

Section 6 - Contracts Procedure Rules

4.6.1 Introduction

- 4.6.1.1 The primary objective of the Council's Contract Procedure Rules is to ensure that all contracts for works, goods and services are entered into in a manner that secures value for money and is demonstrably free from impropriety.
- 4.6.1.2 The Council's Contract Procedure Rules also ensure that:
- a contract selection and award procedures are conducted fairly, in a properly regularised manner and in accordance with relevant legal requirements
 - b strategic service delivery and supply partners are used wherever possible to ensure value for money is obtained and the cost to procure is minimised
 - c local firms are employed whenever they offer as good value for money as other firms and their selection is in accordance with the Council's legal obligations, for example in relation to European procurement rules
 - d the Council's strategic policies are taken into account, for example in promoting the economic development of Herefordshire and in relation to protecting the environment
 - e alternative methods of procurement compatible with the objectives of the Contract Procedure Rules have been considered
 - f procurement procedures are kept under review in order to ensure continuous improvements to services and provide best value to the community of Herefordshire
- 4.6.1.3 The Director for Economy Communities and Corporate has overall responsibility for the preparation of the Council's Contract Procedure Rules. The Head of Commercial Services appointed by the Director for Economy, Communities and Corporate has delegated responsibility for implementing the Council's Contract Procedure Rules.
- 4.6.1.4 The Head of Commercial Services works very closely with the Solicitor to the Council due to the significant legal issues involved in contracting and procurement activity.
- 4.6.1.5 It should be noted that the Council's Contract Procedure Rules form part of the Council's Constitution and are to be read in conjunction with other sections of the Constitution in particular:
- Part 3 – The Functions Scheme
 - Part 4 – Section 3 - The Budget and Policy Framework Rules
 - Part 4 – Section 7- Financial Procedure Rules.
- 4.6.1.6 Wherever it is mutually advantageous to do so, the Council should seek to conduct procurements in collaboration with partner organisations. It must be noted that each partner will need to comply with their own Contract Rules, which may have key differences to the Council Rules – for example, the European Procurement Directive features different financial thresholds in respect to Health Authorities and Local Authorities. In the event that contracts are to be established which are applicable to two or more partners the Contract Rules of each partner must be adhered to, and it is

possible that separate contractual documents will have to be established for each partner as they are separate legal entities. Officers must ensure the Rules and Governance procedures of each partner are followed throughout the procurement process. Where costs are to be shared between collaborating authorities it is advised that a formal agreement detailing such arrangements is drawn up between the partners. The Legal Services Team can provide assistance.

- 4.6.1.7 It should also be noted that failure to observe the Council's Contract Procedure Rules could lead to disciplinary action.
- 4.6.1.8 All council contracts shall contain provisions to this effect. All financial limits outlined in this document exclude Value Added Tax (VAT).

STANDARDS OF CONDUCT

4.6.2 Declarations of Interest

- 4.6.2.1 Members and Officers must ensure that they comply with the provisions of the relevant Code of Conduct including on the Declaration and Registration of Interests and the Disclosure of Financial Interest requirements in Part 5 (sections 1 and 13) of the Constitution.

4.6.3 Gifts and Hospitality

- 4.6.3.1 Any offer of gift, favour or hospitality made by any person or firm doing or seeking to do business with the Council must be treated with extreme caution.
- 4.6.3.2 Any such offers must be noted on the appropriate form and reported to the Solicitor to the Council who shall maintain and make available to the Council's internal and external auditors a register of such matters.
- 4.6.3.3 Acceptance of gifts and hospitality must be in accordance with the Council's Code on such matters (Part 5 section 9).

4.6.4 Honesty

- 4.6.4.1 All Members must follow the Councillor Code of Conduct (Part 5 section 1).
- 4.6.4.2 All employees must follow the Employee Code of Conduct (Part 5 section 13).
- 4.6.4.3 All officers must make sure that employees involved in an in-house tender for a contract submission do not take part in the preparation of tender documentation or the decision on the award of such a contract.

OFFICER RESPONSIBILITIES

4.6.5 Chief Executive's Responsibilities

- 4.6.5.1 The Chief Executive is responsible for resolving issues concerning the operation of the Council's Contract Procedure Rules, seeking advice as necessary from the Director for Economy Communities and Corporate **and** the Solicitor to the Council.

4.6.6 Directors' Responsibilities

- 4.6.6.1 All Directors are responsible for:

- a. monitoring compliance with the Council's Contract Procedure Rules in relation to contracts funded by their Directorate budget
- b. appointing Contract Management Representatives (paragraph 4.6.8) and ensuring they support them in their role and obtain regular briefings from them
- c. appointing a senior member of staff to the Commercial Services Team (paragraph 4.6.9)
- d. bringing the provisions of the Council's Contract Procedure Rules to the attention of their staff
- e. ensuring that the contracts within their Directorate are legal, comply with Contract Procedure Rules and Financial Procedure Rules (Part 4 section 7) and protect the Council's interests fully
- f. ensuring that the Council's Disclosure and Barring Service policies and procedures are followed.

4.6.6.2 The Director for Economy Communities and Corporate has overall responsibility for the preparation and review of the Council's Contract Procedure Rules but must do so in agreement with the Solicitor to the Council.

