



# City of Westminster Procurement Code

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WESTMINSTER CITY COUNCIL

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## **1. Introduction**

### **1.1. Executive Summary**

- 1.1.1. This Procurement Code (the Code) forms part of the Westminster City Council (the Council) Constitution. It is intended as a 'living document and will be updated to reflect changes in internal policy and procedures as well as any changes in legislation as they arise.
- 1.1.2. Procurement is defined as the process of acquiring works, goods and services and plays a critical role in the delivery of effective services, developing relationships with our supply base and partner organisations. The process spans the whole cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset. It involves options appraisal and the critical "make or buy" decision, and in general, as the value increases, so too does the complexity and risk.
- 1.1.3. The Council is subject to legal requirements such as the Public Contracts Regulations 2015 (PCR 2015) and the Concession Contracts Regulations 2016 (CCR 2016), which sets out the procurement procedures, thresholds and the rules that must be followed. This Code sets out the Councils approach to procurement activity according to risk & contract value and the appropriate approval processes. These rules and guidelines apply to all Members, officers of the Council and any persons or organisations that are responsible for the conduct of procurement and contract management activity on behalf of the Council.

### **1.2. Purpose**

- 1.2.1. The intention of this Code and supplementary guidelines is to ensure that commercial activity is effective, making best use of Council resources and delivering Best Value, taking into account cost and quality, over the whole life of the contract. It serves as a guide to those involved to help give practical effect to the Council's priorities whilst at the same time mitigating against commercial and compliance risk, protecting officers, Council reputation and to operate within the law.
- 1.2.2. Procurement activity should demonstrate:
  - Value for money; to ensure Council budgets are optimised as much as possible in relation to securing the desired outcomes;
  - Quality; as is required to secure the desired outcome, without over specification or greater cost;
  - Due process; to ensure procurement activity is conducted in an open and transparent manner and Contractors are treated fairly and equally;
  - Responsible Procurement; to reflect ethical, social, environmental and economic impacts and drive Council policies such as the City for All Vision & Strategy 2020/21, Living Wage, Climate Emergency Declaration and Supplier Diversity and Inclusion;

- Competence; to validate that officers demonstrate high commercial and professional standards and evidence-based decision making.
- 1.2.3. Council officers can access additional guidelines and information about procurement on the Procurement & Commercial Services hub [Intranet pages](#)

### **1.3. Scope**

- 1.3.1. This Code covers all works, goods and services procured by or on behalf of the Council whether it be for;
- The Council only;
  - The Council and The Royal Borough of Kensington and Chelsea (RBKC). This will include all activity commissioned by the shared services on a Bi-Borough or sovereign basis;
  - Collaborative activity with other local authorities where the Council is the lead authority or where the estimated total contract value is £100,000 or more.
- 1.3.2. The Code shall be followed in the conduct of all procurement and contract management activity and must be followed by all Members, officers of the Council and any parties that are responsible for supplier selection and awarding, managing and monitoring contracts on behalf of the Council.
- 1.3.3. Council Wholly Owned Companies will be reviewed on a case by case basis to determine whether they are subject to the legal requirements of the PCR2015 and CCR2016, and whether this Code and/or wider Council Governance must be followed when procuring works, goods or services.
- 1.3.4. To help determine an appropriate and proportionate approach, Procurement activity is categorised on the basis of contract value and risk.
- 1.3.5. Procurement projects are considered 'High Risk' where, it is deemed on a case by case basis that the criticality of service, product interruption or loss may have a negative impact to the Council. A procurement project may be considered high risk if it;
- has a commercial impact that exceeds >£100,000
  - has significant public/customer or market visibility or critical effect on other key services or work programmes;
  - could result in loss of business or regulatory control;
  - supports or is a statutory service or involves the capture or storage of personal data or sensitive information;
  - could have significant negative reputational or political impact;
  - could result in a loss of critical functions/systems for more than 2 days;
  - creates a high level of commercial dependency (>30% of a contractor's business or vice versa);

- will require an interface with or connection to Council IT systems or networks

## **2. Responsibility and accountability**

### **2.1. Overall accountability**

- 2.1.1. Accountability for services that are provided by a third-party rest with the commissioner or business owner.
- 2.1.2. It is the responsibility of the service owner to assign a responsible officer to act as the 'voice of the client', to engage early with Procurement and Commercial Services on new commissioning ideas, contract renewals or new business initiatives, and management of the contract after it has been awarded.
- 2.1.3. The Procurement and Commercial Service will provide the necessary professional leadership, support and technical inputs throughout the process as detailed in its [Core Service Offer](#). This will include guiding the client through the relevant governance requirements throughout the procurement process, support with coordination of professional inputs from other key stakeholders (e.g. Legal, Finance, IT, Property) and embedding the Contract Management Framework.

### **2.2. Conduct**

- 2.2.1. The Council expects all officers and elected members involved in procurement to behave with the highest levels of probity, integrity and in accordance with the Bribery Act 2010 and the Codes of Conduct detailed within the Council Constitution. Any parties acting on behalf of the Council must also follow the same principles as well as any expressed contractual provisions relating to their involvement in the procurement.

### **2.3. Cabinet Member decisions**

- 2.3.1. Any decision requiring Cabinet Member approval is the responsibility of the project lead to obtain. Cabinet Members are elected representatives who make informed decisions of significant value or of multi departmental interest. Where there is delegated authority to incur expenditure, all officers involved in the procurement process shall ensure they follow this Code, the requirements set out in the Council Finance Procedure Rules and the Cabinet Member Terms of Reference. For collaborative procurement activity, officers should note the requirements set out under 3.4.2

### **2.4. Conflicts of interest**

- 2.4.1. Officers, including external parties acting on behalf of the Council who find themselves in a situation of potential, perceived or actual conflict of interest must disclose it formally in writing to the project lead as soon as they are aware.

### **2.5. Transparency Code**

- 2.5.1. The Council will comply with its statutory obligations set out under the Local Government Transparency Code 2015, to publish data such as information on

all tenders issued, contract awards and expenditure. An extract of data to be published is set out under [Appendix 5](#).

