

Contracts Procedure Rules (Procurement)

The City Council's Contracts Procedure Rules can be found in the Procurement Code and the Contracts Standing Order. The Procurement Code can be found in this Constitution and the Contracts Standing Order is included within this Constitution.

36.1 Contracts Standing Order

- (1) This Standing Order shall be followed in respect of all matters effecting contracts for works, goods or services.
- (2) All contracts entered into by the Council shall comply with this Standing Order and the Procurement Code.
- (3) The terms of the Procurement Code may be revised from time to time by the Chief Executive provided that no such revision may affect the powers or responsibilities of the Cabinet or Cabinet Members, Committee or Sub-Committee (save with their express consent) or any obligations imposed by law provided further that any such revision shall be reported to the relevant Cabinet Member and the Audit and Performance Committee.
- (4) The Council, the Cabinet, a Cabinet Member, the Chief Executive and the City Treasurer or any other Chief Officer may, but only in circumstances specifically defined in the Procurement Code, waive the obligations to comply with the Procurement Code where for any reason they consider such a waiver to be appropriate.
- (5) All contracts entered into on behalf of the Council in the course of the discharge of an executive function shall be made in writing. All such contracts of a value of £175,000 (other than letters of acceptance prior to formal engrossment – which may be signed by the Director of Law or external solicitors on the Council's behalf) must either be signed by at least 2 officers of the Council or made under the Common Seal of the Council attested by at least one officer.
- (6) For the purposes of this Standing Order the term "Chief Officer" relates to any Statutory or non-Statutory Chief Officer within the meaning of Section 2 of the Local Government and Housing Act 1989.

PROCUREMENT CODE

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1. Introduction

1.1. Executive Summary

1.1.1 This Procurement Code sets the mandatory rules on behalf of Westminster City Council (the Council) including all Members and officers of the Council, Westminster Adult and Children's Education Services and any persons or organisations that are responsible for supplier selection and awarding, managing and monitoring contracts on behalf of the Council.

1.1.2 This Procurement Code shall be followed in the conduct of all procurement and contract management activity, this document is designed to ensure that the Council achieves Best Value from procurement activities, risks are minimised and procurement complies with the Public Contracts Regulations 2015 (PCR 2015) and other relevant legislation.

1.1.3 The Procurement Code also applies for externally funded or collaborative projects where the contracting authority conducting the procurement and signing the contract e.g. the Heritage Lottery Fund, other Councils etc.

1.1.4 Overarching principles of the Procurement Code are that:

- Best Value shall be obtained for all works, goods and services
- All procurements shall take place in an open and transparent manner
- Fairness with all potential and existing suppliers being treated equally
- All actions are compliant with UK and EU Legislation
- All procurements to include City for All Objectives
- All procurements to align to the "Route Map to Success"
- Responsible Procurement (including social, economic and environmental characteristics) objectives are included in all strategic procurements

2. Operating Model

2.1. Responsibility & Application of the Code

2.1.1 The overarching responsibility of Procurement is with the Chief Procurement Officer. Any interpretations of this Procurement Code will be clarified by the Chief Procurement Officer

2.1.2 All officers involved in the procurement process shall ensure they are aware of and fully comply with all relevant legislation, corporate strategies and policy.

2.1.3 If an officer finds themselves in a situation of potential, perceived or actual conflict of interest, they must take the necessary action to disclose it formally to either the appropriate Category Manager or Executive Director for decision.

2.1.4 Officers who take Executive Decisions, as part of a delegated authority for example contract awards, are required to notify relevant Category Managers, keep a record of these and publish them on a public list.

2.2. Procurement Services

2.2.1 Procurement Services support the Council in procuring goods, works and services at the best possible value and compliant with relevant legislation and policy.

2.2.2 It is recognised that effective procurement is fundamental in supporting the delivery of the Council's overall financial strategy and delivery of the Council's vision "City for All".

2.2.3 Procurement Services employs a strategic sourcing approach to procurement that provides leadership, commercial insight, assurance, policy and governance to the procurement activity of the Council. Procurement Services has adopted a Category Management approach for managing all procurement spend and leads on all sourcing activity over £100,000.