4.6.7 Solicitor to the Council's Responsibilities

4.6.7.1 The Solicitor to the Council is responsible for:

- a providing legal advice and guidance to Members and officers on the operation of the Council's Contract Procedure Rules and all contracting and procurement activity
- b working with the Director for Economy Communities and Corporate on the preparation and review of the Contract Procedure Rules
- c assisting the Chief Executive with the resolution of questions regarding the interpretation of the Council's Contract Procedure Rules
- d advising on the preparation of contract documentation
- e maintaining a Contract Procedures Exemption Register
- f informing relevant officers of any information received that calls into question the suitability of a contractor, consultant, agency or any other person carrying out work for the Council.

4.6.8 Contract Management Representatives' Responsibilities

- 4.6.8.1 Directors shall appoint one or more Contract Management Representative(s) to take responsibility for contracts with an estimated total value (excluding VAT) in excess of £10,001. The Contract Management Representative will be responsible for maintaining and providing timely information regarding the contracts register to the Commercial Services Team.
- 4.6.8.2 Contract Management Representatives are responsible for liaising fully with the Commercial Services Team and Legal Services on all matters relating to contracting and procurement.
- 4.6.8.3 Contract Management Representatives are responsible for agreeing exemptions from the formal tendering procedures with the Head of Commercial Services **and** the

Solicitor to the Council. All exemptions are to be approved in writing and reported in line with the requirements of 4.6.18 of the Council's Contract Procedure Rules.

4.6.8.4 Contract Management Representatives are responsible for liaising with officers administering contracts regarding any reports concerning failures by contractors to comply with contractual obligations or otherwise satisfactorily complete work.

4.6.8.5 Contract Management Representatives are responsible for advising the Head of Commercial Services and the Solicitor to the Council of any concerns they receive regarding the suitability of a supplier to carry out work for the Council.

4.6.8.6 Contract Management Representatives are responsible for maintaining records of the:

- a contracts awarded including the nature and value of contracts and the names of successful tenderers
- b total value of contracts awarded to each successful tenderer during each financial year
- c names of unsuccessful tenderers and reasons why their tenders were not accepted if the reason is other than price
- d details of any failure by a tenderer to comply with instructions to tenderers
- e details of the reasons for any tenders being withdrawn
- f details of failures by contractors to submit tenders after having requested and been invited to do so
- g contractors' performance
- h reasons for opening late tenders (paragraph 4.6.13.45)
- i reasons for exceptions to tendering procedures (paragraph 4.6.18).

4.6.8.7 Contract Management Representatives are responsible for making arrangements for the retention of tender and contract documentation in accordance with the Council's Record Retention Schedule

4.6.9 Head of Commercial Services' Responsibilities

4.6.9.1 Working to the Director of Economy Communities and Corporate, the Head of Commercial Services is responsible for providing advice on all aspects of the Council's Contract Procedure Rules save for the legal issues. The responsibility for the legal aspects of the Council's Contract Procedure Rules rests with the Solicitor to the Council.

4.6.9.2 The Head of Commercial Services is responsible for chairing the Council's Commercial Services Group. Each Director shall appoint a senior officer to be a member of the Commercial Services Group and the membership shall include the Solicitor to the Council or their nominated representative.

4.6.9.3 The Council's Commercial Services Group will meet at least annually in order to fulfil the following responsibilities:

- a continually reviewing the Council's Procurement Strategy and making recommendations on appropriate enhancements to the Deputy Chief Executive to take forward in consultation with the Solicitor to the Council for approval in line with the Council's arrangements for decision making as set out in the Constitution

- b maintaining a register of current contracts above £10,000
- c monitoring compliance with the Council's Contract Procedure Rules and reporting non-compliance to the Director for Economy Communities and Corporate Director for Economy Communities and Corporate and the Solicitor to the Council for appropriate action
- d preparing an annual report on the operation of and compliance with the Council's Contract Procedure Rules as a basis for the Director of Economy, Communities and Corporate, in consultation with the Solicitor to the Council and the Audit and Governance Committee
- e continually reviewing the Council's Contract Procedure Rules to ensure they keep pace with developing best practice and advising amendments as necessary
- f prescribing the information needed from each directorate's Contract Management Representatives and maintaining a central contracts register of the information provided by the Contract Management Representatives
- g reviewing the Contract Procedure Rules Exemption Register and preparing an annual report on the exemptions recorded for the Solicitor to the Council
- h providing training and support for employees involved in procurement activities.

4.6.10 Responsibilities of all Officers

4.6.10.1 All officers are responsible for:

- a following the Council's Contract Procedure Rules and any codes of practice, guidance or instructions provided by Commercial Services Team and the Solicitor to the Council
 - b following all relevant English and European procurement laws
 - c following the Council's policy requirements and legislation on Equalities and Environmental concerns including the Equalities Act 2010 and the Public Sector Duty Policy.
 - d seeking advice from the Commercial Services Team and the Solicitor to the Council in the case of any uncertainty
 - e ensuring that any departure from these Contract Procedure Rules is agreed with the Head of Commercial Services **and** the Solicitor to the Council
 - f following the Council's Employee Code of Conduct (Part 5 section 13)
 - g following the Council's Financial Procedure Rules and the systems and procedures that are in place to control budgets properly
 - h declaring any interest that could influence their judgement in contracting matters to their Director and the Solicitor to the Council
 - i not taking part in **any** decisions relating to the procurement of work, goods or services if they are part of a formal in-house bid for that work
 - j reporting any suspected fraudulent, corrupt or other irregularity to the Chief Internal Auditor
 - k ensuring that value for money is evidenced through the procurement process.
- l applying appropriate monitoring arrangements to all contracts to ensure the management of risk and the projected delivery of services and benefits.