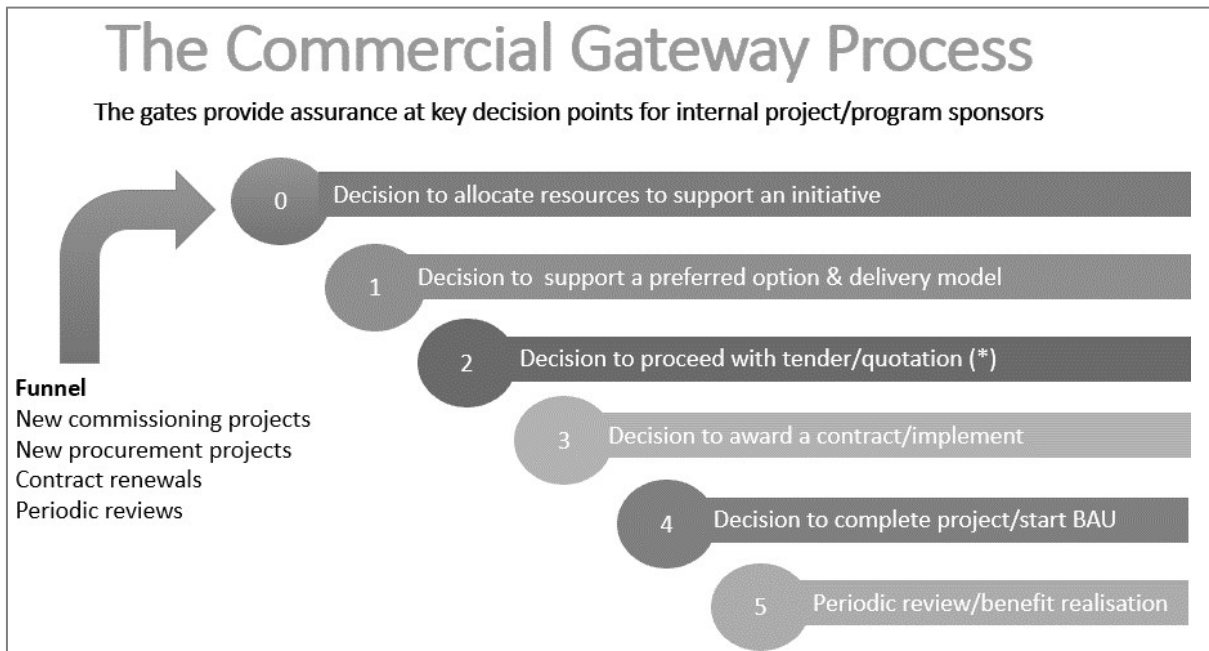
## 2.6. Interpretation of this code

2.6.1. The overarching responsibility of Procurement and Commercial Services is with the Director of Commercial Partnerships. Any interpretation of this Code will be clarified by the Director of Commercial Partnerships (or delegated authorities as appropriate)

## 3. Operational principles

### 3.1. Procurement Governance

3.1.1. Procurement governance within the Council is aligned to a simple commercial gateway process which tracks a projects journey from inception through to the delivery of business outcomes.



3.1.2. This is overseen by the Commercial Gateway Review Board (CGRB) which is the single assurance body in respect of procurement activity.

3.1.3. CGRB will review and endorse commercial activity as projects progress through the stage/gate process and the level of governance will be proportionate to the risk and commercial impact. [Appendix 1](#) provides a detailed overview of the commercial gateway process.

3.1.4. **For procurement projects that are deemed to be High Risk, or that have an estimated total contract value of £100,000 or more, Gates 2 and 3 are mandatory.** CGRB will formally review a Gate 2 'Procurement Strategy' once the lead officer wishes to formally go to market and a Gate 3 'Contract Award proposal' once tender submissions have been evaluated and the lead officer wishes to award a contract. CGRB members will recommend to the appropriate

officer, whether the Procurement Strategy or Contract Award should proceed to approval.

3.1.5. CGRB may review projects at other gates by exception dependent on risk. The gateways and criteria for submission to the Board are set out in the CGRB Terms of Reference.

### 3.2. Alignment of commissioning and procurement activity

3.2.1. Accountability for managing the overall commissioning or business project remains with the Directorate / services area leads. At a high level this accountability includes;

- Managing the overall business project/program within which the procurement aspect is a part;
- Ensuring that there is a clear business rationale for what is being proposed (e.g. business case or commissioning strategy) and the necessary business approvals associated with this;
- Defining business needs and priorities in a way that can be translated into a specification and tendering strategy;
- Securing financial and other resources to undertake the work;
- Managing the contract after it has been awarded.

3.2.2. The Procurement and Commercial Service will work collaboratively to develop a procurement approach that is most able to secure the desired business and commercial outcomes and will work with Directorate / Service areas throughout all stages of the commercial/gateway process.

3.2.3. Procurement projects are categorised as follows;

<b>Procurement and Commercial Services to lead on all Type A and B procurement activity</b>	
Type A	Type B
Total contract value (or concession) is over the relevant PCR/CCR thresholds (or value equivalents if using an existing framework or DPS) All new frameworks or Dynamic Purchasing systems All 'High Risk' projects	Total contract value is over £100,000 but below the relevant PCR/CCR value thresholds (or value equivalent if using an existing framework or DPS); and Is not 'High Risk'
<b>Directorate / service areas to lead on all Type C &amp; D procurement activity</b>	
Type C	Type D
Total contract value is over £10,000 but below £100,000 Is not 'High Risk'	Total contract value is below £10,000 and Is not 'High Risk'

- 3.2.4. Procurement and Commercial Services will provide a ‘fully managed’ tendering service for all Type A and B procurement activity and all projects deemed to be High Risk, as outlined in the. [‘Core Service offer’](#)
- 3.2.5. Directorates / service areas will lead on all Type C and D procurement activity with appropriate support, guidance and training from Procurement and Commercial Services.

