Luton

Luton Borough Council

Procurement and Contract Management Policy

February 2025

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Introduction

Procurement in Luton is underpinned by our Luton 2040 Vision - a healthy, fair, and sustainable town where everyone can thrive, and no one has to live in poverty.

This Policy document sets out details of what operational steps services need to take to comply with national legislation (Procurement Act 2023) and Standing Orders whilst meeting Luton 2040 objectives.

Luton Borough Council's Procurement Policy supports compliance with UK legislation (Procurement and Local Government Finance Act), the Procurement Act 2023, and supports the delivery of the Luton 2040 Vision - a vision for a fairer, greener, and more prosperous Luton.

Additionally, the policy embeds the principles of the Council's 'Prosperity Through Procurement Strategy' and adheres to Standing Orders Chapter 9 of the Council's constitution.

Purpose and Application Policy Objectives

This Policy is required to ensure a consistent and proportionate approach to all purchasing, procurement and contract management activity. All activity that involves committing council expenditure to an external Provider/Supplier must be done in such a way as to meet the following key objectives:

1. Ensure compliance with the Procurement Act 2023 and all relevant regulations.

2. Support the Council's Luton 2040 Vision, specifically focusing on delivering sustainable growth, reducing inequality, and ensuring that procurement supports local economic development.
https://www.luton.gov.uk/Council_government_and_democracy/Lists/LutonDocuments/PDF/luton-2040-vision-2023-2028.pdf

3. Deliver value for money and ensure the best use of public funds. The council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, that public money is safeguarded, properly accounted for and used economically, efficiently and effectively, and that services and practices are continually improved for the benefit of the service recipients and the taxpayers of Luton.

In discharging this overall responsibility, the council is also responsible for putting in place proper arrangements for the governance of its affairs and facilitating the exercise of its functions, which includes ensuring a sound system of internal control is maintained and that arrangements are in place for the management of risk. This Policy supports officers in complying with those controls and delivering value for money.

4. Ensure procurement activity contributes to Luton 2040 emphasizing social value, local & SME supplier engagement, and environmental sustainability.

5. Ensure transparency, fairness, and accountability in all procurement & contract management processes with appropriate and relevant records retained to evidence decisions made by authorised officers and the action taken.

All officers and senior leaders undertaking procurement and contract management activity must adhere to this procurement and contract management policy, in any situation where they are involved in a procurement process, whether as commissioners, purchasers (including those requirements under £25,000 (£30,000 including VAT), operational contract leads or those who validate or authorise payment. This includes any interim staff, consultants or third parties acting on the Council's behalf.

Note that failure to comply with this policy may result in individuals facing disciplinary action. Therefore, if you are unsure with anything set out in the policy, seek advice and support from the central procurement team.

Scope

The scope of this policy applies to:

1. All spend made by the Council (whatever the source).
2. All contracts made by, for or on behalf of the Council with the exception of contracts for any interest in land and employment contracts.
3. Any renewal or extension of contracts beyond their original scope or term as they apply to the formation of new contracts.
4. All parts of the Council's business and where the Council is acting as an agent for another body unless the principal lawfully directs to the contrary.
5. Any person, not an officer of the Council, who is engaged to undertake a procurement or manage a contract on behalf of the Council.
6. All purchase orders raised in any system, including financials and ALL feeder systems.
7. Activity under applicable UK and EU Legislation (as it relates to contracts tendered pre-Brexit) and in particular that relating to competition, public procurement and tendering procedures.
8. Where the Council is a member of any consortium or similar body or is collaborating with another body which is acting as its agent, the regulations of that body shall apply, but Procurement shall not enter into any such arrangements unless satisfied that the Council will thereby achieve best value for money and proper control within the consortium or by the agent over procurement arrangements.
9. It applies to contracts where a service is being provided for the Council, which also results in income being generated for the Council.
10. Concession Contracts where the Council gives a Provider/Supplier the opportunity to make a profit from an arrangement, but which may/may not involve the Council paying for the delivery of services or works.
11. Any contract entered into for the provision of a service to a third-party organisation.

Out of scope

If a Minister of the Crown considers it necessary, they may, by regulations provide that specified public contracts be awarded under Regulation 41 of PA23 *direct award justification where these are necessary to protect human, animal or plant life. In those cases, the regulations and associated guidance will apply.

Where external funding is received that comes with conditions, then those conditions must be complied with. In the event that there is a conflict between those conditions and this Policy the service must consult the Head of Procurement and the Legal Services team for guidance.

This Policy does not apply to the Procurement of land or any interest in land unless linked to the delivery of specified standards or structures of building thereon. Any conditions placed on a developer may invoke the application of PA 23 and legal advice must be sought.

Organisational Context

This Policy supports the Council's Corporate Portfolio and contributes toward delivery of Luton 2040. It is to be read in conjunction with the Council's Constitution, Part 3 A, Standing Orders, in particular Chapter 9 "Contracts Procedure Rules".