2.2.4 Procurement Services primary role is to ensure that the Councils procurement activity provides value for money (VFM) and meets the functional needs of the Council. Through strong relationship management they ensure that our suppliers and partners deliver high standards of performance, as well as continuous improvement and innovation within the VFM framework.

2.3. Category Management

2.3.1 'Category Management' is the process of managing the Council's spend through segmenting expenditure into discrete groups of similar or related products and services called categories. The categories are based on the supply market and how it is influenced by commissioning strategies.

2.3.2 Spend is then analysed to determine why we buy what we do, how we buy it, from whom and with what results. The categories are then managed through a continuous and systematic process to develop and implement sourcing strategies which deliver maximum value whilst managing risk.

2.3.3 The Category Management Team within Procurement Services includes a number of specialist Category Managers who provide expert knowledge and advice to deliver all procurements with an aggregated value over £100k.

2.4. Procurement Development

2.4.1 The Procurement Development team within Procurement Services provide the framework within which procurement and contract management activity is performed, including policy, process, governance, performance and systems.

2.5. capitalEsourcing

2.5.1 capitalEsourcing is the Councils 'end to end eSourcing Platform' which encompasses spend analysis, strategic sourcing, procurement (including Requests for Quote), evaluation, contract management, compliance, performance management, savings tracking and programme management solution in an integrated suite.

2.6. Officers

2.6.1 Individual officers within the Council are responsible for sourcing activity under £100k and shall ensure they are aware and comply with all relevant legislation and policy. Contract management responsibilities are outlined at 3.21. If officers are unsure of best practice, guidance is to be sought from Procurement Services.

2.7. Cabinet Member

2.7.1 Cabinet Members are elected representatives who make informed decisions of significant value or of multi departmental interest. Any decision requiring Cabinet Member approval is the responsibility of the Project Manager/Internal Client to obtain.

2.8. Codes of Conduct

2.8.1 The Council expects all officers and elected members involved in procurement to behave with the highest levels of probity and integrity in accordance with the Bribery Act 2010 and the Codes of Conduct detailed under Part 5 of the Westminster City Council Constitution. Failure to adhere to these conditions will result in disciplinary action.

2.8. Procurement Assurance Board “Gate”

2.9.1 The Procurement Assurance Board, commonly known as “Gate” is an officer group who review procurement activities at two stages (or gates). Stage 1 (Gate 1) is a formal review of the Procurement Strategy once the lead officer wishes to formally go to market, and Stage 2 (Gate 2) is a formal review of the Contract Award proposals once the procurement strategy has been delivered, tender proposals have been evaluated and the lead officer wishes to award a contract. The members of the Procurement Assurance Board “Gate” will recommend to the appropriate officer, whether the Procurement Strategy or Contract Award should proceed to approval.

2.9.2 Adult Social Care and Children’s Services procurements are not governed by the Procurement Assurance Board (see item 2.11 below)

2.9. Peer Review

2.10.1 Peer reviews shall be led by the lead officer in accordance with the agreed procurement timetable. The peer review should be proportionate to the value and complexity of the procurement and should ensure that the procurement is compliant; meets the project objectives and supports the wider council objectives such as City for All. Peer reviews can include: Electronic circulation; programme board; team meeting; executive director review etc.

2.10. Commissioning and Contracts Board (CoCo)

2.11.1 The Commissioning and Contracts Board commonly known as CoCo is an officer group in Adult Social Care and Children’s Services which independently of each other review procurement activities, and make recommendations to the appropriate Officer, at Stage 1 (Gate 1) and Stage 2 (Gate 2). The members of CoCo will recommend to the appropriate member whether the Procurement Strategy or Contract Award should proceed.

2.11. Tri-Borough

2.12.1 Procurement activity led by a Tri-borough services or where all three sovereign Councils collaborate on a single procurement, will be subject to the Code as follows:

- All Tri-borough contracts with a combined value (total contract value over the life of the contract) greater than £300,000
- All Tri-borough contracts where spend by Westminster City Council is likely to exceed £100,000 over the life of the contract.

2.12.2 The scope of all Tri-borough activity will be subject to the governance of the Procurement Assurance Board (PAB) or the Commissioning and Contracts (CoCo) Board as applicable.