### 3.3. Procurement principles

3.3.1. The procurement principles set out below are well established, promote competition and ensure compliance with public procurement law and statutory duties:

- **Transparency:** contract procedures must be transparent. Opportunities, decision and award outcomes should generally be publicised;
- **Proportionality:** procurement procedures and decisions must be proportionate to the scale and complexity of the project;
- **Non-discrimination & equal treatment:** potential contractors must be treated equally, and procurement activity must ensure a level playing field, i.e. not discriminate or favour any contractor or group of contractors;
- **Mutual Recognition:** must give equal validity to qualifications and standards from other Member States (where appropriate);
- **Manage Conflicts of Interest** The procurement process must recognise and manage any potential conflicts of interest that may arise in relation to a supplier selection process or commercial decision;

3.3.2. In addition to securing the desired business outcomes and priorities, officers will seek to support and drive key strategies and policies through Council contracts such as City for All, the Councils Climate Emergency, Living Wage, Sustainability and improved Social Value outcomes. For Bi-Borough or collaborative procurement activity, consideration will also be given to the participating councils key priorities, strategies and policies.

### 3.4. Collaborative procurement activity

3.4.1. Procurement activity undertaken by two or more participating councils will follow the tendering requirements documented within the Contract Standing Orders’ of the lead council. The scope of all procurement activity where spend by the Council is likely to exceed £100,000 over the life of the contract or where it is deemed to be High Risk, may require commercial oversight and be subject to the governance of CGRB. The level of governance to be applied will be proportionate to the risk and commercial impact.

3.4.2. It is the responsibility of the lead officer to ensure the governance arrangements in respect of Key and Executive Decisions of participating councils are followed.



### 3.5. Systems

- 3.5.1. The Council is required by law to use an electronic tendering system (currently capitalEsourcing) and to make its requirements visible and accessible to the market;
- 3.5.2. Use of the system is also required for lower value quotations where the value of the contract is between £25,000 and £100,000.
- 3.5.3. This system should be used for the publication of contract opportunity and award notices as set out within [Appendix 2](#).

## 4. Establishing a new contract for works, goods, services or a concession.

### 4.1. Thresholds and approvals

- 4.1.1. The Council thresholds determine the approach to be applied to all procurement activity, the type and levels of approval.
- 4.1.2. For all low value procurements, with an estimated total contract value below £100,000 and that are low risk, the following will apply.

Contract Value and Process	Approval
Type D: Up to £10,000 and low risk Obtain at least one quote	The appropriate Corporate Leadership Team member
Type C: Meets or exceeds £10,000 and below £100,000	
Endeavour to obtain 3 quotes, using local suppliers wherever possible.	

- 4.1.3. For all procurements with an estimated total contract value of £100,000 or more, or where the activity is deemed to be high risk, the following will apply. No procurement activity can commence until prior approval of the procurement strategy is obtained and no contracts can be executed until prior approval of the contract award.

Contract Value and Process	Approval
Type B: £100,000 or more but below the relevant PCR/CCR thresholds  Must be competed with a minimum of 5 suppliers invited to quote	Procurement Strategy – Executive Leadership Team Member following CGRB endorsement  Contract Award - Executive Leadership Team Member if below £1,500,000 (Below £300,000 for Consultancy agreements) following CGRB endorsement
Type A: Meets or exceeds the PCR/CCR thresholds  Must follow the requirements set out within the PCR/CCR thresholds	Contract Award – Cabinet Member if meets or exceeds £1,500,000 (£300,000 for Consultancy Agreements), following recommendation to approve from the appropriate Executive Leadership Team member and CGRB endorsement

- 4.1.4. With all Direct Awards involving essential statutory services the requirement for CGRB involvement is removed and all awards must be approved at Executive Director level or Cabinet Member level following procurement team and legal advice.
- 4.1.5. It should be noted that compliant use of Frameworks and or Dynamic Purchasing Systems are acceptable. This will include recommendations to proceed with a compliant direct award in place of running a mini competition where it can be demonstrated that this offers Best Value. The detailed procedural requirements and approval processes associated with these thresholds are set out within [Appendix 2](#).
- 4.1.6. 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 extension. If the terms of a contract are yet to be established or are uncertain, then a 4-year contract should be assumed for the purposes of estimating the contract value.
- 4.1.7. When procuring assets (equipment) officers should ensure that the whole life costs are included such as, maintenance / after care-support.
- 4.1.8. Officers must not deliberately sub-divide or disaggregate the total contract value for the purposes of avoiding thresholds, oversight and governance.
- 4.1.9. Works, goods (supplies) and services are defined terms in the PCR 2015. [Appendix 3](#) sets out these definitions.

## **4.2. Section 20**

- 4.2.1. 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).
- 4.2.2. 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.

## **4.3. Form and term of Contract**

- 4.3.1. The Council's preference is to let contracts using its own standard terms and conditions. Variations to these terms can only be made with the agreement of Legal Services.
- 4.3.2. The use of industry standard terms or a supplier's terms and conditions must be reviewed and approved by Legal Services for all Type A, B & C procurement projects.
- 4.3.3. Where appropriate, the Council purchase order terms and conditions can be used for Type C and D procurement projects
- 4.3.4. No goods will be delivered, and no works or services shall commence without a

written and executed contract in place.

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

4.3.6. All contracts with a value of £175,000 must be signed by at least two authorised officers of the Council or made under the common seal attested by at least one officer, in accordance with the Contract Standing Order 36.1 (5). The Director of Law, or other lawyer authorised by him or her, may decide by what means and in what form (including but not limited to an electronic seal) the common seal is to be used.

#### **4.4. Evaluation Criteria**

4.4.1. Officers shall base the award of contracts on the Most Economically Advantageous Tender (MEAT) to be assessed on the basis of the best value (price-quality ratio).

4.4.2. The default evaluation criteria is set at 60:40 price:quality and the rationale to deviate from this ratio must be documented within the Procurement Strategy. For procurement activity valued at £100,000 or more, officers will be expected to present the basis for the proposed evaluation criteria, and any relative weightings attached to these, to CGRB. In constructing the evaluation criteria, consideration should be given to elements such as; complexity of the contract requirements; budget requirements and/or constraints; market intelligence such as competitive pressure, capacity, capability, service profile and reputational risk, and market maturity.