Every contract made by or on behalf of the Council, including its Executive and Cabinet Members, shall comply with:

- This Policy.
- The Council's Financial Regulations.
- The Council's Standing Orders, in particular, Chapter 9 "Contract Procedure Rules".
- All relevant statutory provisions including in particular, the Local Government Act 1988 Part II, Local Government Act 1999, Local Government Act 2000, the Public Contracts Regulations 2015, Procurement Regulations 2024 https://www.legislation.gov.uk/uksi/2024/692/contents/ made and the Local Government (Contracts) Act 1997 (as amended) and relevant Healthcare directives.
- European Union treaties and European Council Directives (relevant to contracts awarded prior to the exit of the UK from the EU).
- The rules on Subsidy Control Act 2022.
- Any direction by the Council, the Executive or Committee in the exercise of the functions for which it is responsible.

Senior leaders (these being, Corporate Directors and Service Directors) will be responsible for ensuring that their staff comply with this Policy. The Head of Procurement may need to investigate any incidences of non-compliance and liaise with the Monitoring Officer, Head of Legal Services and the Audit Manager to identify action needed.

The Annual Statement of Governance requires senior leaders to confirm their compliance with Standing Orders and this Policy. This provides assurance to internal and external auditors that controls are in place and effective to meet our obligations under law.

The Head of Procurement, Procurement Business Partners and Category Managers are responsible for providing advice on this Policy and will work to support colleagues and the wider Council to meet requirements.

If you are in any doubt about whether the Policy applies, you must always check with the Corporate Procurement Team.

Legal

Procurement and contracting activity must comply with:

- All applicable UK laws and regulations.
- International laws, treaties and agreements to which the UK government is party, including, for example, any United Nations-approved trade sanctions; World Trade Organisation rules and post Brexit trading legislation relating to Treaty agreements on Government Procurement.
- All applicable European Union laws, directives and regulations (including those governing Public Procurement, where relevant).
- The relevant laws, regulations and so on of other territories in which organisations operate, to which we supply, or from which we source.
- All Policy Notes issued by the United Kingdom Cabinet Office in relation to Procurement by local authorities.
- Have regard to the National Procurement Policy statement published by government.

Note: this includes not only those laws directly applicable to the buying and selling of goods and services - but it also includes, amongst others, the laws on:

- Taxation – the Procurement Team, will not be a party to the evasion of income, sales, corporate, VAT, or other taxes, customs duties, or other charges, either by procurement professionals, their customers, or their suppliers.
- Environmental regulations.
- Employment regulations.
- Health and Safety regulations.
- Anti-Bribery and Corruption.
- Equality.
- Data protection (GDPR).
- Safeguarding.
- Modern slavery.

The Council is committed to the fair and effective application of laws and regulations and expects the same of our suppliers. Therefore, the use of the Council's terms and conditions of contract is mandatory unless Procurement and Legal Services approve otherwise.

There is, therefore, a positive duty on all officers and elected members to report and refer any reasonably founded suspicions of illegal activity (for example, attempts at corruption, evidence of anti-competitive or cartel-like activity, breaches of employment or environment law) to the Head of Legal Services and Head of Procurement.

The Council, and individuals, will give full co-operation to legitimate authorities investigating such claims. This specifically includes the duty to ensure that any conceivably relevant documentation is preserved and made available, even if such documents could be construed adversely to the interests of the organisation or individuals.

In order to make sure that we as a Council ensure that our suppliers are also compliant with all relevant legislation, we enter into formal written contracts. These vary in complexity depending on a number of factors such as value, term (length of relationship) and risk. Contact the Legal Admin Unit for support on contract drafting or Contract and Performance Managers for support on variations/disputes.

<u>Note that Standing Orders only authorise senior officers to sign a contract where it is compliant with Standing Orders relating to Procurement and the Head of Procurement has confirmed that.</u>

Audit and Internal Governance

The Council has both a legal and moral duty to ensure that all financial transactions are properly recorded and that a clear audit trail is established to demonstrate that all matters have been conducted properly in line with Standing Orders, Regulations and associated policies. All officers must actively check the extent of their authority and the processes they must follow *before* taking any action or issuing instructions to others to do the same.

Services must keep all related records in a centralised location to enable access by Internal and External Audit; no records should be kept in a manner that prevents external scrutiny after an officer has left the Council. For activity within Corporate Procurement, this means central shared folders and within the E-tendering Portal. For Services, this means a central shared folder or shared email box accessible by others.

It is essential that the Council can demonstrate there is a separation of duties relating to Procurement – so the person ordering cannot be the same as the one who authorises an order.

The Council will maintain systems that will, for all purchases, contracts and external commitments record, identify, and as appropriate, provide justification for:

- The originator of the requirement.
- The purpose for which the requisition was made.
- The route by which the requisition was approved.
- The methods adopted in accordance with the Procedures below (or any variation from Procedure, with reasons) to procure the requirement, with all relevant documentation (for example, Requests for Quotation, Tender documents and so on) and the reasons for decisions made.
- The source of supply.
- The compliance or otherwise of the goods or services, and of the supplier or contractor, with the requirement as specified in the contract or other agreement.
- All actions taken to remedy any defect as recorded above, and the results.
- The route by which payment was authorised, and when, to whom and in what sum any payment(s) are made.

Note: The above is the minimum requirement – additional transparency may be required on more complex procurement activity.

A fundamental principle of the Policy is that as far as is possible, the person raising the order, the buyer, negotiator or contractor, and the authoriser of payment, will be different persons, all identifiable in the records maintained.