FORMAL QUOTATION AND TENDERING PROCEDURES

4.6.13 Introduction

4.6.13.1 The Council, will engage with external suppliers to create large-scale strategic service delivery partnerships. This form of commissioning will become more common as the Council seeks to secure longer term efficiency gains and it is likely that it will involve larger amounts of more complex services within each contract's scope. Officers must use Council approved strategic service delivery partners if the work required is within the scope of the Council's service delivery contracts. Should officers be unclear of the scope of such contracts, they should seek advice from the Commercial Services Team prior to proceeding with any procurement exercise.

4.6.13.2 The following procedures must be followed for all other types of procurement:

- a **Purchases in total valued up to £1,000** – no requirement for formal quotations or tenders but officers must be able to demonstrate value for money has been obtained and that all other relevant aspects of the Council's Contract Procedure Rules have been followed.
- b **Purchases in total valued between £1,001 and £10,000 (inclusive)** – at least two formal quotations must be obtained (see 4.6.13.7 to 4.6.13.11)
- c **Purchases in total valued between £10,001 and £50,000 (inclusive)** – at least three formal quotations must be obtained (see 4.6.13.7 to 4.6.13.11)
- d **Purchases in total valued between £50,001 and up to relevant EU limit (£172,514)** – formal tendering arrangements must be followed (see 4.6.13.12 to 4.6.13.71)
- e **Purchases in total valued in excess of relevant EU limit (currently circa £172,514 for goods and services)** – The Public Contracts Regulations must be followed (see 4.6.14).

4.6.13.3 As the value, size and complexity of the contract increases, the degree of risk to the Council will also increase. Where the value of a contract exceeds £50,000, a formal risk assessment must be undertaken and a managed risk register maintained throughout the procurement process. Advice may be sought from the Council's risk and insurance officers.

4.6.13.4 Official orders should be raised for works, goods and services in line with the Council's Financial Procedure Rules.

Formal Quotation Procedure

4.6.13.5 The requisite number of formal quotations must be obtained for all purchases (other than those within the scope of a strategic service delivery contract or where a legally compliant Framework Agreement is utilised – see 4.6.15) where between £1,001 and £50,000 in total (see 4.6.13.3).

4.6.13.6 A quotation is a written estimate of the cost to execute works or supply goods, materials or services.

4.6.13.7 Officers must produce a description of the goods or specification of the services required before seeking quotations. This will enable a fair comparison of prices. The level of detail in the description or specification will depend on the value and type of goods or services being purchased. Advice can be obtained from the Commercial Services Team.

4.6.13.8 Formal quotations should contain as a minimum the following information:

- a date and reference number
- b supplier company details
- c council officer/department name
- d item/part number
- e description specification
- f quantity required
- g unit/service cost
- h total cost
- i delivery information
- j payment details
- k any special requirements
- l Details of any discounts or rebates

- 4.6.13.9 Every person or firm who makes a quotation must be treated fairly and equally.
- 4.6.13.10 Any departures from the formal quotation procedures must be discussed with the Commercial Services Team who will agree or otherwise any exception in consultation with the Head of Commercial Services. A record must be kept of the reasons for, and approval given for, departing from the formal quotation procedure.
- 4.6.13.11 When Council Officers are engaging in procurement activity on behalf of schools, or other third parties who will be the actual contracting entity, and the Council is therefore acting as the agent of the school or other party, they must adhere to the Council Contracts Procedure Rules, recognising that the Council may be held liable for any complaints or challenges relating to the process. The documents sent to bidders in such cases must contain a disclaimer saying that the Council will not be held liable should the contracting entity not follow the Council's recommendation in making an award. The Council must provide a written recommendation to the school or third party regarding making the award, pointing out that if they make a different choice to that recommended it will be at their own risk. Advice on wording can be obtained from the Commercial Services Team.