#### **4.5. Responsible Procurement**

4.5.1. Responsible Procurement is generally defined as the act of sourcing works, goods and services in a way that considers the ethical, social, environmental and economic impacts (both positive and negative). The Council expects officers to investigate every opportunity to incorporate Responsible Procurement into all activity, by considering how contracts will drive and support the Councils key strategies and policies.

4.5.2. **Living Wage:** The Council is an accredited Living Wage Employer. The Council is committed to promoting and implementing the real Living Wage (LW) standard which means:

- adoption of the LW by Contractors (and sub-contractors) deemed in scope at the point a new contract commences; and to
- seek voluntary adoption of the LW by Contractors (and sub-contractors) not currently paying it at the point where break clauses / options to extend exist.
- Officers should follow the guidelines set out in the Councils Living Wage policy

4.5.3. **Social Value:** The Council is committed to fulfilling its obligations under The Public Services (Social Value) Act 2012 and the London Government Act 2000. Officers shall maximise the potential to generate social value outcomes from

procurement activity through a standardised approach that is aligned to the **City for All Vision and Strategy**.

- 4.5.4. Social value outcomes may be achieved as part of the subject matter of the contract (i.e. the beneficial impact of the contract itself)
- 4.5.5. In addition to the beneficial aspects of the contract itself a minimum of 5% of the total weighting in the Award Criteria must be allocated to **additional** social value benefits offered by each bidder. This should be applied to all contracts that have an estimated total contract value of £100,000 or more. A Responsible Procurement Delivery Plan (RPDP) has been developed to form part of the procurement documentation and it is aligned to the three pillars set out in the City for All Vision & Strategy 2020/21. The RPDP of the winning bidder will form part of the final contract.
- 4.5.6. Officers should make clear to potential bidders that where social value commitments have already been secured through Section 106 agreements<sup>1</sup>, that they are not duplicated within their tender submission for a new contract award.
- 4.5.7. **Climate Emergency Declaration:** The Council declared a climate emergency in September 2019, to become a net zero carbon emissions council by 2030 and to put in place policies which will achieve net zero carbon emissions in the City of Westminster by 2040. As the Council develops its strategy and approach to delivering these ambitious targets, to reduce carbon intensity, officers will be expected to embed innovative approaches to service design, specification and demand challenge in pre-procurement activity and to influence suppliers and supply chains through the tender process and post contract management.
- 4.5.8. **Supplier Diversity and Inclusion:** The Council is developing an ambitious programme of work, implementing a range of initiatives to create a culture of diversity and inclusion both internally and externally. As this matures, officers will be expected to support proactive procurement initiatives to help create and develop a more diverse and inclusive supply base, which includes examining the supplier workforce to become more reflective and representative of the Westminster communities it serves over the short, medium and long term. The intention is to “ensure all relevant, potential suppliers have the fair and equal opportunity to compete for Council business. This can include micro, small and medium enterprises, social enterprises, local vendors, and enterprises that are majority owned and controlled by minority groups”<sup>2</sup>.
- 4.5.9. Further support and guidelines on Responsible Procurement can be found on the Procurement hub intranet pages.

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<sup>1</sup> Section 106 (S106) Agreements are legal agreements between Local Authorities and developers; these are linked to planning permissions and can also be known as planning obligations

<sup>2</sup> <https://www.cips.org/knowledge/procurement-topics-and-skills/equality-diversity-and-inclusion/supplier-diversity/>

#### **4.6. Document Retention**

- 4.6.1. The Council regulations for the retention of tenders, quotations and contracts are set out in Westminster's Retention of Documents Schedule.
- 4.6.2. Original signed or sealed contracts must be placed in the Councils Records Management once the documentation has been completed. Soft copies of all contracts over £25,000 must be uploaded onto capitalEsourcing by the lead officer or Contract Manager and by the procurement lead if the contract is over £100,000 in value.
- 4.6.3. Contracts awarded under seal must be kept for 12 years from the date of final delivery or completion of the contract.

#### **4.7. External Frameworks and Dynamic Purchasing Systems**

- 4.7.1. Prior agreement should be sought from Procurement and Commercial Services before a DPS or Framework Agreement is used, or access agreement signed.

#### **4.8. Revenue Earning Contracts**

- 4.8.1. Where the Council wishes to enter into a revenue earning contract, the officer shall advise:
  - The Corporate Leadership team member, when revenue generated will be less than £50,000
  - The Executive Leadership team member or Cabinet Member, when revenue generated will be more than £50,000

#### **4.9. Concession Contracts**

- 4.9.1. The procurement of concession contracts is regulated by the Concession Contracts Regulations 2016 as amended, which sets out the rules on the procurement procedures and the thresholds that apply.
- 4.9.2. A concession contract is generally defined as the provision of services to or on behalf of the Council, but one where service users as opposed to the Council make payments to the Contractor for use of the service. For example, where the Council allows a third party to commercially exploit a Council asset to provide services, and the provider in turn pays the Council an agreed level of rent for a fixed period and/or a share in the profits resulting from the commercial activity undertaken on or from the premises. Two key factors that distinguish concessions from normal works or services are:
  - consideration must consist either solely in the right to exploit the services (i.e. to make money from third parties) or in that right together with payment from the procuring body
  - the contract must transfer to the contractor the operating risk (encompassing demand or supply risk or both); plus, real exposure to the vagaries of the market

- 4.9.3. The same procurement principles apply to concessions contracts as per public contracts and officers are expected to follow a process that demonstrates Best Value.
- 4.9.4. When determining the estimated total contract value of a concession contract, the estimated total turnover to be generated over the life of the concession contract for the works and services is to be used. This will determine the procurement type, the approach and approval processes to be followed as set out within this Code.