Statement of Governance (SOG)

Service Directors must complete an annual statement of governance; this asks them several questions relating to compliance with Standing Orders, Internal Policy and Processes. Some of these questions relate to Purchasing, Procurement and Contract Management, so it is essential that Service Directors ensure the correct controls are in place within their areas and that all officers involved in purchasing or procurement are trained and have read Standing Orders and this Policy. This includes record keeping, separation of duties and delegated authority.

The outcome from the SOGs is a key source of assurance in the preparation of the Annual Governance Statement (AGS), which reports on the council's governance arrangements and its effectiveness over the past year. The AGS is a prime document for accountability and is required to be published in the council's Statement of Accounts, after it has been signed by the Chief Executive and the Leader of the Council. Results are reported to the Internal Governance Group, CLMT and Audit & Governance Committee and can form the basis for additional controls being put in place as well as targeted Audit activity to check compliance.

Commissioning and Procurement Boards

Governance arrangements for managing Commissioning, Procurement & Contract Management will be set up as directed by the Chief Executive. The Terms of Reference of each board will ensure greater transparency, planning and engagement ahead of a decision-making process on what solution is needed. This will include market shaping, oversight of contract performance (in relation to reporting into CDP) and management of risk.

Procurement Project Governance

All procurement projects with a contract value of £100,000 or more will be subject to an internal gateway process at the beginning (Strategy stage) and end (Award stage). Clear roles and responsibilities are outlined throughout the process to ensure transparency & accountability. Reports are prepared by the service and procurement leads, with support from finance/legal and require approval from the Service Director and Head of Procurement before proceeding and contracts will only be awarded if Finance confirm budget availability.

The strategy gateway consists of an appraisal of all the procurement routes available, their risks and advantages, an assessment of the market and identifies how the contract will contribute to Luton 2040 and deliver social value.

The award gateway summarises the tender process and the outcome of the evaluation stage, recommending award of contract. It also captures the social value that will be delivered over the term of the contract.

Ethical and Social responsibility

The Council has a legal duty to ensure that none of its purchasing or procurement activity contravenes a range of legislation relating to the treatment of those persons delivering outputs/outcomes within the supply chain, including combatting modern slavery, real living wage, working time directives amongst others. The Council's terms and conditions of contract oblige our suppliers to do the same.

Tender documents and terms and conditions of the contract will be updated in a timely fashion to reflect the latest best practise guidance coming out of Cabinet Office and the Government Commercial function and amended to reflect any learning from an issue experienced by the Council.

All contracts will require suppliers to pay the National Living Wage set by Government; officers are asked to mandate the Real Living Wage at the Strategy stage, subject to the cost centre manager confirming there is sufficient budget to cover this.

When specifying our needs, we will always, where the market exists, explore the cost/provision of goods/supplies that have the least impact on the environment and positively promote positive ethical behaviour.

The Council's social value policy embeds commitments into contracts over £100,000 and many of those will have an element of social responsibility, which can be monitored and reported on.

Buy Local & support for SMEs and VCSE

The Council aims to maximise spend with local suppliers to contribute to the economic growth of the town and will use external data sources to identify potential businesses who operate in the markets of demand. This data will be used to make contact to understand what knowledge and skills they need to bid on opportunities and then to develop an appropriate learning environment to deliver that.

PA23 requires us to consider how we might remove barriers to the participation of SMEs. We are required to consider whether a contract can be sub divided into Lots, thereby becoming smaller in value/complexity, which might be of more interest to SMEs in particular.

This is an active decision-making process, ensuring consideration to the risk and impact of not creating avenues to support SME involvement – IE: Creating 'Lots' or allowing a longer submission of tender time. We must be clear on why this decision has been made within the business case and Procurement strategy documents.

The requirement to publish a Pipeline notice to the Central Digital Platform (CDP) also gives us the opportunity to consider how we may tender and remove barriers, it also allows sufficient time for meaningful premarket engagement.

In order to maximise spend with local suppliers, (within 20 miles of the Town Hall) procurement processes (noted elsewhere in the Policy) require officers to support the need to increase local spend and remove (where relevant) barriers for SME's. Procurement will work proactively with colleagues in Inclusive Economy to provide support to local SMEs to equip them with the skills and knowledge to bid for suitable opportunities. Local spend will be published on a quarterly basis and reported to CLMT.

Net Zero Carbon Strategy

In January 2020, the Council declared a climate emergency and an ambition to reach net zero carbon by 2040 to keep within the carbon budgets recommended in the Paris Agreement. This overall target relates to both the council as an organisation and the whole of Luton.

The Council has an interim target of 9% year on year reduction of the overall council's carbon footprint. The Luton Net Zero Roadmap was adopted in 2023, and work is underway to refresh targets and key activity needed.

As more detailed objectives and targets develop, all procurement projects should have regards to the following principles through the environmental aspects of the social value and contract performance indicators:

All contractors should be working towards the following and a plan should be requested on all tenders above threshold in the first instance so we can track progress:

- know the impact that their organisation has on the environment.
- have an Environmental Policy that embeds a culture of reducing negative. environmental impacts within their organisation.
- ensure their environmental impact is measured and regularly reported and overseen at the highest level.
- reduce negative environmental impacts with a clear action plan outlining the work to be undertaken, focusing on the biggest impacts, with key targets and timelines for the actions to be undertaken for example:
    - if they use travel, reduce their mileage. For the miles that they are not able to reduce, travel in more sustainable ways.
    - if they use building/s ensure that they have had environmental building survey/s undertaken and mitigated the negative environmental impact.
    - work with their supply chain to know the environmental impact of the goods/services they purchase and mitigate/reduce the negative impact; where the negative impact is not able to be reduced, offset the impact.
- work towards their organisation also being net zero carbon by 2040.