Formal Tendering Procedure

- 4.6.13.12 Formal tendering procedures apply to all contracts with a total value between £50,001 and the prevailing European procurement limits for goods, services and works except for those with a Council approved strategic service delivery contract. To ensure that European procurement rules are properly applied, including aggregation rules, Officers should liaise with the Commercial Services Team before commencing any procurement with an estimated value in excess of £50,000. Aggregation rules also apply to Council formal tenders, and requirements must not be artificially split to fall below the £50,000 threshold to avoid the following the correct process. Advice should be sought from the Commercial Services Team if uncertain.
- 4.6.13.13 It is important to respect confidentiality during all stages of the formal tendering process. Officers must not disclose any information they have about potential suppliers to others persons/suppliers potentially competing for the same contract.
- 4.6.13.14 Advice and guidance on how to describe the works, goods or services required for formal tendering purposes can be obtained from the Commercial Services Team.
- 4.6.13.15 In accordance with regulation 111 of the Public Contract Regulations 2015, officers should note that they should not issue a PQQ for any tender below the central

government threshold which currently stands at £111,676 (as of 1st January 2014 to 31st December 2016). For the latest information regarding the EU thresholds for procurement, please visit the EU Procurement website via the following link:

http://ec.europa.eu/internal_market/publicprocurement/rules/current/index_en.htm

Selecting Potential Tenderers

- 4.6.13.16 Potential suppliers must be sought by placing advertisements in the most appropriate media, in addition to the Council's e-tendering portal, in accordance with 4.6.13.17.
- 4.6.13.17 Advertisements for potential suppliers may be placed at the officer's discretion in relevant trade or professional journals, local and national newspapers or national websites administered by responsible bodies, and **must** be placed in the EU Journal (OJEU) if the contract is likely to exceed the relevant EU threshold. All contracts with a potential value exceeding £5,000 must be advertised on the Council's e-tendering portal ("the Portal"), in addition to any discretionary advertising by other means. Furthermore details of all contracts with a potential value exceeding £50,000 must be published on the UK Cabinet Office's Contracts Finder portal and the information provided shall include at least the following:
- obtained.
- (a) the internet address at which the procurement documents may be
 - (b) the time by which a prospective tenderer must respond if it wishes to be considered;
 - (c) how and to whom a prospective tenderer is to respond; and
 - (d) any other requirements for participating in the procurement

Where advertisements are published in OJEU such publication must **precede** their appearance on the Portal, or any other supplementary means of advertising, to comply with EU regulations. Note, for clarity, publication is still required on the Portal if OJEU is used, and must quote the specific OJEU Reference for the contract, which suppliers should be asked to quote in their application. As a general rule officers should leave 48 hours between the time of OJEU publication and any subsequent publication in other media.

- 4.6.13.18 The only occasions when procurements do not need to be advertised on the Portal is when the contract value will be less than £5,000, or if an existing strategic service delivery contract or Framework Agreement is to be used to source suppliers and advertising is therefore not required.
- 4.6.13.19 For formal tenders (values in excess of £50,000), the minimum number of tenderers required is three. In the event that officers find that they have less than the minimum number of applications they must consult with the Commercial Services Team before they proceed further.
- 4.6.13.20 The procurement strategy, specification and evaluation strategy must be agreed before the commencement of the procurement.
- 4.6.13.21 The entire process of advertising, selecting suppliers to tender, through to final award, is highly prescribed under European law for all procurements over the

relevant threshold. Advice needs to be sought from the Commercial Services Team before commencing a procurement in excess of EU thresholds (including ensuring sufficient time is allowed to carry out a compliant process, which can take several months). For procurements below the European thresholds, the advice in clauses 4.6.13.26 to 4.6.13.71 applies.

4.6.13.22 A standard business questionnaire may be used to collect information from the potential suppliers. However, all potential suppliers must receive the same questionnaire. Alternatively, information may be gathered by inviting potential suppliers to express an interest in writing covering the specifics identified by the officer in the advertisement or letter of invitation. Pre-procurement market testing can be carried out to gauge market interest (and is positively encouraged when purchasing new services), including approaching suppliers directly, but pre-selection of suppliers for potential contract award must not commence until the market testing process has been completed and the actual formal procurement process begun. In the case of procurements above the EU thresholds, highly– prescribed processes apply. In any event, information gathering and market testing exercises should not have the effect of distorting competition or violating EU mandated principles of non-discrimination and transparency. In particular, such exercises should not provide any potential supplier(s) participating in them with an advantage over those who do not. Further advice can be obtained from the Commercial Services Team.

4.6.13.23 The method for selecting tenderers must:

- a treat all tenderers in the same way
- b keep the process clear and simple
- c record all the selection decisions.

4.6.13.24 Officers must consider the following when selecting suppliers to be invited to tender for a particular contract:

- a past performance on similar contracts (quality and costs)
- b technical capacity
- c specialist experience in the type of products and services being procured
- d financial situation
- e public and employer's liability insurance arrangements
- f health and safety arrangements
- g equalities policy
- h written references on the contractor's reputation
- i environmental policies.

4.6.13.25 Officers may also use information from referees and from company searches to assess which persons or firms to invite to submit a tender.

Inviting tenders

4.6.13.26 In accordance with regulation 53 of the Public Contract Regulations 2015, the Council's e-tendering system is the default option for the publication of procurement documents. In order to access these documents, prospective tenderers must have registered on the e-tendering portal prior to the publication of said documents.

For each tender, the following procurement documents will be published:

- A letter of invitation
- Instructions to tenderers
- Form of Tender
- Specification
- Schedule of Rates/pricing documentation
- Terms and Conditions of the Contract (see 4.6.13.27)
- Quality requirements/method statement questions
- Tender Evaluation Criteria
- Any relevant supporting information

4.6.13.27 A copy of the Council's standard contract terms shall be included so that the tenderer is aware of the terms and conditions that will form part of the final contract. When an industry standard contract is used advice should be sought from the Head of Commercial Services on which of the standard clauses to incorporate.