## **5. Managing or extending an existing contract**

### **5.1. Contract Management**

- 5.1.1. Contract Management is the responsibility of the associated service department which includes ensuring a named Contract Manager is identified and assigned for all contracts and for maintaining information within capitalEsourcing.
- 5.1.2. A Contract Management Framework has been developed to create a consistent approach to contract management activity within the Council. Contract Managers are expected to follow this guidance and will be responsible for monitoring contract performance and total contact spend over the full term of the contract, as well as ensuring that any variations are compliant with the public procurement law and item 5.2 below
- 5.1.3. When monitoring spend, Contract Managers must ensure that expenditure is in line with any budgetary or contractual limits that have been set. In the event such limits are near to being reached, this should be highlighted to the budget holder in good time so that appropriate action can be taken.

### **5.2. Contract extensions and variations**

- 5.2.1. Officers must consult Procurement and Commercial Services and/or Shared Legal Services, on all contract extensions or variations to ensure compliance with the PCR 2015 and CCR 2016. It should be noted that the extent of permitted variations is limited by law and require specific conditions to be fulfilled.
- 5.2.2. Exercising an option to extend or varying the terms of a contract may require the same approvals as the contract award, appropriate to the total contract value over the life of the contract. This will depend on the specific factors and assessment of any potential risk(s) concerning the proposed extension or variation. The following are the minimum requirements that will apply.

Criteria	Contract Value	Approval
Exercising an option to extend a contract; OR	Below £100,000 and low risk	Does not require review by CGRB The appropriate Corporate Leadership Team member can approve
Exercising a variation, extension of contract or contract overspend that will account for 10% or more of the original contract value	£100,000 or more, (or £300,000 for Consultancy agreements)	Business justification, review and endorsement by CGRB Approval by the appropriate Executive Leadership Team Member
	£1,500,000 or more (or £300,000 for Consultancy Agreements)	Business justification, review and endorsement by CGRB Approval by the appropriate Cabinet Member in accordance with their Terms of Reference

5.2.3. Officers should ensure review of contract extensions are made well in advance of contract expiry dates for formal recommendation to proceed. This is to allow sufficient time for a compliant re-tender exercise to be successfully completed should the proposed extension be rejected (or if the contractor does not wish for the contract to be extended)

5.2.4. Minor variations which are not substantial and are permitted under the Regulations may not require the same approval process as contract award; however, officers must seek approval from the appropriate CLT member as a minimum

5.2.5. Officers will be responsible for ensuring that all extensions or variations are formally documented and recorded on capitalEsourcing and stored with the Councils Records Management.

### 5.3. Changes in identity of Contractors

5.3.1. Procurement and Commercial Services and Legal Services must be consulted regarding the assignment or novation of contracts to ensure compliance with the PCR 2015.

5.3.2. 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 Councils Records Management with the original contract.

5.3.3. If the contract value falls within the thresholds outlined in [Appendix 2](#), 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.

5.3.4. 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 and Commercial Services and recorded against the relevant contract on capitalEsourcing.

## 6. Paying for goods and services



## **6.1. No PO No Pay**

6.1.1. Payments are managed through the [Integrated Business Centre \(IBC\)](#) based in Hampshire. All purchases require a valid purchase order to be raised within the payment system. The Council operates a no purchase order (PO) no pay policy, as such for any invoice to be paid a valid PO must be on the system and appropriately receipted.

6.1.2. In accordance with items 4.3 and 5.1 of this Code and the Finance Procedure Rules, officers must:

- ensure a valid contract is in place before approving purchase orders
- monitor and review the cumulative spend 'run rate' over the life of the contract (or annually where there is an annual spend cap) to ensure that purchase orders placed do not exceed any spend limits or the total contract value.

## **6.2. Guidance for invoicing, POs and setting up Suppliers**

6.2.1. Officers should ensure suppliers are set up correctly and paid promptly by following the guidance set out on [IBC SharePoint](#)

## **6.3. Purchasing Cards**

6.3.1. 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](#).

## **7. Grants and other sources of external funding**

### **7.1. Council grant funding**

7.1.1. Where the Council issues grant funding to voluntary and community sector or other third-party organisations as a conditional gift with no benefit in return, this will fall outside of the Public Procurement Regulations. However, as grant funding involves the expenditure of public money it is still subject to the requirements of fairness and transparency and demonstration of Best Value.

### **7.2. Arrangements that secure external grants & funding**

7.2.1. The Council may secure grants or external funding from grant awarding authorities such as other Local Authorities, Central Government or the European Commission or other external funding agencies. Officers who secure funding should ensure compliance with the funding arrangements stipulated by these bodies.

7.2.2. Where a competitive tender process must be conducted, as a condition of the grant funding, the thresholds and approval processes set out within this Code must be followed (see [Appendix 2](#)).

7.2.3. Where procurement activity is grant funded (or partially grant funded) and a supplier is named as a condition of that funding, this must be evidenced and

formally documented as an exemption (see section 8). The award of a contract must still be approved in accordance with the total contract value (see [Appendix 2](#))

7.2.4. European Commission funded projects must ensure compliance with the associated standards and regulations.

7.2.5. **Bidders assisted by State Aid.** Officers must ensure that where a bidder is assisted by grants from the Council or other grant awarding authority, such as central government or other Local Authorities, that this does not constitute unlawful State Aid. Moreover, where a bidder is assisted by grants from the Council which does constitute State Aid that the correct procedures are followed. Guidance must be sought from Legal Services.

## **8. Exceptions to the Procurement Code**

### **8.1. Emergency Procedures**

8.1.1. Where there is a clear need to provide urgent goods and/or services in the event of a sudden unforeseen crisis or an immediate risk to health, life, property or environment, compliance with this Code may not be feasible. In such circumstances, officers must notify the Chair of the Commercial Gateway Review Board (CGRB), clearly stating the immediate procurements that are required. Approval from the appropriate decision maker in accordance with the Contract Award Thresholds detailed in Appendix 2, should also be obtained. A retrospective report of any contracts awarded, including full justification supporting the activity undertaken, must be submitted to CGRB at the next available board meeting after the event.

### **8.2. Not using a competitive process – exemptions and waivers**

8.2.1. In exceptional circumstances, there may be instances where conducting a competitive process may not represent Best Value. Exemptions/waivers must be endorsed and recorded by the Procurement and Commercial Service Team. [Appendix 4](#) provides some examples of valid exemptions.