The council is currently working towards implementing a requirement that aligns with government and NHS policy objectives for suppliers.

Officers can use this guide to assessing the environmental impact environmental-impacts.pdf

Risk management

The Procurement service and the Service will proactively review risks throughout the governance gateways produced for all projects over £100,000 and identify the appropriate treatment or mitigation. The risks associated with different procurement options will be documented, so all parties own, understand and manage them. Procurement boards will provide scrutiny of the strategy and confirm the budget is available.

Any ongoing risks must be recorded on the Council's risk management software (JCAD). Operational contract managers must understand the ongoing risks through the life of the contract and, therefore, should be involved at the tender stage, so they take on ownership of any risk flagged at the contract award stage. Operational contract managers are responsible for updating JCAD with any contract specific risks going forward.

The Head of Procurement will update CLT/Senior management team on a regular basis as to any ongoing general commercial/market risks with a recommendation as to how these could be managed.

Continuous improvement

All personnel involved in the Procurement process are expected to attempt to improve their knowledge and skills, and the organisation will support such activities. The organisation aims to recruit, maintain and develop a core of professionally qualified procurement officers and others with the requisite skills required within the structure.

Officers will all have personal development plans that use a mix of internal team training, central Learning & Development for soft skills and external training, budgets permitting.

The Procurement Team will develop online and in-person training resources for commissioners, operational contract managers & suppliers to improve knowledge and understanding relating to the Procurement Act 2023, Procurement processes and Contract Management.

Legal and ethical concerns

All concerns regarding a supplier's conduct, ethics, or legal conduct must be raised through the 'Supplier Need to Know' process at the earliest opportunity whether or not they are verifiable (refer to toolkit for templates). Many instances of poor behaviour might appear minor in themselves but may, over time, point to some more serious breaches that must be dealt with.

If there is any suspicion that suppliers (or any third party, including officers) are colluding to fix pricing or undermine a tender process, then this should be reported to the Audit Manager and Head of Procurement immediately. We also have a legal duty to raise such matters with the relevant government department to avoid collusion and unfair practice in the market and this may trigger a wider investigation.

Any improper approaches, whether in the form of inducements or threats, must be reported, even if they are sufficiently ambiguous to allow for an innocent misunderstanding. All officers are bound by the Council's Code of Conduct for Employees, the Council's Anti-Fraud, Bribery and Corruption Policy and Whistleblowing Policy (all available on the intranet). Elected Members are bound by the Code of Conduct for Members.

Debarment and Exclusion

The Council must have regard to the "Debarment List" set up and maintained by a Minister of the Crown under Regulations 62-66 of PA23 for over threshold contracts. This lists suppliers who are either excluded or excludable from participation in a procurement exercise for a public contract. They are only added to this list following an investigation by the Procurement Review Unit (Cabinet Office) and the rules are prescribed within PA23. The Council must still undertake the standard exclusion ground validation exercise and also check the centrally held list before proceeding with any exclusion.

For sub threshold covered procurement exercises, the council will also exclude suppliers if they are on the debarment list as an excludable/ excluded supplier.

Conflict of Interest (COI)

Before publishing a tender, evaluating a tender and awarding a tender (including Direct Awards) and when a Transparency notice is required to be published due to modification of a contract, a conflicts of interest assessment must be completed.

A conflicts assessment must include details of:

- conflicts or potential conflicts of interest identified in accordance with our duty to identify,
- any steps the council has taken or will take for the purposes of our duty to mitigate.
- If the council is aware of circumstances that it considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest, a conflicts assessment must also include details of any steps the contracting authority has taken or will take to demonstrate that no such conflict or potential conflict exists.

All conflicts of interest assessments will be stored centrally on the network and be available for scrutiny by any officer or member of the public in line with Standing Orders. Conflicts of interest that arise will be managed by the Head of Procurement in consultation with another relevant senior officer.

Market Engagement

The Procurement Act 23 encourages councils to conduct premarket engagement activities intended to help prepare both the market and the council ahead of the procurement. Premarket engagement activities can be done in diverse ways to help inform the development of the specification, the procurement strategy and/or the capacity and capability of the market. – Please see Procurement toolkit for guidance.

However, Luton mandates that every procurement over the value of £100k, **MUST** perform as a minimum a ‘Meet the Buyer’ event prior to commencement of a procurement. Meet the Buyer events will be performed by the service, procurement and legal (where applicable) collectively and records kept on attendees.

Although the regulations do not enforce a requirement to undertake Premarket engagement, there is a requirement to publish a Preliminary Market Engagement Notice when we are conducting market engagement. If we do not complete this notice, when engagement has occurred, we must provide justification in our tender notice as to why it did not do so. The reasoning provided will then be open to scrutiny. Services need to ensure that the Procurement service is informed of any form of Premarket engagement activity to publish the appropriate notice on the CDP.

