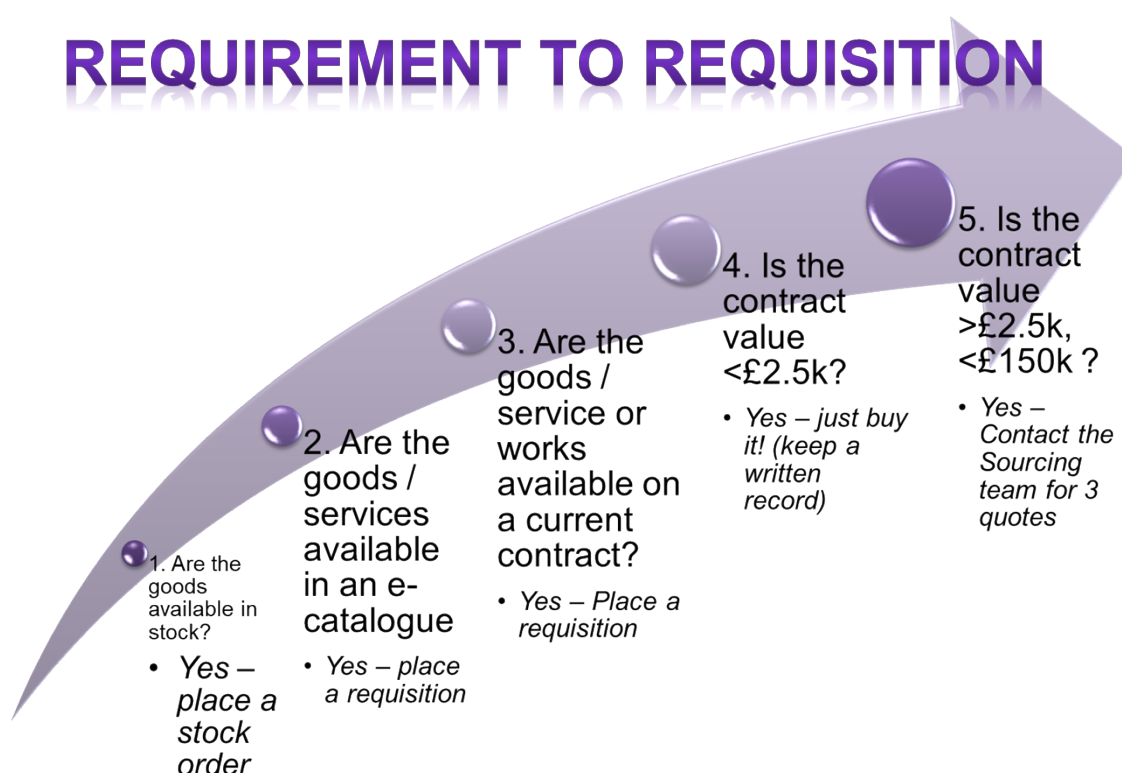
#### 5. Goods, services or works

Different processes apply to contracts for goods, services and works depending on their value. The Procurement Professional is responsible for determining the

most appropriate contracting terms in consultation with Legal Services where required.

## 6. Which process applies?

It is important that the right decision as to how goods and services should be acquired is made. See the Council's acquisition model below for guidance for values below £150,000, if above this value contact Procurement and Supply Chain for assistance.



## 7. Tenders

7.1 The Public Contract Regulations 2015 apply to all requirements (other than concessions for which The Concession Contracts Regulations 2016 apply) and the Construction Design and Management Regulations 2015 apply to all works requirements irrespective of size, duration, complexity and whether the project is notifiable to the Health and Safety Executive.

A Procurement Professional will advise on the most suitable and compliant process in line with these regulations.

## 7.2 Selecting the successful contractor

Contracts must be awarded to the contractor submitting the **most economically advantageous tender**.

The award of the contract will be made in line with the procurement procedure.

The reasons for such a decision shall be formally recorded.

## 8. Awarding the contract

### 8.1 Authority to award contracts

Contracts shall only be entered into in accordance with the Council's Arrangements for Delegation.

### 8.2 Forms of contract

Goods and Service contracts with a value of **>£2.5K** must be evidenced in writing.

### 8.3 Signed or sealed?

A contract may only be signed or sealed when the necessary approvals are in place for the award of the Contract.

The process of signing or sealing a contract will be determined by value and any special circumstances.

<b>Contract value</b>	<b>Signed or sealed?</b>	<b>Exceptions</b>
Up to £2,500	Signed	A good reason not to sign.
Between £2,500 and £500,000	Signed	The Director of Legal and Governance recommends that the contract should be made by way of a deed.  The law requires that the contract has to be made by way of a deed or additional warranties are required.
Over £500,000	Sealed	The Director of Legal and Governance recommends that the contract can be signed.