8.2.2. The statutory provisions of the PCR 2015 (EU Procurement Directives) or the CCR 2016 will be applied to all procurements by the Council and cannot legally be waived.

8.2.3. Approvals of exemption/waiver requests are as follows:

<b>Total Contract Value</b>	<b>Approval Required By</b>
Less than £100k	Director of Commercial Partnerships (or deputy) and the appropriate Director.
Less than £1.5m	Director of Commercial Partnerships (or deputy) and the appropriate Executive Leadership team member following a recommendation to approve from CGRB
£1.5m or more (or £300k or more for Consultancy agreements)	Cabinet Member following a recommendation to approve from the appropriate Executive Leadership Team Member, the Director of Commercial Partnerships and CGRB

8.2.4. If the exemption/waiver is approved, the award of contract must still be approved in accordance with the total contract value (see [Appendix 2](#))

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

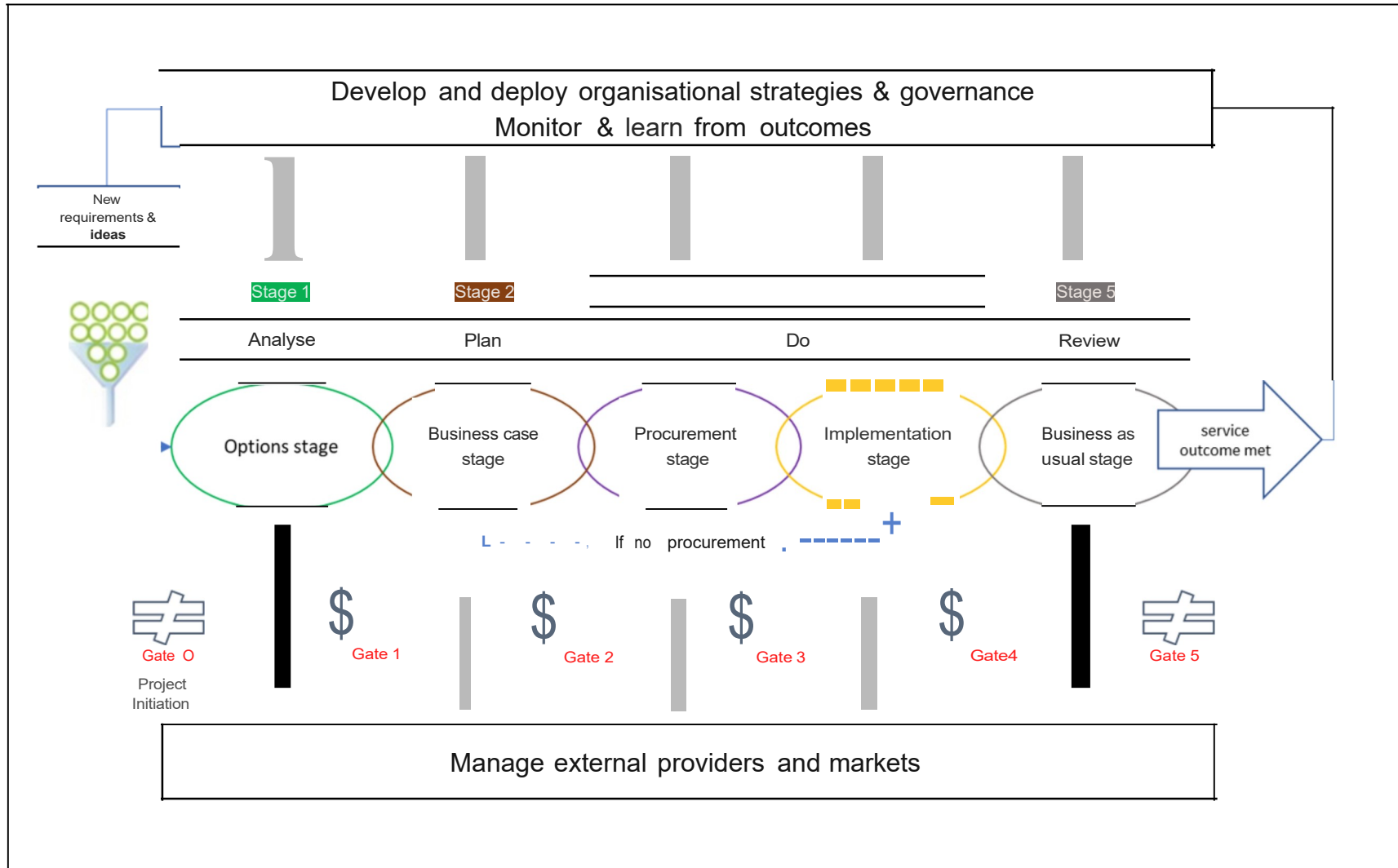
### **8.3. Process for seeking an exception to the Procurement Code**

8.3.1. Procurement and Commercial Services will support officers with an exception of the Procurement Code requests, which will include drafting of the request and submission to the relevant decision maker for approval.

8.3.2. Exceptions (waiver and/or exemption requests) will not be granted retrospectively. Retrospective requests, where a commitment has been made to a provider of works/goods/services without appropriate approval, will be reported to the Executive Leadership Team (ELT) and to the Audit & Performance Committee as part of the Annual Contract Review.

8.3.3. Proceeding with a non-compliant procurement without the appropriate approvals will be the responsibility of the officer involved and the relevant Executive Leadership Team member.

