

Section 6 - Contract Procedure Rules

Whole contract period total value excluding VAT *	Competition requirements	Advertising and process	Authority to procure	Authority to award a contract/ appoint contractor (sign/seal)
<u>Goods, Services, Works, Concessions, Light Touch Low value</u> Below £25,000	Evidence best value	<ul style="list-style-type: none"> Best value must be demonstrated. <ul style="list-style-type: none"> This might be a comparison of costs for services that you have procured previously and where you understand and can evidence the costs. Or, where you have been able to compare costs with information published such as catalogues or framework pricing. Otherwise, identify at least three appropriately qualified and competent suppliers to obtain a simple quote. Consider local suppliers and/or local voluntary, charity and social enterprise (VCSE). Officers must consider whether any barriers to them bidding can be removed or reduced. The procurement process can be undertaken outside of the council's e-tendering portal. 	Director's delegated authority under Scheme of Delegation.	<p>Operational decisions: Only service directors or above are authorised to award and sign /authorise sealing of a contract.</p> <p>Key Decisions: Only service directors or above are authorised to award and sign /authorise sealing of a contract, subject to approval or specific delegation by cabinet/cabinet member.</p> <p>All amounts exclude VAT.</p> <p>The following must be sealed by the council:</p> <p>Contracts above the key decision value (£500,000);</p>
<u>Goods, Services, Works, Concessions, Light Touch Medium value</u> £25,001 to £75,000	4 quote process	<ul style="list-style-type: none"> Undertake preliminary market engagement where appropriate and proportionate A minimum of 4 competitive quotes sought from appropriately qualified and competent suppliers. <ul style="list-style-type: none"> Include at least two suppliers within the county and/or local VCSE and /or SME sector interest where appropriate. Where 4 suppliers cannot be identified, the opportunity must be: <ul style="list-style-type: none"> Openly advertised using the councils e-tendering portal or Procured via a compliantly let framework agreement (except Concessions Contracts) or Procured through a Dynamic Market except Concessions Contracts). The procurement process for both scenarios must be undertaken using the council's e-tendering portal, unless another method has been approved by Commercial Services. Where the opportunity is to be openly advertised a Below Threshold Tender Notice must be published on the Central 	Director's delegated authority under Scheme of Delegation and FPR authorised spend levels.	<p>All amounts exclude VAT.</p> <p>The following must be sealed by the council:</p> <p>Contracts above the key decision value (£500,000);</p>

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		<p>Digital Platform prior to publication of the opportunity. Officers must design the procurement process with reasonable timescales which are the same for each supplier. (See section on notices – Appendix 3)</p> <ul style="list-style-type: none"> Before inviting submissions officers must – <ul style="list-style-type: none"> (a) Have regard to the fact that small and medium sized enterprises may face particular barriers in competing for a contract and (b) Consider whether such barriers can be removed or reduced. Authorised Officers may not invite suppliers to submit a tender unless they are satisfied that the notice and/or associated tender documents contain sufficient information to allow suppliers to prepare such a tender, and details of the goods services or works required by the Council. Advertising in trade journals and other local publications if appropriate (recommended for professional services). Where the opportunity is above £25,000 you must publish a Contract Details Notice on the Central Digital Platform as soon as practicable after award of the contract. (See section on notices in Appendix 3). 		<p>All building and works-related contracts;</p> <p>Other high risk contracts (as advised by Legal Services) where a longer limitation period of 12 years is required.</p>
<p><u>Goods, Services, Works, Concessions, Light Touch High value</u></p> <p>£75,001 to:</p> <ul style="list-style-type: none"> £179,087 (goods and services £214,904 incl. VAT) £4,477,174 (works £5,372,609 incl. VAT) <p>£552,950 (light touch regime for health/</p>	Competitive tendering	<ul style="list-style-type: none"> Undertake preliminary market engagement where appropriate and proportionate. The opportunity must be openly advertised using the council's etendering portal or Make the purchase via a compliantly let framework agreement (except Concessions contracts) or Through a Dynamic Market (except Concessions contracts). A Below Threshold Tender Notice must be published on the Central Digital Platform via the council's etendering portal before advertising by any other means. Officers must design the procurement process with reasonable timescales which are the same for each supplier. (See section on Notices at Appendix 3) Before inviting submissions officers must – <ul style="list-style-type: none"> (a) Have regard to the fact that small and medium sized 	Procurement that is above the key decision value (£500,000) must be subject to approval by cabinet/cabinet member.	