4.6.13.28 Tenderers must be instructed to return their tendering documentation via the e-tendering portal, rather than by any other method. In addition, tenderers must be told that tenders which are received by other means, or received after the deadline, will not be accepted.

4.6.13.29 Tenderers should be advised that tenders will be opened at the same time and no advantage is secured by seeking to delay submission until the last moment.

4.6.13.30 The invitation to tender **must** state that the Council does not bind itself to accepting the lowest or any tender.

4.6.13.31 The invitation to tender needs to explain how the Council will deal with any mistakes it identifies in the tender documentation submitted (see Assessing Tenders below).

4.6.13.32 The invitation to tender **must** set out the criteria that will be used to select the preferred supplier. The assessment criteria must not prevent fair competition or discriminate between tenderers in any way. They must also comply with relevant legislation.

4.6.13.33 The tender should be assessed according to the Most Economically Advantageous Tender (MEAT) criteria which can be the lowest price, but typically will be a price-quality assessment reflecting the qualitative, technical, sustainable and social aspects of the tender submission as well as price and such assessment criteria may include the following factors:

- a) experience and skills of staff performing the contract where staff quality can have a significant impact on contract performance.
- b) financial proposals
- c) contract management arrangements
- d) quality including technical merit and functional characteristics
- e) delivery proposals
- f) social value
- g) environmental factors
- h) innovation

- 4.6.13.34 During the live tender period (i.e. the period between first advertisement and the deadline for tender submission), all communications with tenderers must be recorded in the clarification log on the e-tendering Portal. The clarification log will record all enquiries which are raised during the respective period and the relevant responses. The identity of the tenderer who has raised the query **must not** be disclosed.

Receiving Tenders

- 4.6.13.35 The original tender return date should be fixed and unchanged except in appropriate and necessary circumstances. Any extension should not provide either advantage or disadvantage to any of the tenderers.
- 4.6.13.36 Should it be necessary to extend the time limit for the submission of tenders all potential tenderers should be informed of the new date in good time before the original submission date.
- 4.6.13.37 The Council's e-tendering Portal will automatically record the time, date and name of the tenders as they are received.
- 4.6.13.38 Tenders cannot be opened until the final deadline for receiving them. All tenders will be stored in the secure e-tendering portal until the requisite deadline for opening them.
- 4.6.13.39 If fewer tenders are received than expected, officers should not contact tenderers to ask whether they have sent one in.
- 4.6.13.40 In exceptional circumstances, officers, in consultation with and the approval of the Solicitor to the Council, can accept a late tender (see the section "Late Tenders" below). The core principle is that tenders should not be rejected if the delay is due to the actions of the Council, a third party, or force majeure,

Opening and Recording Tenders

- 4.6.13.41 All tenders relating to a contract will be opened at the same time automatically using the Council's preferred electronic procurement system. This system will formally record the date and time for audit purposes.
- 4.6.13.42 Once the tenders have been opened, they will be stored securely in the electronic portal.

Late Tenders

- 4.6.13.43 Any tenders received after the deadline must be rejected unless there are exceptional circumstances in accordance with 4.6.13.40
- 4.6.13.44 If it is decided to accept a late tender, it must be treated in the same way as all other tenders. The full details of the decision to accept the late tender must be recorded.
- 4.6.13.45 If the late tender is rejected, a record should be kept on file for two years with the other documents from the tender opening. The tender should be opened, under the same

conditions as the other tenders, merely to ascertain the return name and address. The tenderer should be informed in writing of the reasons for rejecting the tender, i.e. that it was received late and is therefore deemed to be non-compliant under the Council's Contract Procedure Rules.

Assessing Tenders

- 4.6.13.46 Before assessing the tenders, the Responsible Officer needs to check that each part of them meets the requirements of the specification. The Responsible Officer also needs to make sure that there are no mistakes and that nothing is missing
- 4.6.13.47 If there are substantial omissions of data or documentation that make it impossible to assess the tender, this should be fully recorded and the tender rejected.
- 4.6.13.48 If the tenderer has omitted ancillary documents, made an obvious error in calculating figures, or has otherwise made an error in their tender they may be allowed to correct any minor non-compliance or mistakes or to provide any necessary clarification. However, where a tenderer fails to allow sufficient time for the punctual submission of his tender, then the tender submission will be rejected in accordance with 4.6.13.43 to 4.6.13.45.
- 4.6.13.49 A record of all mistakes must be kept and attached to the tender documents together with any corrections agreed with the tenderer.
- 4.6.13.50 The correct tenders can then be assessed in accordance with the assessment criteria that have previously been agreed in accordance with these formal tendering procedures.
- 4.6.13.51 The assessment criteria used for the tender evaluation must be the same in all respects as the criteria advised to prospective suppliers at the beginning of the process.
- 4.6.13.52 Assessment details are strictly confidential and must not be passed on to anyone else. During the course of the assessment, tender documentation must be kept secure and confidentiality preserved. If, in a major tendering exercise, the documentation is going to be copied or divided to aid the assessment process, a record should be maintained to identify those to whom such documents have been issued and the date returned.
- 4.6.13.53 The Responsible Officer shall retain a complete set of documents in a secure place in case any parts of the documentation go missing.
- 4.6.13.54 Once the assessment has been completed the Responsible Officer should produce a report showing:
- a the result of the assessment of each tender
 - b a comparison of assessment results
 - c the recommendation on which tenderer should be offered the contract.

