



MERSEYSIDE RECYCLING & WASTE AUTHORITY

# **Contract Procedural Rules**

## **General Goods, Services or Works**

<b>0.</b>	<b>DOCUMENT CONTROL</b>		
<b>0.1</b>	<b>SUMMARY</b>		
	Contract Procedural Rules		
<b>0.2</b>	<b>DOCUMENT INFORMATION</b>		
<b>Role</b>	<b>Name/Position</b>	<b>Date</b>	
<b>Author</b>			
<b>Approved by</b>			
<b>Document Reference</b>			
<b>0.3</b>	<b>DOCUMENT STATUS HISTORY</b>		
<b>Version</b>	<b>Date</b>	<b>Change owner</b>	<b>Reason for Update</b>
Version 1	June 2024	Ian Stephenson	Annual Constitution review
Version 2	June 2025	Ian Stephenson	Procurement Act 2023 Document Update
Version 3	June 2026	Ian Stephenson	Revised Threshold value in accordance with 2026 National thresholds Requirement for PID >£30k contract value (S 2.13)
<b>0.4</b>	<b>DOCUMENT REVIEW DATE</b>		
<b>Review Due</b>	June 2027		
<b>Responsible Officer</b>	Ian Stephenson		
<b>0.5</b>	<b>DISTRIBUTION</b>		
<b>Name / Department</b>	<b>Title</b>		
<b>0.6</b>	<b>ASSOCIATED DOCUMENTS</b>		
<b>Procurement Policy</b>			
<b>Scheme of Delegation</b>			
<b>Financial Regulations</b>			
<b>Financial Procedural Rules</b>			



<b>Contents</b>	<b>Page</b>
<b>1. Introduction</b>	<b>4</b>
<b>2. Scope</b>	<b>7</b>
Structure of Procurement	7
Procurement Fundamentals	7
Quote vs Tender	9
Procurement Reports	10
Procurement Procedures	11
Requirement Specifications	13
Social Value	13
Clarification process	13
Exceptions to the Contract Procedure Rules	14
Form of Contract	15
Clauses Common to All Contracts	16
<b>3. Process</b>	<b>17</b>
Step 1 - Assess Contract Value	17
Step 2 - Select Procurement Processes	18
Step 3 - Contract Award	18
Procurement Waiver	18
Data Sharing Agreements	19
<b>Tables</b>	
Table 1: The Procurement Act 2023 Contract Thresholds	8
Table 2 The MWDA Common Procurement Routes	11
Table 3: Available Procurement Routes Aligned to Value	18
<b>4. Appendices</b>	<b>19</b>
Appendix 1 - Process Decision Map	
Appendix 2 - Route B - RFQ	
Appendix 3 - Route C - Below Threshold Open Procedure	
Appendix 4 - Route D - Below Threshold Closed Procedure	
Appendix 5 - Route E - Above Threshold Open Procedure	
Appendix 6 - Route F - Above Threshold Competitive Flexible Procedure	
Appendix 7 - Procurement Waiver Form	
Appendix 8 - Specification Guidance Document	
Appendix 9 - Clarification Log Template	
Appendix 10 - Evaluator Guidance	
Appendix 11 - Evaluator Scoring Template	
Appendix 12 - Procurement Initiation Document	
Appendix 13 - Contract Award Report – PCR15 Further Competitions	
Appendix 14 – Contract Award Report – Procurement Act 2023	