2.12. European Commission (EC) funded project

2.13.1 EU funded procurements must ensure compliance with associated standards and regulations.

3. Procurement Operations

3.1. Category Planning

3.1.1 Department Directorates will be asked to provide a forecast every February, for the following financial year, for all procurements above £100,000 to enable Procurement Services to plan and allocate resources.

3.2. Section 20

3.2.1 Procurements relating to goods, services and works for residential properties leased by Westminster City Council may be subject to statutory requirements for the Council to consult with leaseholders under Section 20 of the Landlord and Tenant Act 1985 (as amended).

3.2.2 Officers responsible for managing the properties for which the procurements are being undertaken are also responsible for undertaking the consultation with leaseholders and will need to factor in appropriate lead times.

3.3. Corporate Contracts

3.3.1 Procurement Services have awarded a range of Corporate Contracts for goods, services and in some cases works that are commonly required. The use of these contracts is mandatory.

3.4. Category Management Toolkit

3.4.1 The Category Management Toolkit is to be used for all strategic procurements and the principles are to be adopted for operational and low value procurements. The principles are built into the workflow within capitalSourcing.

3.5. Estimating the Total Contract Value

3.5.1 Officers should calculate a genuine pre-estimate of the total contract value excluding Value Added Tax. This should be for the whole of the predicted contract period which must include any provisions for extensions. If the terms of a contract are yet to be established or uncertain, then a 4 year contract should be assumed for the purposes of estimating the contract value.

3.5.2 Officers must not deliberately sub-divide or disaggregate procurements for the purpose of avoiding thresholds.

3.6. Spend Definitions

3.6.1 **Consultancy Services** are defined as the provision to management of objective advice relating to strategy, structure, management or operations of an organisation. Such advice will be provided outside the 'business-as-usual' environment when in-house skills are not available and will be time-limited. Consultancy Services may include the identification of options with recommendations, or assistance with (but not necessarily the delivery of) the implementation of solutions. Officers must seek advice from the Professional Services Category Manager within Procurement Services, prior to proceeding with the procurement of a consultancy service, regardless of the estimated total contract value. For the avoidance of doubt, Architectural services are not classed as the provision of Consultancy but will fall under the definition detailed under item 3.6.3 Goods and Services

3.6.2 **Works** are defined as the construction, demolition, transformation or repair of a building or location.

3.6.3 **Goods and Services** are defined as the provision of tangible items (goods) or intangible routine actions (services) that are required to fulfil a need.

3.7. Standard Procurement Documents

3.7.1 Procurement Services are responsible for developing and maintaining standard procurement documents to be used when conducting tender or requests for quotations. The standard documents/templates contained within capitalEsourcing shall be used for all new strategic procurements.

3.8. Terms & Conditions of Contract

3.8.1 The Council will only use and accept its own standard Terms and Conditions. The standard terms and conditions of contract can be located on capitalEsourcing; these are updated in consultation with Legal Services and maintained by Procurement Services. Any variation to the standard Terms and Conditions will require express authorisation and advice from Procurement Services, who will seek advice on alternative clauses from Legal Services.

3.9. Evaluation Criteria

3.9.1 The standard evaluation criteria for any procurement is weighted 60:40 to Price:Quality respectively. Any deviation from this ratio requires the Chief Procurement Officer's approval in conjunction with the relevant Cabinet Member, by submitting a waiver request. This rule to obtain a waiver request will not apply to procurements where the total contract value is below £100,000 and the price criterion is increased.

3.10. Responsible Procurement

3.10.1 For all contracts with a total contract value of £100,000 or above the Council requires a minimum of 5% of the total weighting of the tender evaluation score to be allocated for Responsible Procurement. This will be derived from the Quality section of the evaluation and will include social, economic and environmental characteristics (example: Quality has 40% overall weighting Social Value will be 5% of that weighting allowing 35% for other quality evaluation criteria).

3.10.2 All procurements conducted by the Council and by those contracted by the Council to act on their behalf will do so following the Government Buying Standards 'Mandatory' criteria, for further information contact the relevant Category manager.

3.10.2 All appropriate WCC Policies and Strategies are to be considered and included in tenders either within the Scope or Evaluation.