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social services £663,540 incl. VAT)		<p>enterprises may face particular barriers in competing for a contract and</p> <p>(b) Consider whether such barriers can be removed or reduced.</p> <ul style="list-style-type: none"> • Authorised Officers may not invite suppliers to submit a tender unless they are satisfied that the notice and/or associated tender documents contain sufficient information to allow suppliers to prepare such a tender and details of the goods services or works required by the Council. • A Contract Details Notice must be published on the Central Digital Platform via the council's etendering portal as soon as is practicable after the award of the contract. (See section on notices at Appendix 3). • The Authorised Officer shall consult Commercial Services early to determine the procedure for conducting the procurement exercise. 		
<p><u>Goods, Services, Works, Concessions, and Light Touch Regime Above UK Threshold</u></p> <p>Over:</p> <ul style="list-style-type: none"> • £179,087 (goods and services £214,904 incl. VAT) • £4,477,174 (works and concessions £5,372,609 incl. VAT) • £552,950 (light touch regime 	Use UK compliant procedures	<ul style="list-style-type: none"> • The process must be undertaken using one of the following procedures:- <ul style="list-style-type: none"> ○ A single-stage tendering procedure without a restriction on who can submit tenders (an "open procedure") or ○ Such other competitive tendering procedure as the contracting authority considers appropriate for the purpose of awarding the public contract (a "competitive flexible procedure") or ○ Make the purchase via a compliantly let framework agreement. (except Concessions Contract) or ○ Make the purchase via a Dynamic Market (except Concessions Contract). • Undertake preliminary market engagement where appropriate and proportionate. • The procurement process must be undertaken using the council's e-tendering portal, unless another method has been approved by Commercial Services. • The opportunity must also be advertised on the Central Digital Platform and the relevant notices must also be published on 		

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£663,540 incl. VAT)		<p>the Central Digital Platform. (See section on notices in Appendix 3)</p> <ul style="list-style-type: none"> • Authorised Officers may not invite suppliers to submit a tender unless they are satisfied that the tender notice and/or associated tender documents contains sufficient information to allow suppliers to prepare such a tender, and details of the goods, services or works required by the Council • The opportunity must be advertised for the periods set out in the Procurement Act 2023. • The Authorised Officer shall consult Commercial Services early to determine the procedure for conducting the procurement exercise. 		
<u>Light Touch Regime</u> £552,950 (£663,540 incl. VAT)	Use UK compliant Light Touch procedures	<ul style="list-style-type: none"> • Light Touch services are those services covered by the CPV codes set out in column (1) of Table 1 in Schedule 1 and described in column (2) of that Table in the Procurement Regulations 2024. • Advice must be sought from Commercial Services before undertaking a light touch regime procurement. 		
<u>Direct award</u>		<ul style="list-style-type: none"> • Undertake preliminary market engagement where appropriate and proportionate • Public Contracts may be awarded by way of a direct award in limited circumstances set out in Procurement Act 2023. Seek advice from Commercial Services before making a direct award. • Follow the process set out in the Contracting Toolkit. 		
<u>Health care services</u> (Including mixed procurements where at least 50% of the services fall within these regulations.) All procurements regardless of value that fall within this definition must be	Compliant process under the Health Care Services (Provider Selection Regime) Regulations 2023	<p>Procurement Processes: The Health Care Services (Provider Selection Regime) Regulations 2023 provides three processes for procuring applicable healthcare services. (Applicable CPV codes are listed in Schedule 1 of the Health Care Services (Provider Selection Regime) Regulations 2023.</p> <ul style="list-style-type: none"> • Direct Award Process: <ul style="list-style-type: none"> ○ Direct Award Process A (one capable provider): must be used where there is an existing provider for the healthcare services and the council assesses and can 		