## 1. Introduction

- 1.1 Merseyside Waste Disposal Authority's (MWDA) Procurement Policy should be read prior to using this procedure document and can be found in the procurement section of the Controlled Document Library.
- 1.2 MWDA relies on a range of third parties (suppliers/contractors/consultants) to deliver key services. These Contract Procedural Rules, and associated appendices have been designed to guide colleagues through the process for procuring and awarding a contract or agreement for the provision of goods, services or works by a third party, while ensuring compliance with Public Procurement and other relevant Regulations.
- 1.3 The purpose of this document is to ensure that all procurement activities carried out by, or on behalf of, MWDA are done so in a responsible and effective manner that conforms with all relevant regulatory requirements and the requirement to deliver Value for Money.
- 1.4 Public Sector procurement is governed by the Procurement Act 2023, legislation and Case Law from UK and Europe. The rules are complex and continually developing. Breaching the rules can have far reaching consequences, ranging from large fines to cancelled contracts, compensation claims and the cost and time of re-running procurement exercises.
- 1.5 The Procurement Regulations 2024 were established following the implementation of the Procurement Act 2023. In some instances, references within this document (and all associated documents within the MWDA Procurement System), will be made to the Procurement Act 2023, as opposed to the Procurement Regulations 2024, adhering to official Government Guidance references.
- 1.6 The Procurement Act 2023 established the overarching legislation that governs public procurement in the UK. Procurement Regulations 2024 provide the detailed implementation framework for the Act, outlining specific procedures and requirements.
- 1.7 Dual-regime procurement may exist until all PCR15 frameworks expire, as the Public Contract Regulations 2015 (PCR15) that used to govern public procurement, may still apply to any further competition procurements against Frameworks or Dynamic Purchasing Systems (DPS) that were established under PCR15, and any contract established under the PCR15.
- 1.8 Every contract entered into by MWDA is required to comply with:
  - MWDA Financial Regulations, Financial Procedural Rules, Scheme of

Delegation and Procurement Policy in relation to tendering and entering a contractual commitment.

- Compliance with legislation, and relevant guidance issued by the Cabinet Office.
- Where applicable, the general principles of UK Law, the treaty of Rome Principles and current UK public procurement directives implemented by Regulations.
- MWDA's Vision and Values, Social Value commitment, Procurement Strategy, and other commercial associated policies.

1.9 These rules relate to the supply of services; the purchase, leasing and hiring of goods and the execution of works.

## 1.10 Interpretations

Unless the context otherwise requires, in the Contract Procedural Rules, the following terms have the following meaning:-

- “Threshold”** means the Government’s current procurement thresholds.  
As of January 2026, this is £207,720 (inclusive of VAT).  
  
These thresholds are subject to change and should be regularly checked and updated. Thresholds can be found on the government website gov.co.uk and the latest thresholds are available in the following location:  
<https://www.legislation.gov.uk/ukxi/2023/1117/regulation/2/made>.
- “Central Digital Platform”** means the online portal designed to streamline public procurement in the UK. It helps suppliers find and bid for contracts while ensuring buyers meet transparency commitments under the Procurement Act 2023. It serves as the enhanced Find a Tender service, ensuring all regulated public procurement notices are published in one place
- “Clerk”** means the Clerk to the Authority or their duly authorised representative
- “Contract”** means any agreement for:-
- a. the supply of services to or for the Authority including the use of consultants but excluding the use of Counsel instructed by the Monitoring Officer
  - b. the purchase, leasing or hiring of goods by the Authority **providing that** arrangements involving hire purchase, finance leases or operating leases shall only be entered into in accordance with arrangements approved by the Treasurer; and
  - c. the execution of works for the Authority
- “Contracts Finder”** A Government website previously used to advertise Contracts below a set threshold under PCR15. All tenders under the Procurement Act 2023 will be published on the Central Digital Platform.

<b>“Chief Executive”</b>	means the Chief Executive of the Authority or their duly authorised representative.
<b>“Consultant”</b>	means an external service provider appointed to advise and act for the Authority.
<b>“e-Procurement Portal” / “MyTenders Portal”</b>	A dedicated website used to publish, advertise and receive tenders and associated notices.
<b>“Find a Tender”</b>	A Government website used to advertise Above Threshold tenders under PCR15. Under the Procurement Act 2023, the Central Digital Platform uses an enhanced version of the “Find a Tender” for advertising all tenders and all transparency requirements..
<b>“Monitoring Officer”</b>	means the officer appointed in accordance with section 5 of the Local Government and Housing Act 1989 and responsible for the provision of legal services to the Authority or their duly authorised representative.
<b>“Treasurer”</b>	means the Officer the officer appointed under section 73 of the Local Government Act 1985, responsible for the proper administration of the financial affairs of the Authority or their duly authorised representative.

## 2. Scope

### The Structure of Procurement

- 2.1 Certain employees within MWDA are required to perform purchasing decisions and transactions as part of their job. Whilst procurement is not their primary role or main responsibility, the placing and managing of procurement contracts may still form a significant part of their role responsibilities. These employees are, for the purposes of these procedures, called Contract Owners and will have knowledge and experience regarding their own business area. This document and associated appendices provide detail on how to perform a procurement process for Contract Owners.