3.11. External Frameworks (including Dynamic Purchasing Systems)

3.11.1 Prior to using an external framework (or DPS) for the first time, Procurement Services will undertake a due diligence assessment for using the framework, and a formal review by the Procurement Assurance Board (Gates 1 & 2) must be conducted. Any frameworks (or DPS) that are approved by the relevant member or Executive Director following a recommendation from the Procurement Assurance Board, must be added to the Framework Register which is maintained by Procurement Services. The Framework Register will be a publicly available document.

3.12. Access Agreements (including Dynamic Purchasing Systems)

3.12.1 Where use of a framework (or DPS) requires Westminster City Council to sign an Access Agreement (or similar) with an external contracting authority, the agreement must be reviewed by Procurement Services and authorised by the Chief Procurement Officer.

3.12.2 Mini competitions or call-offs, from frameworks (or DPS), over £100k should be administered through Procurement Services and conducted using capitalSourcing.

3.13. Westminster Led Frameworks (including Dynamic Purchasing Systems)

3.13.1 All commercially viable contracts over £100k are to be let as framework (or DPS) agreements, open to other Public Sector organisations. Tri-borough collaborative procurements where only The London Borough of Hammersmith & Fulham, Royal Borough of Kensington & Chelsea and Westminster City Council are named in order to allow each individual Council to call off on a sovereign basis for uniquely local services will be exempt.

3.14. Procurement Strategy Thresholds and Approval

3.14.1 The Procurement Strategy thresholds determine the approach to be applied to all procurement activity and set the type and levels of approvals before engaging the market via a tender process. Where procurements are considered to be high risk, the appropriate Category Manager must be consulted. A Procurement Strategy may include a programme of works/projects, including the use of a Dynamic Purchasing System, over a defined period of

time. Any deviation from an approved Procurement Strategy will require officers to seek approval again.

Estimated Total Contract Value	Key points and requirements	System	Approval Required By
Low Value under £10k	Obtain at least 1* quote	Manual process	The appropriate member of the Corporate Leadership Team (CLT)
Operational - Less than £100k	RFQ – invite a minimum of 3* suppliers to quote	Mandatory use of capitalEsourcing for all procurements over £25k including both tendering and management of contracts	
Strategic - £100k +	Procurement Service must lead in all projects and use the Category Management Process. Procurements must be competed		The appropriate Executive Director following recommendation to approve from the Procurement Assurance Board (Gate 1)

* A minimum of one supplier must be sought with a registered address within the borough of Westminster, Small Medium Enterprises, Social Enterprises or VCSO where possible.

3.14.2 Where the Cabinet Member is approving spend on ward budgets, in these circumstances, if the value is below £50,000 and 2 out of 3 ward Members have approved the spend, then only 1 written quote is required.

3.15. Waivers

3.15.1 In exceptional circumstance a waiver to the requirements of the Procurement Code may be sought.

3.15.2 All waivers must be reviewed by the appropriate Category Manager prior to issue for approval.

Estimated Total Contract Value	Approval Required By
Less than £1.5m	Chief Procurement Officer
£1.5m + (or £300k + for Consultancy agreements)	Cabinet Member

3.15.3 If the Waiver is approved, the award of contract must still be approved in accordance with the total contract value (see item 3.18)

3.15.4 All Waivers are reported to the Audit & Performance committee as part of the Annual Contracts Review.

3.15.5 The statutory provisions of the Public Contracts Regulations 2015 (EU Procurement Regulations) will be applied to all procurements by the Council and cannot legally be waived.

3.16. Procurement Exemptions

3.16.1 In limited instance it is not necessary to seek a competitive tender or quotations; the list of approved exemptions to procurement is included in **APPENDIX 1**.

3.17. Non-Compliance

3.17.1 Waivers will not be granted retrospectively. Requests for retrospective waivers, where a commitment has been made to a provider of works/goods/services without appropriate approval, will be reported to the Executive Director of the Service as non-compliant and will also be reported to EMT as part of the quarterly contract review and to the Audit & Performance Committee as part of the Annual Contract Review.

3.17.2 Proceeding with a non-compliant procurement without the appropriate approvals will be the responsibility of the officer involved and the relevant Executive Director, the non-compliance will be reported to EL T.