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procured under this legislation		<p>evidence that there is only one capable provider. Publish a notice of the award.</p> <ul style="list-style-type: none"> ○ Direct Award Process B (patient choice): must be used when patients have the freedom to choose their provider and the number of providers is not restricted by the council. Publish a notice of the award. ○ Direct Award Process C (incumbent extension): may be used when the council is not required to follow direct award processes A or B, can assess and evidence that the existing provider is satisfying its existing contract, has the ability to satisfy the new contract, and the proposed new contract has no considerable changes. Publish a notice of intention to make an award to the existing provider. After the standstill period, the contract is awarded and a notice of the award is published. <ul style="list-style-type: none"> ● Most Suitable Provider Process: This process involves awarding a contract to a provider without running a competitive process because the council can identify the most suitable provider. It may be used when all of the following apply: <ul style="list-style-type: none"> ○ the council is not required to follow direct award processes A or B ○ the council cannot or does not wish to follow direct award process C ○ the council is of the view, taking into account likely providers and all relevant information available to the relevant authority at the time, that it is likely to be able to identify the most suitable provider (without running a competitive process). The council submits a notice of intention to follow this process and identifies potential providers, assesses them based on key criteria, and selects the most suitable provider. After the standstill period, the contract is awarded and a notice of the award is published. 		

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		<ul style="list-style-type: none"> • Competitive Process: involves running a competitive process to award a contract. The competitive process must be used when all of the following apply: <ul style="list-style-type: none"> ○ the council is not required to follow direct award processes A or B ○ the council cannot or does not wish to follow direct award process C, and cannot or does not wish to follow the most suitable provider process. <p>The council determines the criteria, invites offers from providers, assesses the offers, and makes a decision on the successful provider. After the standstill period, the contract is awarded and a notice of the award is published.</p> • The council must consider five key criteria when applying direct award process C, the most suitable provider process or the competitive process. These are: <ul style="list-style-type: none"> ○ quality and innovation ○ value ○ integration, collaboration and service sustainability ○ improving access, reducing health inequalities and facilitating choice ○ social value. • Framework agreements can only be concluded using the competitive process. • For all three processes, officers must keep records of their assessments, decision making process, and decisions made. <p>Where the Health Care Service required is outside of the scope for these regulations then the Public Contract Regulations 2015 must be followed where appropriate.</p>		
<u>Concessions contracts</u>	Procurement Act 2023	A concession contract means a contract for the supply, for pecuniary interest, of works or services to a contracting authority where—		

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£4,477,174 (£5,372,609 Incl VAT)		<p>(a) at least part of the consideration for that supply is a right for the supplier to exploit the works or services, and (b) under the contract the supplier is exposed to a real operating risk.</p> <p>An operating risk is a risk that the supplier will not be able to recover its costs in connection with the supply and operation of the works or services, where the factors giving rise to that risk— (a) are reasonably foreseeable at the time of award, and (b) arise from matters outside the control of the Council and the supplier.</p> <p>Use the processes above depending on the value of the contract.</p> <ul style="list-style-type: none"> Advice must be sought from Commercial Services before undertaking a concessions contract procurement. 		
<u>Creating new Framework Agreements</u>	New framework Use one of the above procedures relative to the framework type and value.	<ul style="list-style-type: none"> Undertake preliminary market engagement where appropriate and proportionate. The opportunity must be advertised and undertaken utilising the council's e-tendering portal. The opportunity should also be advertised using: <ul style="list-style-type: none"> the relevant notices and the mandatory Central Digital Platform. The Authorised Officer shall consult Commercial Services early to determine the procedure for conducting the procurement exercise. 		New frameworks must be sealed by the council.
<u>Creating New Dynamic Markets</u>		<ul style="list-style-type: none"> Undertake preliminary market engagement where appropriate and proportionate. The opportunity must be advertised and undertaken utilising the council's e-tendering portal. Before establishing a dynamic market, Authorised Officers must publish a Dynamic Market Intention notice (see section on notices in Appendix 3) Authorised Officers may set conditions for membership of a dynamic market if they are satisfied that the conditions are a proportionate means of ensuring that members— 		

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		<ul style="list-style-type: none"> (a) have the legal and financial capacity to perform contracts awarded by reference to membership of the market or the part of the market; (b) have the technical ability to perform such contracts. • As soon as reasonably practicable after establishing a dynamic market Authorised Officers must publish a dynamic market establishment notice (see section on notices in Appendix 3). • Authorised Officers establishing a dynamic market must: <ul style="list-style-type: none"> (a) accept applications for membership at any time; (b) consider applications within a reasonable period of time; (c) admit suppliers to the dynamic market (as long as they are not excluded suppliers and they meet the conditions for membership) as soon as reasonably practicable; (d) consider whether to admit suppliers that are excludable suppliers and that meet the conditions for membership; and (e) inform suppliers of the outcome of their applications, and the reasons for the decision, as soon as reasonably practicable. • The number of suppliers on a dynamic market cannot be limited and the conditions for membership of a dynamic market cannot be modified during the life of the dynamic market. The conditions for membership must remain consistent throughout the life of the dynamic market to ensure fairness to all suppliers. • When awarding a contract under an 'appropriate dynamic market', the competitive flexible procedure must be used. • Advice must be sought from Commercial Services before setting up a Dynamic Market. 		