### Procurement Fundamentals

#### Valuing the Contract

- 2.3 The calculation of the estimated value of a procurement is based on the total amount payable, inclusive of VAT, including any options and/or any allowable extensions of the contracts as explicitly set out in the procurement documents at the point of procurement. In addition, the value must include the whole life cost, including any termination or disposal costs, if applicable. The value is set in pounds sterling and should not be purposely subdivided to prevent it from falling outside the scope of Procurement Act 2023.

#### Procurement Act 2023 Thresholds

- 2.4 The anticipated value of the procurement determines the regime of regulations which govern the procurement and the awarded contract. Table 1 presents the contract value thresholds which would be governed by the full regime of the Procurement Act 2023, procurements below these values are considered as ‘Below threshold’ and are governed by Section 5 of the Procurement Act 2023, which applies different rules and regulations with regard to how contracts are advertised and awarded.

**Table 1: The Procurement Act 2023 Contract Thresholds**

Thresholds are updated by Procurement Policy Notes and should be checked and updated at regular intervals – current Thresholds can be found at: <https://www.legislation.gov.uk/ukxi/2023/1117/regulation/2/made>.

Contract Type	Threshold from 1 January 2026 (inclusive of VAT)
Public works contracts	£5,193,000
Public supply contracts and public services contracts (Central Government)	£135,018
Public supply contracts and public services contracts (all other contracting authorities)	£207,720
Public service contracts for social and	£663,540

other specific services under Light Touch Contracts	
---	--

### **Defining the Type of Contract**

- 2.5 In the event that MWDA choose to award a single contract which has subject-matter spanning several types of procurement (works, services or supplies), the main focus (predominate purpose) of the contract is to be taken into account in deciding the threshold.

### **Transparency & Equal Treatment**

- 2.6 Fundamental to the Procurement Act 2023 and therefore all procurements undertaken by MWDA, regardless of value, are the principles of transparency and equal treatment. When undertaking any procurement activity, it is imperative to consider whether you are being open and fair in the procurement process, giving equal opportunity and information to all bidders, and not exhibiting bias of any form. Maintaining records of key decisions, evaluations and communication is essential to evidence adherence to these principles.

### **Contract Extensions and Modifications**

- 2.7 Contracts may only be extended beyond their original term if the following provisions are met:
- The original contract was procured in a manner compliant with the Procurement Act 2023, the Procurement Policy (which can be found in the Controlled Document Library), Financial Procedural Rules, Financial Regulations and Scheme of Delegation, and included within the original procurement as an option to extend without seeking further approval or re-opening competition.
  - The extension, variations or modifications are in accordance with the terms and conditions of the existing contract. Appropriate advice should be sought to confirm this is the case and to support the drafting of the extension and/or variation documents.
  - If the initial contract was subject to a compliant Procurement Act 2023 process, and the extension option was declared within the original procurement.
  - The Contract has not been extended beyond the approved extension period.
- 2.8 For contracts that do not contain specifically defined Change processes, MWDA may consider modifying an existing contract without the need to re-advertise under the circumstances defined below, however, they must now publish a 'Contract Change Notice' for any such changes:
- Modifications to below-threshold contracts (unless they are *Convertible Contracts*) and light touch contracts do not need to be justified on the same grounds as above-threshold contracts; they may be freely modified under the Act if it satisfies the following criteria:
    - does not increase or decrease the estimated value of a goods or services contract by more than 10%, or a works contract by more than 15%; and
    - does not materially change the scope of the contract.

- cannot be made on the grounds at Schedule 8 or is not a substantial modification (as set out in section 74(3)).

Below threshold modifications can be made multiple times, however, the aggregated value of the changes made on this ground must be less than the threshold applicable to that type of contract. If below threshold contract modification exceeds the threshold it becomes a ‘Convertible Contract’ and the full Procurement Act 2023 will apply to the contract.