# Appendix 1: Commercial Gateway process



## Appendix 2: Council Procurement Thresholds and Approval processes

Note: Thresholds are exclusive of VAT

Procurement and Commercial Services to lead on all Type A and B procurement activity			
Procurement Type / Contract Value	Key Process Points	Procurement Strategy Approval	Contract Award Approval
<b>TYPE A</b>  Meets or exceeds the relevant PCR / CCR threshold & all high-risk projects	<ul style="list-style-type: none"> <li>• Mandatory use of capitalEsourcing for all procurement activity including both tendering and management of contracts.</li> <li>• Must follow PCR / CCR requirements</li> </ul>	<ul style="list-style-type: none"> <li>• <b>£100,000 or more:</b> The appropriate Executive Leadership Team member following CGRB endorsement to approve</li> </ul>	<ul style="list-style-type: none"> <li>• <b>£1,500,000 or more*:</b> The appropriate Cabinet Member following endorsement to approve from the appropriate Executive Leadership Team member and CGRB</li> <li>• <b>Less than £1,500,000*:</b> The appropriate Executive Leadership Team member following CGRB endorsement to approve</li> </ul> <p><b>*Note:</b> Cabinet Member approval is required for all Consultancy Agreements valued at £300,000 or more in accordance with their Terms of Reference.</p>
<b>TYPE B</b>  £100,000 or more but below the relevant PCR / CCR thresholds	<ul style="list-style-type: none"> <li>• Invite a minimum of 5 suppliers to quote</li> <li>• Mandatory use of capitalEsourcing as per TYPE A</li> <li>• Must follow PCR / CCR rules regarding advertising for all procurements</li> </ul>		

Directorate / service areas to lead on all Type C & D procurement activity		
Procurement Type / Contract Value	Key Process Points	Procurement Strategy Approval and Contract Award Approval
<b>TYPE C</b>  10,000 or more but below £100,000	<ul style="list-style-type: none"> <li>• invite a minimum of 3 suppliers to quote</li> <li>• Mandatory use of capitalEsourcing for all procurements valued at £25,000 or more including both tendering and management of contracts.</li> <li>• Must follow PCR rules regarding advertising for all procurements valued at £25,000 or more</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Less than £100,000:</b> Corporate Leadership Team Member following recommendation to approve following Peer Review</li> </ul>
<b>TYPE D</b>  Below £10,000	<ul style="list-style-type: none"> <li>• Obtain at least one quote</li> <li>• Manual process</li> <li>• No requirements to publish an opportunity listing or contract award notice</li> </ul>	<ul style="list-style-type: none"> <li>• Corporate Leadership Team Member</li> </ul>

It should be noted that compliant use of Frameworks and or Dynamic Purchasing Systems are acceptable. This will include recommendations to proceed with a compliant direct award in place of running a mini competition where it can be demonstrated that this offers Value for Money.

### Appendix 3: Spend Definitions

The PCR 2015 sets out the definitions of works, supply and service contracts. The paragraphs below provide a detailed overview of these public procurement categories.

**Supply/Goods contracts:** The defined term in the PCR 2015 is - *“public supply contracts” means public contracts which have as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products, whether or not the contract also includes, as an incidental matter, siting and installation operations.*

Goods or Supply contracts are for the provision of physical products which are purchased or manufactured on request. There may be an element of service involved, such as when items need to be assembled and/or installed. Typical examples are office supplies and equipment, furniture, IT equipment, books, medical supplies and other commodities

**Service contracts:** The defined term in the PCR 2015 is - *“public service contracts” means public contracts which have as their object the provision of services other than those referred to in the definition of “public works contracts”.*

Services are often classified as consulting services and non-consulting services because of the difficulty at times in clearly determining the difference. A distinguishing factor between the two, is the degree of importance in measurable physical output of the requirement.

- Consultancy services/agreements are usually intellectual in nature. At the Council, these are defined as the provision of objective advice relating to strategy, structure, management or operations of an organisations. Such advice will be provided outside of the ‘business-as-usual’ environment when in-house skills are not available and will be time-limited. This may include the identification of options with recommendations, or assistance with (but not necessarily the delivery of) the implementation of solutions. Typical examples are management and/or business consultancy, advice on finance, audit, HR, Health, infrastructure, ICT, to name a few. Architectural services are not classed as the provision of Consultancy but will fall under the definition detailed under non-consulting services.

**Officers should note that Consultancy agreements fall under TYPE A procurements where the threshold for approval is set at £300,000.**

- Non-consulting services usually involve the use of specific methodologies (and at times equipment) to achieve their objectives. Some typical examples are equipment maintenance and repair, operation and maintenance services, utility management, installation and maintenance services, surveys and field investigations, health and social care services and similar.

**Works contracts:** The defined term in the PCR 2015 is - *“public works contracts” means public contracts which have as their object any of the following:*

- a) the execution, or both the design and execution, of works related to one of the activities listed in Schedule 2;*
- b) the execution, or both the design and execution, of a work;*
- c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;*

Works are related to civil works; this includes new construction of structures of all kinds (buildings, highways, bridges, etc), renovations, extensions, and repairs however it excludes certain types of planned maintenance for example decorating. This category can also include, some types of ground condition surveys, water and sanitation, transportation and electrical plant infrastructure.

Supplies and works are usually provided by firms, but consulting and non-consulting services are generally provided by firms as well as individuals.

## Appendix 4: Exceptions to the Procurement Code

Note that the examples listed below are not necessarily exhaustive. Requests must be endorsed by Procurement and Commercial Services and are recorded prior to submission for approval by the relevant decision maker.

Exemptions		
#	Circumstance	Example
E1	The Council has no influence over the supplier selection	<ul style="list-style-type: none"> <li>Where works are to be undertaken by a developer, in accordance with a Section 106 agreement, and the developer appoints a contractor</li> <li>The procurement activity is grant funded (or the Council is match funding) and the supplier is named as a condition of that funding.</li> <li>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 <b>ONLY</b>.</li> <li>A subscription is to be paid for a particular service e.g. annual subscription to London Councils.</li> <li>Where staff are seconded from other local authorities.</li> <li>individual care packages or education placements where it is considered in the Council's interest or the Council is required to meet obligations under the relevant legislation</li> <li>adult social care service packages managed by the Council on behalf of a client under the personalisation agenda e.g. managed accounts &amp; direct payments/individual budgets.</li> </ul>
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	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.