Commissioning Pipeline planning

All Heads of Service / Service Managers are responsible for creating and maintaining a commissioning pipeline to allow for strategic planning and commissioning as well as to manage risk and resources. This pipeline must show all contracts managed within the department with the following documented:

Clear dates of activity for:

- Pre-Market Engagement activities
- Co Production activity (where applicable)
- Commissioning development activities
- Procurement activity
- Mobilisation activity

Any risks relating to commissioning & procurement activity must be escalated through the governance boards, and where significantly urgent, to the Service/Corporate Director.

How to calculate value to determine the process to follow

The Procurement Act 23 requires us to publish a Contracts Pipeline for all contracts but in addition, a pipeline notice is required for all contracts over £2 million. Therefore, there is a significant importance to ensure contract value accuracy.

In order to work out which process applies, we look at the total value likely to be spent (including VAT), across the council, over a 4-year period, unless we know the exact term of need (or funding is time-limited). This allows us to understand how we must procure and what other policies or legislation will need to be applied.

From a best practice, procurement and efficiency view, we must look at spend across the Council and determine if that demand should be aggregated to undertake one council procurement that meets multiple teams' needs. We have to do this to comply with the regulations but also to reduce the transactional cost to the Council and the market.

The new regulations require us to actively look at removing barriers to SMEs when devising our procurement strategy. This can be, where possible, setting minimum tender periods to encourage our SME market to bid for the opportunity. However, we must be clear on the reasons for not taking any action to introduce Lots for example and document that reasoning.

The calculation of value must be done on a Whole Life Costing basis – this means you must include any subsequent ongoing costs such as training, consultancy days, software maintenance and licensing, maintenance of plant and equipment and potential disposal costs.

The regulations require that if the value remains unknown then the authority must act as if it is over threshold of PA23.

Officers must NOT deliberately understate the true costs or split costs to avoid the application of this Policy, Standing Orders or the Procurement Act 23 (or PCR15).

Procurement processes

There are different procurement processes dependent upon the value of the spend commitment. The council's spend commitments are separated into three categories according to their size, these are.

- Spend commitments - £0 to £24,999
- Spend commitments - £25,000 + VAT to £100,000
- Spend commitments - £100,001 to unlimited

Each category of spend is led and managed in a slightly different way according to and reflecting the structure of the Corporate Procurement Team. There are process charts, templates and checklists for each process undertaken by the Procurement team; these are live documents subject to change but are available upon request.

The approach to each is set out in Table 2 below:

Table 2 Procurement process by value

Total Value of Contract or PO	Lead Business Area	Tender Requirements	E-Procurement System Used	Procurement Engagement Process	Exceptions
£0-£4,999	Responsible Council Officer/ Budget holder	At least one written quotation	None – records to be retained at local level.	N/A	
£5-£24,999	Responsible Council Officer/ Budget holder	Service to seek at least three competitive quotes via the e-tendering portal. These must include one quote from a local/SME supplier – where market allows. It is good practice to clearly state requirements and standards within the Purchase Order as well as any rebates or volume discounts as agreed.	E-tendering Portal then AFP to raise the PO.(LBC finance system) or approved feeder system where compliant with audit/procurement rules and internal controls. Procurement Card where available/appropriate and the purchase is a one off or only available online.	Completed by Service. Procurement can provide support to services.	The Commitment must represent the total of all requirements.
£25,000 + VAT - £99,999	Corporate Procurement Team	Quotation process via the E-tendering Portal- either open to all on the portal or restricted to a limited number. NB: at least one local Provider/Supplier/SME should be invited where at all possible.	E-tendering Portal then AFP to raise the PO	Submit a PEF – Procurement Engagement Form – located on the intranet	Unless the Service can satisfy the Service Manager Corporate Procurement that the matter meets the conditions for an exemption under Standing Orders.

		Or Mini competition from a compliant Framework or use the process within the CCS Digital Marketplace/G Cloud.			
£100,001 – PA23 threshold	Corporate Procurement Team	Full and compliant tender process via the E-tendering portal.	E-tendering Portal then AFP to raise the PO	Submit a PEF – Procurement Engagement Form – located on the intranet	Up to the threshold. Unless the Service can satisfy the Service Manager Corporate Procurement that the matter meets the conditions for an exemption under Standing Orders.
Works threshold £5,372,609 (including VAT) **Supplies/Services** £214,904 (including VAT) **Light Touch Regime** £663,540 **Provider Selection Regime (PSR)** (All Values)	Corporate Procurement Team	Tender Process will be one of the prescribed routes set out in the Regulations for works/services/supplies. Either Open or Competitive Flexible, Framework or Open Framework or Dynamic Market (includes direct award). NB: PCR15 governed frameworks will still be available until expiry date. All health funded contracts to be considered under Provider Selection Regime regulations– 5 options available for consideration. The Regulations for the Light Touch Regime allow for more creativity in the route to market, but transparency, fairness and non-discrimination underpin whatever route is used. All Spot Placement activity, including for Adults/Children's care and must adopt an approach approved by Audit/Procurement.	E-tendering Portal then AFP to raise the PO	Submit a PEF – Procurement Engagement Form – located on the intranet.	Unless the grounds for a Direct Award under PA23 are met OR there is a healthcare related exemption from PA23.

Routes to Market

Over threshold

There are two routes to market under PA 23.