- **Minor Change** does not:
  - increase or decrease the term of the contract by more than 10% of the maximum term provided for on award; or
  - materially change the scope of the contract; or
  - materially change the economic balance of the contract in favour of the supplier.
- **Major Change (above Minor Change thresholds and up to 50% of the original value)**
  - Additional works, services or supplies “have become necessary” and a change of supplier would not be practicable (for economic, technical or interoperability reasons) and would involve substantial inconvenience/duplication of costs, or;
  - The need for the change could not have been foreseen by a “diligent” contracting authority, provided these changes do not affect the nature of the contract/framework or exceed 50% of the price of the original contract.

2.8 In the event that these provisions are not met, a new procurement must be initiated.

2.9 Any contract extensions and/or variations should follow the same approval process as a new contract and must comply with the MWDA Scheme of Delegation in respect of contract signing/approval.

### **Quote vs Tender**

2.10 A quotation is a fixed offer and is generally assumed for a simple purchase with standard terms and conditions. Quotes may be oral or in writing - if you seek quotes over the phone, the supplier should also confirm their quotes in writing or email. Quotes should include the proposed price, details of the service being delivered and to what timescales. They should also refer to any legislation or standards that are being adhered to. Quotations are only permissible as a route to market for total contract values below £30,000 (inclusive of VAT). The number of formal quotes required and procedure to follow are determined by the value as detailed in Table 2 of this document.

2.11 Formal tendering processes apply where the total estimated contract sum,

project or programme of work exceeds a financial threshold (see table 2). A tender process is a formal and structured exercise, involving the issue of a tender pack, containing detailed requirements and the Form of Contract to be used. It will include a quality and cost assessment against pre-defined criteria, which is communicated to the bidders at the start of the process and used to determine the successful bidder(s). Appendices 2,3,4,5 and 6 to this procedure provide details of the various common tendering options used by MWDA. Table 2 presents the common procurement routes based on financial thresholds.

### **Procurement Reports**

- 2.12 A Procurement Initiation Document (PID) (Appendix 12) is used to gain and record stakeholder agreement on the market approach and assessment criteria. The PID outlines the route to market and sets the method used for supplier evaluation, ensuring clarity, fairness, and effective procurement management.
- 2.13 A PID shall be completed for all procurement activities above a contract value of £30,000 (inclusive of VAT)
- 2.14 A Contract Award Report (Appendix 13) is used to gain stakeholder agreement on contract awards by providing transparency and accountability. The report documents the decision-making process, ensuring compliance with regulations. It also serves as a tool for continuous improvement in procurement practices.

**Table 2 – Procurement Procedures**

<b>Total Contract Value</b>	<b>Procedure</b>	<b>MWDA Governance</b>	<b>Advertising / Regulation Requirements</b>
£0 - £10k (inc vat) Goods, Services, Works	At least one formal written quote to be obtained - <b>ROUTE A</b>	the Chief Executive shall ensure that value for money is obtained and, in consultation with the Treasurer, shall establish staff instructions for the letting of contracts and placing of orders	None
£10k to £30k (inc vat) Goods, Services, Works	A minimum number of three separate written quotations or tenders shall be invited - <b>ROUTE B (see appendix 2)</b>	The Chief Executive, in consultation with the Treasurer, shall establish staff instructions for the letting of contracts and placing of orders	None
£30k to £207,720k (inc vat) Goods, Services, Works	Formal Competitive Tender using contract award criteria using either below threshold process: - i) Open Tender Procedure <b>ROUTE C (see appendix 3)</b> ii) Closed Tender Procedure <b>ROUTE D (see appendix 4)</b>	A tender recommendation report shall be developed and submitted setting out the award decision and submitted to the relevant budget holder. All Contracts in writing which are £30,000 (inclusive of VAT) and above shall be signed by at least two officers of the Authority. All Contracts of £120,000 (inclusive of VAT) or more shall be under seal.	Part 6 of the Procurement Act 2023 to be Observed. <b>i) Closed Tender Procedure (not advertised)</b> Requires the use of pre-determined award criteria and the submission of a Contract Details Notice to conclude the exercise. <b>ii) Open Tender Procedure (advertised)</b> Requires the publication of a Tender Notice on HM Government’s Central Digital Platform (Find a Tender) website; the use of pre-determined award criteria; and the submission of a Contract Details Notice to conclude the exercise.
£207,720k and above (inc vat) Goods & Services ONLY	Procurement Act 2023 compliant exercise either: - i) Above Threshold Open Tender Procedure - <b>ROUTE E (see appendix 5)</b> ii) Above Threshold	A Contract Award Report shall be developed and submitted setting out the award decision and submitted to the relevant budget holder.	Full regime of the Procurement Act 2023 to be observed. Issuance of a Tender Notice to initiate the procurement. Issuance of a Contract Award Notice to advise of the award decision and issuance of a Contract Details Notice to conclude the procurement. A Contract Award