In addition, for procurements in excess of the OJEU threshold, a report should be produced in accordance with regulation 84 of the Public Contract Regulations 2015. The Responsible Officer should seek further advice from the Commercial Services Team with regard to preparing such reports.

Accepting and Rejecting Tenders

4.6.13.55 The Procurement Officer should accept the tender that the most economically advantageous tender in accordance with 4.6.13.33. i.e.:

- a it is the lowest priced tender ; or
- b it is the most cost effective tender

Where this is not the lowest tender, the Responsible Officer should explain in writing, giving objective reasons why that tender is preferred, and seek approval from the Head of Commercial Services to proceed to appoint. A note should be placed on file to show that the Head of Commercial Services has reviewed the evaluation process and agreed with the outcome.

4.6.13.56 The Responsible Officer should always consider whether their recommendation for awarding the contract should be put before a Cabinet Member, the Cabinet or Council for formal approval **before** contacting the successful tenderer. The Functions Scheme (Part 3) sets out the Council's procedures for making decisions. If in doubt, seek advice and approval from the Commercial Services Team and the Head of Commercial Services. Tenderers should be told at the outset if Cabinet or Council approval will be needed.

4.6.13.57 The officer should write to inform the successful tenderers of the decision as soon as possible **after all necessary approvals have been received**.

4.6.13.58 Care should be taken when issuing letters informing the tenderer that they have been successful as an unqualified acceptance of the tender may create a binding contract before the formal documentation has been completed and signed by the appropriate authorised signatories. In the case of an EU-compliant process the contract cannot be formally awarded until the losing bidders have been informed and the mandatory standstill period has elapsed without any challenges arising from the bidders.

4.6.13.59 Unsuccessful tenderers should be informed of the outcome of the tendering process at the same time that the successful tenderer is notified. All bidders should be provided with a comprehensive briefing on the results of the tender. With the increasing tendency for losing bidders or third parties to ask for such information under the Freedom of Information Act, it is essential that full details are recorded and can be supplied easily for all tender exercises, both above and below the EU thresholds.

Negotiating

4.6.13.60 The Responsible Officer must comply with the following conditions when negotiating on price with tenderers:

- a guidance must be sought from the Commercial Services Team who will consult with the Head of Commercial Services as necessary before advising on the appropriate course of action
- b the Responsible Officer must be accompanied by another officer during negotiations with tenderers and a full written record of all discussions should be made and signed by both officers. The results of the negotiation process must be shared with the Commercial Services Team
- c all negotiations must be carried out at the Council's offices
- d officers must not discuss one tenderer's detailed prices, conditions or terms with

another tenderer

- e officers must respect the confidentiality of information provided by tenderers
- f if negotiations lead to a material change in the description of the work, goods or services or other terms, the officer must invite everyone who has provided a tender to re-tender on the basis of the revised contract. If this is the case, the whole process should start again.

4.6.13.61 If there is an in-house tender for a contract, negotiations must not take place without permission from the Commercial Services Team as outlined in 4.6.13.60 a above.

Awarding a Contract

4.6.13.62 Before awarding any contract, the officer responsible shall produce a written report evaluating each tender received against the evaluation criteria. The report shall identify the tenderer who has submitted the highest score in the evaluation, and recommend the award of the contract to that tenderer. This report shall be submitted to the relevant director authorised to award the contract under paragraph 8 and the Specific Delegations listed in the Appendix 1 to Part 3 of the Council's Constitution (Chief Executive's Scheme of Delegation to Officers).

4.6.13.63 The Commercial Services Team will ensure that each contract is signed by an Authorised Signatory in accordance with the following thresholds:

- a officers as authorised by the Director up to £5,000
- b Managers who report to Heads of Service may authorise payments up to £100,000.
- c Heads of Service (as defined by Head of Service pay grades) may authorise payments up to £250,000.
- d Directors must authorise all payments in excess of £250,000 (excluding VAT).
- e All amounts exclude VAT.

If the value of the contract exceeds £250,000 then approval needs to be sought from the Chief Finance Officer.

Works contracts in excess of the European procurement limit for supplies and services (currently £173,000) must be executed under seal in accordance with 4.6.17.1.

4.6.13.64 Officers are responsible for seeking advice from Legal Services if they are not clear about the form of contract to be used or changes are needed to the standard form of contract used by the Council.

4.6.13.65 The Commercial Services Team is responsible for recording the details of all contracts over £10,000 in the Contracts Register.

4.6.13.66 Officers must keep a record of each contract, including all the quotes and letters they have received and notes of telephone calls and meetings about selecting suppliers. These records must be made available to internal or external audit as required by them.

4.6.13.67 In accordance with the Public Contract Regulations 2015 and the Late Payment of Commercial Debts Regulations 2013 and to maximise performance under the contract; the council will process all undisputed invoices within 30 days of receipt.