- **Open Procedure** - A single-stage tendering process with no restrictions on who can submit a tender.

- **Competitive Flexible Procedure** – Provides flexibility to design our own tendering process to reach the best solution by developing our understanding of what is available.
  It also allows for:
  - Limiting the number of suppliers that participate
  - Refine award criteria (within a defined period)
  - Prevent suppliers from participating if they didn't submit a tender in an earlier round
  - Use lots to let a contract (to increase interest from SMEs)

The Procurement service will guide, support and advise in the development of the procurement strategy by way of an options appraisal.

Use of Framework Agreements (Open or closed)

Where the market conditions or time constraints require the use of a third-party framework agreement then these must be verified as legally valid and compliant with the Public Contract Regulations 2015/Procurement Act 23. This means that checks must be made on the body that has set the framework up to ensure they are a body governed by public law and permitted to advertise/award an agreement. Further checks are needed to ensure it is accessible by us as a Council, not all frameworks are.

The regulations require that a framework agreement must <u>fully meet</u> all of a customer's requirements for it to be used, and the Council must sign up to use it before proceeding to follow the process for call off. The call off agreement, once authorised, must be signed before any contract terms and conditions. Note that a call off agreement may impose certain obligations on the Council and therefore advice should be sought from Legal Services and Corporate Procurement before anything is signed.

The nature of third-party frameworks means it is unlikely we can amend the terms and conditions of the call off agreement in a substantial way and therefore officers must understand to what extent local policies, such as social value and Luton 2040 and LBC net carbon can be included in any call off process. Use of a framework for contracts over £100,000 in value should consider all the risks and opportunities of doing so as part of the options appraisal.

Spot Placements (care & education)

We have a statutory duty to provide care placements, some at short notice due to hospital discharge, into either a residential or nursing home setting, for provision of domiciliary/home care or emergency foster placements. Where there are no existing contracts that can accommodate the individuals, we must adopt a fair, transparent and non-discriminatory approach to selecting a supplier.

Light touch contracts also have the benefit of enabling authorities to do a direct award of contract because of service user choice. This direct award justification applies where separate legislation or statutory guidance imposes a legal obligation on the council, to have regard to the views of the individual or their carer where they have expressed a preference as to who should provide the service to them.

To this end, all spot placement activity is to be done via an internal process that involves social workers, commissioners and senior manager oversight and approval and record keeping.

Evidence of the process followed, and transparency of decision-making is crucial to demonstrating we have justifiable reasons for not putting the matter out for competition or using an existing contract arrangement. Evidence of some sort of price negotiation and management is needed to satisfy Audit – both Internal and External - that Value for Money has been pursued – accepting that the quality and appropriateness of care is paramount. The process for spot placements must be approved by Internal Audit and the Head of Procurement, with all placement activity being tracked and reported on a quarterly basis as per Standing Orders.

Note that care placements mainly fall to be treated under the Light Touch Regime of the Public Contract Regulations 2015/Procurement Act 23 and a robust audit trail of decision-making is required. There may be placements that are funded by health budgets, and these may be subject to use of the Health Care Services (PSR) Regulations 2023-Provider Selection Regime process.

The absence of competition for technical reasons such as User Choice or Best Interests of the Child (Statutory requirements) does not negate the need to post the appropriate Transparency Notice under PCR15/PA23. Any internal control put in place must include these steps.

For administrative efficiency where we have placed multiple people/children in one setting then one overarching agreement with that setting with a “live” list of placements will suffice. Individual placement agreements relating to the personal needs of the person may also be needed by services, but these do not constitute contracts in of themselves and a separate legal agreement should sit “over” these.

Provider Selection Regime

All health funded contracts (includes community health services, but only in respect of community health services which are delivered to individuals) are to be procured under the new Provider Selection Regime regulations 2023 (PSR) five options are available for consideration.

Under the new regime, relevant authorities are expected to:

- act with a view to securing the needs of the people who use the services, improving the quality of the services, and improving the efficiency of in the provision of the services
- ensure decisions about which organisations provide health care services are robust and defensible, with conflicts of interest appropriately managed
- adopt a transparent, fair, and proportionate process when following the PSR.

The council must follow three different provider selection processes to award contracts for health care services under the PSR:

- direct award processes (direct award process A, direct award process B and direct award process C)
- most suitable provider process
- competitive process.

Please refer to the Provider Selection regime regulations for further guidance on this regulation: https://www.legislation.gov.uk/uksi/2023/1348/contents/made

Procurement cards

Luton Borough Council allows the use of Government Procurement Cards (GPC) in certain situations and for transactions under a net value of £25,000 + VAT. The GPC offers a simple method to purchase and pay for business related, low value, non-recurring goods and services which are NOT covered by existing contracts.

The card may be used in cases of an emergency purchase over £5,000 where time is of the essence and an exemption from Standing Orders has been approved. Genuine situations such as securing stock during a Pandemic or where a minister of the crown has issued a direction to act to protect life.

If a service does not have a GPC, they should complete a card request form and submit to Finance. If their application is rejected and the need remains, then they can request support from the Corporate Procurement Team by completing the online credit card payment request form and someone will make the purchase on their behalf; subject to the request being allowed under Finance Policy.