	Competitive Flexible Procedure - <b>ROUTE F (see appendix 6)</b>		Report to be retained containing the award criteria to support contract award decision.
£207,720k to £5.1m (inc vat) WORKS ONLY	Formal Competitive Tender using contract award criteria using either below threshold process: - i) Open Tender Procedure <b>ROUTE C (see appendix 3)</b> ii) Closed Tender Procedure <b>ROUTE D (see appendix 4)</b>	A Contract Award Report shall be developed and submitted setting out the award decision and submitted to the relevant budget holder. All Contracts in writing which are £30,000 (inclusive of VAT) and above shall be signed by at least two officers of the Authority. All Contracts of £120,000 (inclusive of VAT) or more shall be under seal.	Part 6 of the Procurement Act 2023 to be Observed. <b>i) Closed Tender Procedure (not advertised)</b> Requires the use of pre-determined award criteria and the submission of contract award notice to conclude the exercise.  <b>ii) Open Tender Procedure (advertised)</b> Requires the publication of a Contract Details Notice on HM Government's Central Digital Platform (Find a Tender) website; the use of pre-determined award criteria; and the submission of Contract Details Notice to conclude the exercise.
£5.1m and above (inc vat) Works ONLY	Formal Competitive Tender using contract award criteria using either below threshold process:- i) Above Threshold Open Tender Procedure <b>ROUTE E (see appendix 5)</b> ii) Above Threshold Competitive Flexible Procedure <b>ROUTE F (see appendix 6)</b>	A Contract Award Report shall be developed and submitted setting out the award decision and submitted to the relevant budget holder.	Full regime of the Procurement Act 2023 to be observed. Issuance of a Tender Notice to advise of the award decision and initiate the procurement. Issuance of a Contract Award Notice to advise of the award decision and issuance of a Contract Details Notice to conclude the procurement. A Contract Award Report to be retained containing the award criteria to substantiate contract award decision.

## **Requirement Specification**

- 2.14 Specifications will vary in complexity depending on the nature of the Goods, Services or Works required, (and are developed and owned by the Contract Owner in conjunction with key users and stakeholders). This serves as ‘a statement of needs’ to be satisfied by the procurement of external goods, services or works. Specifications provide the marketplace with a clear, accurate and full description of MWDA’s needs and enables suppliers to propose a solution to meet those needs. The suppliers/contractor’s response to the requirement will form a key part of the contract.
- 2.15 Appendix 8 is a specification template with guidance to support Contract Owners with developing specifications. Advice should be sought by Contract owners for support with the development of their specifications.

## **Social Value**

- 2.16 The Social Value Act 2012 is a legal obligation for public bodies to consider the social benefit that could be delivered or derived from any procurement before they embark upon a procurement exercise. The aim of the Act is not to alter the commissioning and procurement processes, but to ensure that, as part of these processes, the organisation considers the wider social impact of the service’s delivery on the local economy or communities.

## **Clarification Process (bid stage)**

- 2.17 The tender clarification process, which occurs during the Bid Stage of the ITT, is a crucial step to ensure transparency, fairness, and accuracy in the bidding process. All queries and requests for clarification from potential bidders should be submitted via the MyTenders Portal within a pre-specified timeframe, clearly stating the section and clause of the tender documentation being queried. These queries should be directed to a designated point of contact within MWDA who will oversee the clarification process.
- 2.18 MWDA will promptly review all queries and provide comprehensive and consistent responses to ensure a level playing field for all bidders. Responses should be issued in writing and circulated to all potential bidders within the Mytenders portal, within a reasonable timeframe to ensure transparency and equal access to information. Any amendments or clarifications to the tender documentation because of the clarification process should be formally communicated through addenda or amendments to ensure that all bidders are working from the same updated information. MWDA will maintain a log of all queries and responses (using Appendix 9) to track the clarification process and demonstrate compliance with procurement regulations and best practices.