Waivers
<p>Officers are reminded that the statutory provisions of the Public Contracts Regulations 2015 (EU Procurement Directives) will be applied to all procurements by the Council and <b>cannot legally be waived</b>. Waiver Requests may cover but are not limited to:</p> <ul style="list-style-type: none"> <li>Request to proceed with a Direct Award without running a competitive process</li> <li>Request to extend a contract for a specific period, where no further extension options exist</li> </ul> <p>It should be noted that compliant direct awards from a Framework or DPS will not require a waiver where it can be demonstrated that this offers value for money</p>

## Appendix 5: Transparency Code Obligations

Extract from Local Government Transparency Code 2015, Annex A: Table summarising all information to be published

Information title	Information which must be published	Information recommended for publication
<p><b>Expenditure exceeding £500</b></p>	<p>Quarterly publication</p> <p>Publish details of each individual item of expenditure that exceeds £500, including items of expenditure, consistent with Local Government Association guidance, such as:</p> <ul style="list-style-type: none"> <li>• individual invoices</li> <li>• grant payments</li> <li>• expense payments</li> <li>• payments for goods and services</li> <li>• grants</li> <li>• grant in aid</li> <li>• rent</li> <li>• credit notes over £500</li> <li>• transactions with other public bodies.</li> </ul> <p>For each individual item of expenditure the following information must be published:</p> <ul style="list-style-type: none"> <li>• date the expenditure was incurred</li> <li>• local authority department which incurred the expenditure</li> <li>• beneficiary</li> <li>• summary of the purpose of the expenditure</li> <li>• amount</li> <li>• Value Added Tax that cannot be recovered</li> <li>• merchant category (e.g. computers, software etc).</li> </ul>	<ul style="list-style-type: none"> <li>• Publish information on a monthly instead of quarterly basis, or ideally, as soon as it becomes available and therefore known to the authority (commonly known as 'real-time' publication).</li> <li>• Publish details of all transactions that exceed £250 instead of £500. For each transaction the details that should be published remain as set out in paragraph 29.</li> <li>• publish the total amount spent on remuneration over the period being reported on.</li> <li>• classify purpose of expenditure using the Chartered Institute of Public Finance and Accountancy Service Reporting Code of Practice to enable comparability</li> </ul>
<p><b>Government Procurement Card transactions</b></p>	<p>Quarterly publication</p> <p>Publish details of every transaction on a Government Procurement Card. For each transaction, the following details must be published:</p> <ul style="list-style-type: none"> <li>• date of the transaction</li> <li>• local authority department which incurred the expenditure</li> <li>• beneficiary</li> <li>• amount</li> <li>• Value Added Tax that cannot be recovered</li> <li>• summary of the purpose of the expenditure</li> <li>• merchant category (e.g. computers, software etc).</li> </ul>	<ul style="list-style-type: none"> <li>• Publish all transactions on all corporate credit cards, charge cards and procurements, including those that are not a Government Procurement Card. For each transaction the details that should be published remain as set out in paragraph 30.</li> </ul>



Information title	Information which must be published	Information recommended for publication
<b>Procurement information</b>	<p>Quarterly publication Publish details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £5,000. For each invitation, the following details must be published:</p> <ul style="list-style-type: none"> <li>• reference number</li> <li>• title</li> <li>• description of the goods and/or services sought</li> <li>• start, end and review dates</li> <li>• local authority department responsible.</li> </ul> <p>Quarterly publication Publish details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000. For each contract, the following details must be published:</p> <ul style="list-style-type: none"> <li>• reference number</li> <li>• title of agreement</li> <li>• local authority department responsible</li> <li>• description of the goods and/or services being provided</li> <li>• supplier name and details</li> <li>• sum to be paid over the length of the contract or the estimated annual spending or budget for the contract</li> <li>• Value Added Tax that cannot be recovered</li> <li>• start, end and review dates</li> <li>• whether or not the contract was the result of an invitation to quote or a published invitation to tender</li> <li>• whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number.</li> </ul>	<p>Place on Contracts Finder, as well as any other local portal, every invitation to tender or invitation to quote for contracts to provide goods and/or services with a value that exceeds £10,000. Publish:</p> <ul style="list-style-type: none"> <li>• information on a monthly instead of quarterly basis, or ideally, as soon as it is generated and therefore becomes available (commonly known as 'real-time' publication)</li> <li>• every invitation to tender for contracts to provide goods and/or services with a value that exceeds £500 instead of £5,000</li> <li>• details of invitations to quote where there has not been a formal invitation to tender</li> <li>• all contracts in their entirety where the value of the contract exceeds £5,000</li> <li>• company registration number at Companies House</li> <li>• details of invitations to tender or invitations to quote that are likely to be issued in the next twelve months</li> <li>• details of the geographical (e.g. by ward) coverage of contracts entered into by the local authority</li> <li>• details of performance against contractual key performance indicators</li> <li>• information disaggregated by voluntary and community sector category (e.g. whether it is registered with Companies House, charity or charitable incorporated organisation, community interest company, industrial and provident society, housing association, etc).</li> </ul>
<b>Grants to voluntary, community</b>	<p>Annual publication Publish details of all grants to voluntary, community and social enterprise organisations. This can be achieved by either:</p>	<ul style="list-style-type: none"> <li>• Publish information on a monthly instead of annual basis where payments are made more frequently than a single annual</li> </ul>

<b>Information title</b>	<b>Information which must be published</b>	<b>Information recommended for publication</b>
<b>and social enterprise organisations</b>	<ul style="list-style-type: none"> <li>• tagging and hence specifically identifying transactions which relate to voluntary, community and social enterprise organisations within published data on expenditure over £500 or published procurement information, or</li> <li>• For each identified grant, the following information must be published as a minimum: <ul style="list-style-type: none"> <li>• date the grant was awarded</li> <li>• time period for which the grant has been given</li> <li>• local authority department which awarded the grant</li> <li>• beneficiary</li> <li>• beneficiary's registration number</li> <li>• summary</li> </ul> </li> </ul>	<p>payment, or ideally, as soon as the data becomes available and therefore known to the authority (commonly known as 'real-time' publication).</p> <ul style="list-style-type: none"> <li>• information disaggregated by voluntary and community sector category (e.g. whether it is registered with Companies House, charity or charitable incorporated organisation, community interest company, industrial and provident society, housing association etc).</li> </ul>