The same shall apply to contractors in respect of any subcontractor arrangements applied under the applicable council contract(s). All council contracts shall contain provisions to this effect.

Publication of Contract Details

- 4.6.13.68 Contract Management Representatives must ensure that all contracts comply with Herefordshire Council's Information Governance Policy.
- 4.6.13.69 Officers must not give tenderers or suppliers any information about the bids or affairs of any other tenderer or contractor unless the law requires it. All information relating to tendering and contracting procedures is confidential.
- 4.6.13.70 The only information officers should make public is the name of the successful tenderer. However, this information must not be released until the contract has been awarded and signed.
- 4.6.13.71 If information is published on the amounts of the other bids received, the names of the unsuccessful tenderers must not be disclosed. Officers should ensure that all tenderers are aware that this information will or may be published when they are invited to tender and that the Council will need to meet its obligations under the Freedom of Information Act.

4.6.14 EUROPEAN PROCUREMENT RULES

- 4.6.14.1 Whilst the European Procurement Rules prevail, officers are expected to follow the principles set out in the Council's Contract Procedure Rules.
- 4.6.14.2 The European Procurement Rules are complex with significant penalties if the legislative requirements are not strictly adhered to. All officers are therefore responsible for seeking advice and guidance at all stages of the process for the Commercial Services Team and the Head of Commercial Services.

European Limits

- 4.6.14.3 The following table sets out the public sector thresholds for 1st January 2014 to 31st December 2016:

	Supplies	Services	Works
Public Sector Contracting Authorities	£172,514	£172,514	£4,322,012
Indicative Notices	£625,050	£625,050	£4,322,012

For the latest information regarding the EU thresholds for procurement, please visit the EU Procurement website via the following link:

http://ec.europa.eu/internal_market/publicprocurement/rules/current/index_en.htm

- 4.6.14.4 The figures are revised every two years on 1st January and officers should check with the Head of Commercial Services for the latest values.
- 4.6.14.5 If a contract for supplying goods or services will be worth more than the limits set out in the table above, the contract is likely to be governed by both EU Directives and English

Law. Note that the calculation of the value of the contract is to be as detailed in 4.6.14.7

4.6.14.6 The value limits apply to individual contracts and groups of contracts with similar characteristics. Contracts with similar characteristics have to be added together to see whether they have reached the value limits. This is to prevent organisations packaging contracts into small units to avoid the rules.

4.6.14.7 There are specific provisions relating to the calculation of contract values, based on the contract's duration:

If the contract is part of a series or is renewable, its value will be:

- (a) The total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted where possible to take into account changes in quantity or value which would occur in the course of the 12 months following the initial contract; or

The total estimated value over the next 12 months (or financial year where that is longer than) 12 months) from the date the goods, work or service is first provided.

In the case of contracts for services:

- (b) If the contract is for a fixed term of less than four years, the value will be the total value of the contract.
- (c) If the contract has no end date or is for a fixed term of more than four years, the value will be the monthly value of the contract multiplied by 48.
- (d) Special provisions apply in the case of contracts involving leasing, hire, rental, hire purchase, insurance services, banking and financial services and design contests. When procuring such services advice should be sought from the Commercial Services Team with regard to calculating value.

4.6.14.8 If more than one of the above applies, the method that gives the highest value must be used. Again this is to prevent organisations by-passing the rules by choosing a calculation that puts a group of contracts below the value limit.

4.6.14.9 Once the value of each contract has been calculated, it must be added to the value of other contracts with similar characteristics. If the value of a contract or a group of contracts with similar characteristics is greater than the value limit, European procurement rules must be followed. To ensure that the aggregation rules are properly applied Contract managing representatives should liaise with the Commercial Services Team for all contracts in excess of £50,000.

4.6.14.10 Before commencing a European procurement process, officers must discuss the next steps with the Commercial Services Team and the Solicitor to the Council.

Awarding Contracts Subject to the European Procurement Rules

4.6.14.11 Contact the Commercial Services Team or your external procurement consultants for advice before issuing an award notification, or if an unsuccessful tenderer challenges the award of the contract at any time during the standstill period or at any time during the process.

4.6.14.12 To ensure compliance with European procurement rules there must be a minimum standstill period of 10 calendar days between advising all tenderers of the award decision and the actual award of the contract (to end on midnight of the 10th after the date the notification was sent).

4.6.14.13 The purpose of the standstill period is to allow any unsuccessful tenderers the opportunity to challenge any award decision. Where a legal challenge is made within the 10 day standstill period, the contract cannot be awarded until the outcome of the application to the court is known. It is imperative that no correspondence amounting to an acceptance letter is issued during this period.

4.6.14.14 The written notification to the unsuccessful tenderers which triggers the standstill period must contain:

- The award criteria
- The tenderer's score (where appropriate)
- The winning tenderer's score (where appropriate)
- The reasons for the decision, including a comparative summary of the characteristics and relative advantages of their bid and the winning bid.

4.6.14.15 The European procurement rules require tender results to be published in the Official Journal within 30 days of the date a contract is awarded. This must be done in consultation with the Head of Commercial Services.