## **Exceptions to Contract Procedure Rules**

- 2.19 The tendering procedures and processes identified within these Contract Procedural Rules will not apply in the following explicit circumstances:

- a) The acquisition or disposal of any interest in land or property and stocks and equipment incidental thereto;
- b) The supply of goods, materials or services which are only obtainable from one contractor and where the Chief Executive is satisfied there is no reasonably satisfactory alternative;
- c) The supply of goods, materials or services by a central or local government purchasing organisation or by or on behalf of any consortium, association or similar body of which the Authority is a member provided that in the latter situation the supply is in accordance with the method prescribed by that body. This may include 'Frameworks' accessible to MWDA or procurements undertaken by other organisations which include MWDA actual or potential requirements and have been procured in compliance with PCR15 or the Procurement Act 2023.
- d) The execution of works of a specialised nature which are carried out only by one contractor and where the Chief Executive is satisfied that there is no reasonably satisfactory alternative;
- e) The execution of work or the supply of services which must be carried out by a particular public utility undertaking, statutory undertaker, local authority or similar body.
- f) Counterparty Exempted Contracts - These contracts are exempt due to the nature of the relationship between the contracting authority and the other party. Examples include:
  - I. Vertical Arrangements: Contracts between a public authority and an entity it controls.
  - II. Horizontal Arrangements: Contracts between two or more public authorities cooperating without market competition.

2.20 All exceptions other than those listed in 2.19 shall be authorised: -

- a) For Contracts where the estimated value is below £30,000 (inclusive of VAT) by an Administrative Decision taken by the Director of the service area in accordance with the Scheme of Delegation;
- b) For Contracts where the estimated value is above £30,000 but below £120,000 (inclusive of VAT) by an Administrative Decision taken by the Chief Executive in accordance with the Scheme of Delegation;
- c) For Contracts where the estimated value is above £120,000 (inclusive of VAT) but below Threshold by an Administrative Decision taken by the Chief Executive in consultation with the Chair;

- d) For contracts where the estimated value or amount is above Threshold by an Executive Decision or Key Decision in accordance with the Scheme of Delegation.
- 2.21 The Director of Finance shall be consulted before any Administrative Decision is signed.
- 2.22 The Chief Executive shall keep a record justifying any exceptions under 2.19 a) and d).
- 2.23 All admin decisions will be reported to the next Audit Committee Meeting following the decision

### **Form of Contract**

- 2.24 The form of contract for the execution of works or the supply of goods, materials or services will be decided by the Chief Executive. Details will be supplied to tenderers within the tender documents.
- 2.25 All Contracts must be in writing with the exception of: -
  - a) Contracts for works, the supply of goods, services, and materials below £30,000 (inclusive of VAT) in value.
  - b) Contracts where the Chief Executive is satisfied that there is an urgent need for the execution of the works or the supply of goods, materials or services which does not permit time for the execution of a written contract but, in this case, a contract must (if otherwise required) be put into writing as soon as practicable;
  - c) All Contracts in writing which are £30,000 (inclusive of VAT) and above shall, with the exception of those under seal, be signed by at least two officers of the Authority.
- 2.26 All Contracts of £120,000 (inclusive of VAT) or more shall be under seal unless: -
  - a) the Monitoring Officer so agrees,
  - b) Contracts where the Chief Executive is satisfied that there is an urgent need for the execution of the works or the supply of goods, materials or services which does not permit time for the execution of a written contract but, in this case, a contract must (if otherwise required) be put into writing as soon as practicable;
  - c) The Contract is for the supply of specific goods or services that must be procured on an annual basis and are excluded from the Procurement Act 2023.
- 2.27 Every contract in writing or under seal shall specify: -
  - a) The work, materials, matters or things to be furnished had or done.