The GPC looks, and is used, much like any other Visa Card and should be accepted by any establishment or organisation, which accepts payment by Visa. However:

- It cannot be used to withdraw cash
- It must not be used for any personal purchases. Use of the card for this purpose may result in disciplinary action being taken.
- You must never share your card details with any other officer.
- It must not be used to set up auto renewal of subscriptions.

The GPC is a charge card, not a credit card and card balances must be paid in full within 14 days of receipt of the invoice.

Further guidance can be found in the LBC Government Procurement Card Policy (owned by Finance).

Exemptions under Standing Orders

Chapter 9 of Part 3 A (Standing Orders) of the Council's Constitution sets out the conditions that must be met for an exemption from conducting a tender exercise and awarding a contract directly to one supplier. The process is undertaken online, and all requestors must provide evidence and rationale against three key questions:

- Why can they not comply with Standing Orders and conduct a compliant procurement exercise
- Why have they selected that specific supplier over any other
- What exactly will that supplier be delivering

All requests should be submitted by the officer that has determined the need for a direct award.

All requests must be accompanied by a signed conflict of interest form. All approved exemptions will result in a contract that will be uploaded into the e-procurement system for transparency and to trigger the creation of an entry on the Contract Register.

Exemptions must be made in advance of any intent to proceed – i.e. before any work has been done.

All exemption requests processed will give the rationale for either approval or rejection. If rejected, the service has the opportunity to re-submit the request providing the information or evidence requested; they must not just proceed with entering into a contract or direct relationship as they do not have authority to do so.

Retrospective exemptions are not permitted.

Direct awards (above threshold and therefore subject to PA23)

A Direct award is when a public contract is awarded without a competitive tendering procedure and the public contract is placed directly with the supplier of the contracting authority's choosing.

Under the Procurement Act 2023, a transparency notice must be published before a contract is directly awarded. The function of the transparency notice is to inform stakeholders that a contracting authority intends to directly award a contract and ensure that there is transparency relating to this decision. It provides an opportunity for interested parties to consider the justification for direct award. Therefore, decisions will be subject to greater scrutiny and clear justification must be documented on the transparency notice.

Justifications for direct awards

Direct awards can be made under certain circumstances, including:

- When a particular supplier is the only one that can supply the goods or services, such as when there are technical reasons for a lack of competition
- When a supplier is undergoing insolvency proceedings, and the award would provide advantageous terms
- When there is an extreme urgency that cannot be addressed through a competitive tendering procedure
- When there is an overriding public interest, such as in relation to national infrastructure, defence, security, or economic stability

All Direct Awards are subject to an eight-working day standstill period after publishing the transparency notice. This means that contract awards cannot be announced prior to the standstill period.

For Direct Awards specifically for consultancy services, officers must ensure the scope covers the largest requirement and value to avoid additional procurement and legal intervention throughout the contract.

All Direct Awards must include social value (where applicable) and must be reported and monitored.

Contract modifications

The Procurement Act 2023 (PA23) allows for contract modifications under certain conditions, including:

- Modifications: if they fall within a specific justification, such as being provided for in the contract, or due to unforeseeable circumstances.
- Below-threshold modifications: Modifications that don't increase or decrease the contract's value by more than a certain percentage, and don't significantly change the contract's scope.
- Convertible contracts: Modifications that turn a contract into a public contract.

Modifications are not permitted if they cannot be justified on at least one of the grounds. If a modification is not permitted, the council must start a new procurement process to implement the change.

Other points to note about contract modifications under PA23 include:

- A voluntary standstill period may be required before a contract can be modified. This period must be at least eight working days long, starting from the day the contract change notice is published.
- Each modification is assessed on its own, not in total. However, if modifications should be treated as one, they must be considered together.
- Contracts procured under existing legislation must be managed under that legislation, even after PA23 comes into force.

Convertible contracts

A convertible contract is a contract that is below a threshold but becomes a public contract after a modification. The act also allows contracting authorities to modify regulated below-threshold contracts if the modification would make the contract's value above the relevant threshold.

Before modifying a public contract or a convertible contract a contract change notice must be published on the Central Digital Platform.

A modification applies when:

A) An increase or decrease of the term of the contract by more than 10 per cent of the maximum term provided for on award,
B) A materially change the scope of the contract, or
C) A material change, where the economic balance of the contract is in favour of the supplier.

Non-exempted non-compliance

If works, services or goods have been procured outside of the procedures, set out in Standing Orders and this policy, then those matters will be recorded and reported to the relevant Service Director and the Internal Audit Manager.

The invoice will have to be paid where we have a legal duty to do so, and it will be flagged as a non-compliant retrospective. The Procurement team will contact the officer responsible and make clear the process that should have been followed, signpost to training and information and record the details. Monthly reports will be produced to identify any trends in behaviour and ongoing issues; these will be shared with the relevant Service Managers and Audit.

No PO - No Pay Policy

We have a ‘no purchase order, no pay’ policy with suppliers.

This policy ensures that we only pay for goods and services received only when they have been properly authorised in accordance with:

- Financial regulations
- Council Standing Orders
- Public Contract Regulations 2015 (PCR 2015)/Procurement Act 23.

This policy applies to all employees (except school-based employees) and requires that all goods and services are ordered using an approved purchase order (PO).