3.18. Contract Award Thresholds and Approval

3.18.1 The contract letting threshold sets out the type and level of approval required by officers prior to proceeding with the award of a contract. When seeking approval for a contract award, officers must clearly state the contract term (which must include any provisions to extend)

Total Contract Value	Approval required by
Less than £100k	The appropriate member of the Corporate Leadership Team (CLT)
Strategic £100k +	The appropriate Executive Director following recommendation to approve from Procurement Assurance Board (Gate 2)
£1.5m + (or £300k+ for Consultancy agreements)	The appropriate Cabinet Member following recommendation to approve from the appropriate Executive Director and Procurement Assurance Board (Gate 2).

3.18.2 The model contract documents/templates contained within capitalEsourcing shall be used for all new contracts. Where modifications are required, Procurement must approve the amended document.

3.18.3 Information relating to Contracts may be commercially sensitive and officers must not communicate it directly or indirectly to other external suppliers.

3.18.4 The Council does not enter into Memorandums of Understanding or issue Letters of Intent.

3.18.5 The Council does not issue or operate under Voluntary Ex-Ante Transparency notices.

3.18.6 No goods will be delivered, nor works or services commence without a proper contractual commitment in place.

3.18.7 All contracts shall have a defined duration and provision(s) for extensions and termination. Contracts shall not have provision for automatic roll over or be allowed to exist in perpetuity.

3.18.8 Prior to entering into contracts with a total value over £25k, the company financial information will be reviewed using the Council's preferred credit check supplier.

3.18.9 All contracts with a value of over £175,000 must be signed by at least 2 authorised officers of the Council or made under the common seal attested by the Chief Executive, Director of Law or authorised Solicitors in accordance with the correct Standing Orders in the Council's Constitution.

3.18.10 Cabinet Members will be sent a briefing note advising them of a contract award by either the Executive Director or Corporate Leadership Team Member where a contract is more than £500,000 in value (£50,000) for consultancies.

3.18.11 Executive Directors are authorised to exercise those powers and duties of the Council in relation to the service and activities for which they are responsible which are not reserved to the Council, the Cabinet/a Cabinet Member, Committee or otherwise identified pre-designated authority.

3.19. Revenue earning contracts

3.19.1 Where the Council wishes to enter into a revenue earning contracts, the Officer shall advise:

- The Corporate Leadership team member, when revenue generated will be less than £50k
- The Executive Director or Cabinet Member, when revenue generated will be more than £50k

3.20. Contract Extensions and Variations

3.20.1 Officers must consult Procurement Services and Shared Legal Services where appropriate, on all contract extensions or variations to ensure compliance with the PCR 2015. It should be noted that the extent of permitted variations is limited by law and require specific conditions to be fulfilled.

3.20.2 Exercising an option to extend or varying the terms of a contract may require the same approvals as the contract award (see item 3.18), appropriate to the total contract value over the life of the contract. This will depend on the specific factors and assessment of any potential risks concerning the proposed extension or variation.

- Minor variations which are not substantial and are permitted under the PCR 2015 may not require the same approval process as contract award; however officers must notify Procurement Services and seek approval from the appropriate CLT member as a minimum.
- Variations, extensions of contract or contract overspends that will account for an additional cost of 10% or more of the original contract value will require the same approvals as the contract award.

□ Officers will be responsible for ensuring that all extensions or variations are formally documented

3.21. Contract Management

3.21.1 Contract Management is the responsibility of the associated service department which includes ensuring a Contract Manager is identified and assigned for all contracts and for maintaining information within capitalEsourcing.

3.21.2 All Contract Managers are required to have attended the Council's training course Managing Successful Contracts within the past 24 months and are required to follow the principles of the Contract Management Framework within 6 months of commencing a role where the officer is managing a contract.

3.21.3 All reporting and performance information is to be submitted to Procurement Services on request. There are to be periodic reviews of contract performance by Procurement Services.

3.21.4 Contract Managers will be responsible for monitoring contract performance and total contract spend over the full term of the contract, as well as ensuring that any variations are compliant with the PCR 2015 and item 3.20 above.

3.22. Changes in identity of Suppliers

3.22.1 Procurement Services must be consulted regarding the assignment or novation of contracts to ensure compliance with the PCR 2015.