- b) The price to be paid with a statement of discounts or other reductions.
  - c) The time or times within which the Contract is to be performed and, where appropriate, the amount of liquidated damages which may otherwise become due.
  - d) The conditions of the Contract which are applicable.
- 2.28 Where a certificate under the Local Government (Contracts) Act 1997 must be issued, the Treasurer shall be the duly authorised certifying officer and will need to be satisfied that the Authority has the powers to enter into the Contract and that it is exercising its powers properly.
- 2.29 Where a Contract is not in writing, or where appropriate, it is not under seal the reasons for the exception shall be recorded and be available for inspection by members of the Authority.
- 2.30 Where appropriate, the Chief Executive, in consultation with the Treasurer, shall determine whether sufficient security should be taken for the due performance of every such Contract.
- 2.31 It shall be a condition of any contract between the Authority and any person (not being an officer of the Authority) who is required to supervise a contract on the Authority's behalf that, in relation to such contract, they shall comply with the requirements of these Rules, and with the Authority's Financial Procedure Rules, as if they are an Officer of the Authority.
- 2.32 Where appropriate, the Chief Executive, in consultation with the Data Protection Officer, if necessary, shall ensure the inclusion of clauses to meet the requirements of Data Protection legislation.

**Clauses Common to All Contracts**

- 2.33 In every contract in writing or under seal for the execution of work or the supply of goods, materials or services clauses to cover the following matters will be included: -
- a) a clause to prevent a contractor from transferring or assigning directly or indirectly the contract without the written consent of the Authority and to prevent the sublet of the Contract without the Authority's written consent except insofar as it relates to the supply of patent or proprietary articles, raw materials, or material products.
  - b) a clause to secure that the Authority shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Authority or for showing or forbearing to show any favour or disfavour to any person in relation to the contract or any other contract with the Authority or if the like acts shall have

been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the contractor) or if in relation to any contract with the Authority the contractor or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or any superseding legislation, or shall have given any fee or reward the receipt of which is an offence under the sub-section (2) or (3) of Section 117 of the Local Government Act 1972.

- c) a clause to require that where an appropriate British Standard specification or British Code of Practice issued by the British Standards Institute or similar national standards provided that they meet the British equivalent is current at the date of tender, unless there is good sufficient reason to the contrary, all goods and materials supplied or used and all workmanship shall be in accordance with that standard or such higher standard as may be specified.
- d) a clause to require a contractor to take all such precautions as are necessary to protect the health and safety of all persons employed by it and others to comply with the requirements of all Health and Safety Legislation and of any other Acts, Regulations, Orders or Codes of Guidance pertaining to the health and safety of employed persons or members of the public who may be affected by the Contract.
- e) a clause to require a contractor to take into account, where considered applicable by the Authority, the requirements of the European Acquired Rights Directive and/or Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014;
- f) a clause or clauses to ensure adequate protection is afforded to personal information under the control of the Authority as Data Controller to which a contractor may have access in the course of fulfilling the terms of a contract and specifically that a contractor must agree to abide by specific terms in relation to its handling of such personal information in performance of the Contract;
- g) a clause requiring the contractor to provide information to the Authority in order for the Authority to fulfil its obligations under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and a clause requiring the contractor to pass to the Authority any requests for information it receives for information held on behalf of the Authority;
- h) such other clauses as the Monitoring Officer shall determine, whether generally or in relation to a specific Contract.

### **3. Process**

**A high-level process map is in Appendix 1 to guide users through the correct procurement process.**

#### ***Step 1 – Assessing Contract Value***

- 3.1 Contract value is classed as the anticipated cost for the life of the contract, including any extensions. For example, a four-year contract, costing £15,000 (ex-vat) per year, which has a 12-month extension would have a contract value of £75,000 (ex. VAT). As contracts are often priced excluding VAT you must ensure that VAT is added to the cost calculations when valuing the contract. In this example, the cost would equate to £90,000 (inc. VAT) and requires authorisation for that level. Where applicable, the contract value should take into account disposal costs and/or any costs associated with terminating the contract.
- 3.2 Contract Owners should estimate the value of the contract and consider the most appropriate route from those listed in Table 2 and in Appendices 2,3,4,5 and 6. Contract Owners must consider if the need can be satisfied from an existing contract. In such instances, the purchase must fall within the terms, scope and permitted value including permitted extensions of the contract/framework and where an existing contract or framework is in place the current Contract Owner must be consulted prior to use.
- 3.3 It is not permitted under the MWDA's Financial Regulations, UK law and/or UK Procurement Directives, to disaggregate a contract to avoid the application of the Procurement Act 2023. Breaching these rules can have far reaching consequences such as declaring the contract as void, imposing large fines in the form of civil financial penalties, and awarding damages to any affected parties.