		The contract is part of a framework requiring contracts to be signed or the use of a standard form.
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#### **8.4 Who can sign?**

The following people are authorised to sign contracts on behalf of the Council using handwritten or electronic signatures:

- The Director of Finance and Commercial Services;
- The Head of Procurement
- The Director of Legal and Governance;
- Any Assistant Director of Legal and Governance; and
- The relevant SRO.

#### **9. Contracts register**

The Council is required by the Government to publish all contracts above an estimated value of £5000 on an online Contracts Register.

All contracts with an estimated value above £10,000 must also be published on the Government's Contract Finder website.

The e-tendering system automatically updates the Contracts Register for contracts awarded through e-tendering.

Where the e-tendering system has not been used to let the contract, the SRO must ensure that full details are provided to Finance and Commercial Services as soon as possible to update the register.

#### **10. Contract management**

It is the responsibility of the SRO to ensure appropriate Contract management arrangements are put in place as defined by Finance & Commercial Services. The Contract management arrangements will relate to the value, scope and risk of the contract.

Contract management arrangements must be defined in the Contract award.

#### **10.1 Payment**

The Council's standard payment terms are within 30 calendar days of the invoice date.

Any variation to this standard must be approved by the Director of Finance &

Commercial Services either as part of the letting of a contract or by ad-hoc exception to the standard terms, or where suppliers participate in the Council's early payment scheme

Approval to vary these terms must be in writing.

## **10.2 Extensions and variations of contracts**

Sometimes it may be necessary or desirable to extend or otherwise change an agreement after it has been confirmed. If you wish to extend or change an agreement, you must engage with Finance & Commercial Services and obtain any necessary approvals prior to making any commitments.

Consent should be sought at an early stage to allow for other procurement methods to be undertaken where appropriate.

All extensions to agreements must demonstrate **value for money** and should not be instigated to avoid or delay the requirement to conduct a competitive procurement.

All variations and extensions to agreements must be evidenced in writing.

## **11. Waiver of Standing Orders**

Where necessary, the Director of Finance and Commercial Services may grant a Waiver to all or part of the requirements of these Orders.

When applying for a Waiver of these Orders, the procurement professional must set out why the competitive processes in these Orders should not apply.

Where a Waiver request relates to a proposed contract value over £50,000, the request must be reviewed and approved by the relevant Executive Director.

The Director's decision to waive the requirements must be recorded and must include the reasons for the waiver.

Waiver cannot, as a matter of law, excuse non-compliance with any law pertaining to public procurement.

Guidance on Waivers is available from Finance and Commercial Services and must be adhered to. Applications for a Waiver shall be made in the form of a procurement strategy document.

## **12. Trading and charging**

Advice must be sought from the Director of Finance and Commercial Services when engaging in commercial trading activity in the following circumstances:

- Where the Council have not delivered the goods, service or works before
- Where professional advice is being delivered
- Where there are health & safety implications

### 13. Transparency

The Council is required to publish any spending over £500 in accordance with the Local Government Transparency Code.

Additionally, the Council is required to publish all tendered contracts that are awarded following a procurement process.

Contracts will be published electronically with commercially confidential information subject to redaction.

### 14. Glossary of terms

In these Contracts Standing Orders the following words shall have the meanings given to them below:

<b>“Best Value”</b>	The Council’s duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
<b>“Commissioning”</b>	A continuous process through which Commissioners identify need, analyse, plan, source, deliver and performance management activity. See “The Commissioning Process” document available from Finance and Commercial Services for more information.
<b>“Concession”</b>	An agreement where the supplier has an obligation to the Council to deliver services or construction. This obligation is in exchange for a right, granted by the Council, to exploit some or all of those services or construction to make a profit. It may also include a payment to and/or from the Council.
<b>“Contract”</b>	An agreement between the Council (or by a company under the control of the Council with the meaning of section 68 Local

	Government and Housing Act 1989) and the supplier for the delivery of goods, construction, or services, in exchange for payment. This can include contracts made on a Concession basis.
<b>"Contractor"</b>	Includes a tenderer or any other person or organisation delivering a Contract.
<b>"Contract Value"</b>	The estimated total of the money payments to be made by the Council and the value of materials or other benefits to be retrieved or enjoyed by the Contractor for the whole period of the Contract, including any potential extensions, exclusive of VAT.
<b>"Framework Agreement"</b>	An agreement between one or more purchasers (including the Council or a party which gives access to the Council) and one or more Contractors, establishing the terms on which goods, construction or services may be purchased during the period of the agreement, in particular with regard to price and, where appropriate, the quantity envisaged. Framework Agreements may allow Contracts to be placed without the need for a further public procurement exercise.
<b>"Orders"</b>	These Standing Orders for Contracts.
<b>"Procurement Professional"</b>	A Council Officer who is either: a qualified procurement professional or a procurement professional by way of their role as a buyer of goods, construction or services.
<b>"Regulations"</b>	The Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016.
<b>"Senior Responsible Officer" or "SRO"</b>	In accordance with the Council's Arrangements for Delegation in place at the time.