3.22.2 For contracts valued at £30,000 or more any new legal documentation such as a Deed of Novation or Parent Company Guarantee must be placed in the Deeds Registry with the original contract.

3.22.3 If the remaining contract value falls within the thresholds detailed within item 3.18, the same approval process must be followed, save for where the contract value is more than £1.5m as the executive Director can approve the novation and send a briefing note to the relevant Cabinet Member.

3.22.4 The contractor shall cover all costs arising from assignment/novation where this has been at the request of the contractor.

3.22.5 Where it is established that no assignment or novation has taken place but only a rebranding exercise following a company merger or acquisition, then a copy of the Change of Name Certificate must be provided to Procurement Services and recorded against the relevant contract on capitalEsourcing.

3.23. Document Retention

3.23.1 The Council regulations for the retention of tenders, quotations and contracts are set out in Westminster's Financial Regulations.

3.23.2 Original signed or sealed contracts must be placed in the Deeds Registry once the documentation has been completed, and a soft copy uploaded onto capitalEsourcing by the lead officer or Contract Manager (where appropriate).

3.23.3 Procurement Services is responsible for maintaining a register of tenders and quotations and will keep records for all Strategic purchases for 6 years.

3.23.4 Contracts awarded under seal must be kept for 12 years from the date of final delivery or completion of the contract.

3. Accounts Payable

The transactional aspects of purchase to payment and purchase cards are facilitated by Managed Services within Westminster City Council and the following apply.

4.1 Purchase Orders

4.1.1 All purchases require a valid purchase order to be raised within the payment system.

4.2 No PO No PAY

4.2.1 The Council operates a No PO No Pay policy, as such in order for any invoice to be paid a valid Purchase Order must be on the system and appropriately receipted.

4.3 Prompt Payment Code

4.3.1 In accordance with the Prompt Payment Code, the Council aims to pay undisputed invoices that quote a valid purchase order number, within 30 days of the invoice receipt.

4.4 Purchasing Cards

4.4.1 The Council provides a corporate Purchasing Card service for the procurement and payment of low value goods and services. Purchasing cards are to be used and administered in accordance with the policy and user guide.

APPENDIX 1

Westminster City Council Procurement Exemptions

There are instances where conducting a procurement under the Procurement Code would not represent Best Value, these circumstances are set out in the table below and may be exempt from the full application of the requirements of the Procurement Code. Please note that if there is an identified Exemption, you **do not** need to seek a waiver of the Procurement Code. Note that the examples listed below are not necessarily exhaustive. Any use of these exemptions must be approved by the Procurement Service and so officers must seek the advice of a Category Manager to ensure that the correct process is followed.

Exemption Number	Circumstance	Example
E1	The Council has no influence over the supplier selection	<ul style="list-style-type: none"> • Where works are to be undertaken by a developer, in accordance with a Section 106 agreement, and the developer appoints a contractor • ☑The procurement activity is grant funded (or the Council is match funding) and the supplier is named as a condition of that funding. • ☑Where it can be robustly demonstrated that there is only one supplier capable of providing the requirements of the Council e.g.: Where software is being procured which must be compatible with an existing IS system thereby limiting the potential providers to the current software provider ONLY. • ☑A subscription is to be paid for a particular service e.g. annual subscription to London Councils. • ☑Where staff are seconded from other local authorities.
E2	The Council are buying goods on behalf of another organisation and those goods will remain on their asset register.	Where purchases are made on behalf of the Metropolitan Police.
E3	Where services need to be procured as a matter of extreme urgency and timescales do not allow for the prescribed procurement route set out in the Procurement Code to be fully followed.	Where an incident occurs which has brought about the events that could not be foreseen by the contracting authority, such as a natural disaster.

E4	SMEs, voluntary sector organisations and other non-commercial companies are encouraged to submit bids for Council contracts.	A small or medium sized enterprise (SME) or voluntary sector organisation does not meet one or more of the criteria set out in the evaluation (e.g. Turnover is no 2 times the contract value)
E5	Local authorities have a statutory duty to provide housing under homelessness legislation, where the applicant is homeless, is in priority need and has a local connection.	When the supply of suitable affordable accommodation is not available, the Council is required to procure Temporary Accommodation (TA) to provide housing until affordable housing is available.