### **Step 2 – Select Procurement Processes**

Table 3: Available Procurement Routes Aligned to Value, use appendices 2 - 6

<b>Value</b>	<b>Route</b>	<b>Legislation</b>	<b>Appendices</b>
Up to £10,000 inc VAT	A - Single quote	MWDA Policy	N/A
£10,000 to £30,000 inc VAT	B - Request for Quotations (RFQ	MWDA Policy	2
£30,000 to £207,720 inc VAT	C- Open Tender Process; or; D - Closed Tender Process	Procurement Act 2023 Part 6	3 & 4
£207,720 and above inc VAT	D- Above Threshold Open Tender Process; or; E - Above Threshold Competitive Flexible Procedure	Procurement Act 2023 Full Regime	5 & 6
£207,720 to £5.1m (inc vat) WORKS	C- Closed Tender Process; or; D - Open Tender Process	Procurement Act 2023 Full Regime	3 & 4
£5.1m and above (inc vat) WORKS	D- Above Threshold Open Tender Process; or; E - Above Threshold Competitive Flexible Procedure	Procurement Act 2023 Full Regime	5 & 6

### **Framework Agreements**

- 3.4 Framework Agreements and Dynamic Markets (formerly Dynamic Purchasing Systems [DPS]) allow public bodies to access a list of pre-approved suppliers, from which they can Direct Award or undertake a Further Competition against the framework to appoint a supplier.

There are many existing Frameworks available that MWDA can access and utilise to appoint a supplier, should they choose to do so. Frameworks and DPS's established under PCR15 will remain accessible and can be utilised until their term expires and the previous regulations (PCR15) will continue to apply to the Frameworks and any contract procured against them.

A framework can be used for any value of procurement, therefore replacing the Procurement Processes outline in 'Step 2', however, there may be restrictions imposed by the Framework Provider that need to be adhered to.

When utilising a Framework, the process to follow will be dictated by the Framework provider and all information on how to appoint a supplier from the framework will be available from the Framework Provider.

### ***Step 3 – Contract award***

- 3.5 Following the completion of a procurement process, formal issue of a Contract Details Notice is required for contracts with a value in excess of £30,000 (inc VAT), no later than 30 days from the day after the notification of award of the contract (below threshold) or the standstill period ends (above threshold) containing specific information prescribed by the Procurement Act 2023, including the name and address of the contracting authority, the name and address of the winning bidder, the value of the contract, and a summary of the reasons for the award decision.

### **Procurement Waiver**

- 3.6 Officers can make a request for approval not to follow the Contract Procedural Rules, due to there being an 'Exception' (as defined in Section 2.19) or due to exceptional circumstances which prohibit the adoption of normal procurement processes (e.g. the failure of a key or critical supplier and need to put in place alternative short-term arrangements). The Procurement Waiver form (Appendix 7) is to be completed and approval by the Chief Executive Officer must be sought prior to the procurement being initiated.

### **Data sharing agreements**

- 3.7 Whenever MWDA, as the Controller of Personal Information, shares that personal information with a third-party organisation (as the Processor), the contract must be supported by a Data Sharing Agreement (DSA). Advice should be sought from the Data Protection Officer.

#### 4. **Appendices**

Appendix 1 – Process Decision Map

Appendix 2 - Route B - RFQ

Appendix 3 – Route C - Below Threshold Open Procedure

Appendix 4 – Route D - Below Threshold Closed Procedure

Appendix 5 – Route E - Above Threshold Open Procedure

Appendix 6 – Route F - Above Threshold Competitive Flexible Procedure

Appendix 7 – Procurement Waiver Form

Appendix 8 – Specification Guidance Document

Appendix 9 – Clarification Log Template

Appendix 10 – Evaluator Guidance

Appendix 11 – Evaluator Scoring Template

Appendix 12 – Procurement Initiation Document

Appendix 13 – Contract Award Report – PCR15 Further Competitions

Appendix 14 – Contract Award Report – Procurement Act 2023

All documents are saved with the Authority’s CRM Document Library