All non-exempt invoices not quoting a valid PO number are returned to the supplier. The list of exceptions is held by Procurement and sent to Accounts Payable for them to identify non-exempt invoices.

All Council employees or agents acting on our behalf must ensure suppliers do not commence any work or start supplying us with any goods, works or services before the requirement has been authorised and an official PO has been issued to the supplier.

For more information and details on the full benefits, exemptions and consequences of non-compliance to the policy, please read the 'No purchase order, no pay’ policy ion the Intranet (note that exceptions to the Policy may change over time).

Manual Payments

Whilst accepting that some situations will require the service to make manual payments outside of the Procurement system, they should not be used to circumvent this Policy or Standing Orders. Evidence of compliance should be in place before a manual payment is authorised.

Publishing contracts and Supplier/Provider performance**

PA 23 regulations require the council to publish the following on the Central Digital Platform:

- A full modified copy of contracts with a value of over £5 million (excluding Light Touch Regime & private utilities)
- A modification to a contract that meets the value of over £5 million (excluding Light Touch Regime & private utilities)

**NB: this will be implemented in Phase 2 of the CDP rollout, expected mid-2026.

Key Performance Indicators

For all Contracts awarded under PA23, over £5 million there is a requirement to ensure:

- A minimum of three Key Performance Indicators are embedded in the contract before award and published on the CDP.
- At least once in every 12-month period of the life cycle of the contract and on termination of the contract, assess the supplier's performance against the KPIs and publish their assessment in a CPN.
- Utilise the matrix set out in the regulations against which KPIs are to be assessed ranging from 'Good' (performance meeting or exceeding KPIS) to 'Inadequate' (performance is significantly below the KPIs).
- A Contract Performance Notice is published demonstrating the assessment against key performance indicators

Provider/Supplier Breach/Failure to perform

For all contracts over £5 million there is a requirement to ensure a Contract performance Notice is published where:

- A supplier has breached a public contract and the breach results in termination of contract, an award of damage or a settlement agreement.

- The contracting authority considers that a supplier is not performing a public contract to the authority's satisfaction, has been given a proper opportunity to improve performance, and has failed to do so.

Where a breach / failure to perform notice has been published, the supplier can be excluded from future procurements on a discretionary basis if the contracting authority (in that future procurement) considers that the circumstances giving rise to the breach / failure are continuing or likely to occur again. Suppliers who are subject to a breach / failure to perform notice may also be at risk of inclusion on the debarment list following investigation.

The Procurement service and Legal department must be informed when a breach / failure is identified to provide support in managing any risks, consider further contracting options and ensure regulatory compliance.

Contract and Supplier Relationship Management

There is online training and a Contract Management Strategy available on the Intranet to support staff mobilising and managing contracts for their service. The Contract and Performance Managers within Procurement are available for advice and support and will work with Services to make sure the Council adopts a consistent approach to supplier relationship management.

Operational Contract Managers (OCM) are ***Officers who are responsible for day-to-day management of the contract delivery***

The responsibilities of Operational Contract Managers (OCM) are:

- Maintaining delivery in line with budget
- To manage risks and report to senior Managers as required (relevant to urgency)
- Ensuring delivery of outcomes through Key Performance Indicators, including social value delivery
- Conducting regular Contract Review Meetings relevant to the contract delivery
- Monitor and report on contract delivery to senior leaders
- Consistently strive for efficiencies and savings throughout the life of the contract.
- Manage supplier / provider poor performance (if required)
- Engage procurement *as early as possible prior to the requirement requiring renewal. (* - this depends on the complexity/value of the contract).

The Procurement Service has Contract & Performance Managers (CCPM) who provide professional support and advice on relationship management, contract disputes and poor performance.

Contract and Performance Managers are required to present a corporate view of all social value and net carbon data that has been committed and delivered. OCM's are required to report this information into the CCPM's as agreed to assure senior leaders of and support conversations with suppliers to ensure they deliver this on top of the service / goods / works contracted.

Contract mobilisation is critical to the longer-term success of a contract and, therefore, time is allotted within the Procurement Project Plan to allow sufficient time and manage risks.

All reasonable attempts will be made to assist suppliers in overcoming difficulties and / or improving their performance for us. Terminating a supplier or a contract is, except in extreme circumstances such as financial failure or illegal activity, to be regarded as a last resort.

Contracts over £5 million in value must be published on the CDP along with the top three KPIs. Annual performance on those must also be published via the Contract Performance Information notice. A Contract Termination notice, or Contract Change notice must also be published if those circumstances arise.

Record Keeping

As a contracting authority we are required to keep such records that are needed to explain a material decision for the purposes of awarding or entering into a public contract. Those records shall be contained within the e-tendering portal used and / or centralised network folders fully accessible to authorised officers. This includes any correspondence with suppliers in relation to the tender or award of contract. Officers should avoid the use of personal email to mitigate the perception of a conflict of interest arising.

Note that this obligation extends to records and decision making in relation to all spot placements for adults / children's. These records should be used to periodically review the placement and consider whether a value for money / care review is appropriate/required to reduce overall costs/improve outcomes.

Note that all records, notes or correspondence relating to a tender exercise may be fully disclosed as part of any legal proceedings or under Part 10 of PA23 (Procurement oversight) to an appropriate body (e.g. Cabinet Office) undertaking an investigation.