4.6.14.16 The Commercial Services Team and the Solicitor to the Council must be consulted on all EU procurements to ensure that the correct procedure is followed.

4.6.15 FRAMEWORK CONTRACTING

4.6.15.1 Framework contracting involves selecting a contractor from a list of contractors on an approved "Framework" for given works, goods or services. The contractors are included on the Framework following a tendering exercise to establish capability, quality and value. The tendering procedures will have had to comply with any relevant English or European law.

4.6.15.2 Purchasers can enter into subsequent 'call-off' contracts from a Framework. Framework contracting is becoming increasingly prevalent in an attempt to avoid bureaucracy and achieve best values via economies of scale.

4.6.15.3 Frameworks can be externally formed (for example, by Government) or internally formed (for example, by the Council). The number of approved contractors on a Framework can vary but the minimum number should be three

4.6.15.4 When an external Framework is formed general terms and conditions are agreed between the Framework contractors and the Framework organiser. These pre-agreed terms and conditions will form a major part of any purchaser's 'call-off' contract and contractors are not obliged to agree to any amendments to them.

4.6.15.5 From 26th February 2014, **EU Procurement Directive 2014/24/EC** has determined that Framework Agreements can be established for a maximum of 4 years (unless special justification can be made for a longer period), and this is reiterated in the present UK enactment of the European procurement rules. Any subsequent call-offs

under the framework may be for a duration longer than four years provided this is justified by the nature of the call off contract e.g. such factors as the time needed for contract performance, where maintenance of equipment with an expected useful life of more than four years is necessary or where extensive training of staff to perform the contract is needed.

4.6.15.6 Officers must take the following steps to ensure compliance with the EU procurement rules when using a Framework contract;

- a) all the contractors on a Framework that are capable of meeting the purchaser's specification must be allowed to submit a bid against that specification.
- b) the reasons for selecting a smaller number of contractors on a Framework must be clearly evidenced and should indicate why the excluded contractors were not capable of meeting the Council's requirements.
- c) award of contract must be on the basis of the criteria for the Framework as set out in the Framework agreement itself, that is, within the original tender documentation setting up the Framework.

4.6.15.7 The Commercial Services Team and the Solicitor to the Council must be consulted on all Framework contract procurements.

4.6.16 OTHER PROCUREMENT PROCEDURES

4.6.16.1 There are a number of other procurement procedures that may be available in particular circumstances:

- a) design contests, particularly in the fields of planning, architecture, civil engineering and information technology.
- b) public housing schemes where the size and complexity of schemes necessitate the close collaboration between the Council and contractors.
- c) concession contracts where contractors derive income from the completed work, for example a toll bridge.

4.6.16.2 The Commercial Services Team and the Solicitor to the Council must be consulted regarding any proposals to follow any such procedures.

4.6.17 CONTRACTS UNDER SEAL

4.6.17.1 All contracts for building, engineering, property repairs and property maintenance works excluded from the Council contract with Integral, with an estimated value in excess of the European procurement limit for supplies and services (currently £173,000), shall be sent to Legal Services for execution under the Council's seal.

4.6.18 EXEMPTIONS FROM THE COUNCIL'S CONTRACT PROCEDURE RULES

4.6.18.1 Exemptions from the Council's Contract Procedure Rules are only allowed in exceptional circumstances such as there being insufficient suppliers for the goods, works or services being procured. Permission must be obtained for any exemption from the Head of Commercial Services **and** the Solicitor to the Council. Major contracts may be subject to the European Procurement Rules and the Solicitor to the Council cannot provide an exemption from those requirements.

- 4.6.18.2 A written application for an exemption from the Council's Contract Procedure Rules must be made to the Solicitor to the Council setting out the reasons for the application. The Solicitor to the Council must respond within 21 days. If agreed by the Solicitor to the Council, the exemption must be approved in accordance with the Council's Constitution.
- 4.6.18.3 The normal procedure for the completion of Exemption Forms is for the Responsible Officer to obtain the signature of their Director on the form to demonstrate their approval of the request, and then forward the form to the senior Procurement Manager for their approval. If the Head of Commercial Services is satisfied they will forward to the Solicitor to the Council or their deputy for final approval and signature. Legal Services will retain a register of all approved extensions.
- 4.6.18.4 Tenders need not be invited in accordance with the provisions of the Council's Contract Procedure Rules if an urgent decision is required, for example for the protection of life or property or to maintain the functioning of a public service. Wherever possible though, at least two quotations must be obtained and any decision made or contract awarded shall be reported to the relevant Director, Cabinet Members and Local Members. Such emergency contracts should be let for as short a period as possible to allow their replacement with a contract that is fully compliant with the Contract Procedure Rules at the earliest practical opportunity.

Glossary of Terms

Authorised Signatory	This would usually be the budget holder in any given department.
Commercial Services Team	The Council's team which specialises in dealing with the tendering process.
Solicitor to the Council	The head of the Legal Services Team.
Head of Commercial Services	The head of the Commercial Services Team.
Contract Management Representative	The person who is responsible for looking after contracts in a given department.
MEAT Criteria	The principles by which tenders are judged by; namely, the Most Economically Advantageous Tender.
Responsible Officer	The person who is responsible for a particular procurement.