INTRODUCTION

What are Contract Procedure Rules?

- 4.6.1 The Contract Procedure Rules (CPRs), the Procurement and Commissioning Strategy, the Contracting Toolkit and the Contract Management Framework together with the Procurement Act 2023, the Procurement Regulations 2024, the Health Care Services (Provider Selection Regime) Regulations 2023 and the Government's National Procurement Policy Statement (NPPS) provide the framework for procurement and contract management activity across the council, setting out how contracts for goods, works, services, concessions and utilities should be put in place and managed, and detailing the record keeping and reporting requirements related to procurement activity. They apply to all officers and elected members across the council.
- 4.6.2 The CPRs should not be seen in isolation, but rather as part of the overall regulatory framework of the council as set out in the Constitution.
- 4.6.3 The Public Contract Rules 2015 and Concessions Contract Regulations 2016 will continue to apply to contracts procured before 24th February 2025, this includes contracts awarded under frameworks let under this legislation.

Why are CPRs needed?

- 4.6.4 The Local Government Act 1972 requires the council to have standing orders for how it enters into contracts. These CPRs are the standing orders required by the 1972 Act. They form part of the council's Constitution and are, in effect, the instructions of the council to officers and elected members for entering into contracts on behalf of the council. In acting on behalf of the council, officers must also have regard to any guidance and procedures issued to support compliance with the CPRs.
- 4.6.5 The council is under a legal duty to promote Best Value and to consider the Public Services (Social Value) Act 2012 and the Public Sector Equality Duty and every officer engaged in the letting of contracts shall have regard to these duties and associated council policies. Where compliance with these duties contradicts the requirements of any statutory legislation or specific best practice guidance, the views of legal and commercial services teams must be obtained.
- 4.6.6 The CPRs apply to all contracts for the supply of works, goods, services, consultancy, utilities and concessions to the council, regardless of value. Maintained schools, and the council where it acts on a school's behalf, must comply with these CPRs when procuring contracts.
- 4.6.7 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 other persons/suppliers potentially competing for the same contract.
- 4.6.8 The CPRs do not apply to:
- (a) The acquisition, disposal, or transfer of land (including leasehold interests) for which the financial regulations apply except where services or works are required by the council as part of the land transaction. e.g. development agreements. Note that this does not apply to any external professional services linked to the purchase or sale.
 - (b) Contracts of employment for the appointment of individual members of staff, including members of staff sourced through employment agencies under a corporate contract.
 - (c) Grant agreements
 - (d) Sponsorship agreements regulated by the sponsorship rules.

- (e) Supply of works, goods and services by the council to a third party. However, the Director of Governance and Law must be consulted where the council is contemplating this route.
- (f) Contracts procured in collaboration with other local authorities where the council is not the lead authority (subject to the necessary approvals having been obtained from the appropriate decision maker at the council). The CPRs of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own contract procedure rules and the relevant procurement legislation.
- (g) Purchases made at public auction.
- (h) Contracts relating to the placement of deposits or raising loans under the Financial Procedure Rules.

Authority to conduct procurement activity

4.6.9 The authority for an officer to undertake;

- (a) a procurement;
- (b) award a contract;
- (c) extend or modify a contract;
- (d) terminate a contract during a contract period (early contract termination)

is provided by either of the following;

- (a) scheme of delegation either as an operational or non-key executive decision,
- (b) any decision through a Council, Cabinet or Cabinet member decision.

Ensure you have the correct governance in place before you proceed with the procurement process.

4.6.10 Once authority has been obtained in accordance with clause 4.6.9, the Authorised Officer may commence the procurement activity in accordance with the financial procedure rules spending levels:

- (a) Officers as agreed by the Corporate Director/Service Director may commence a procurement activity for a total aggregate contract value of up to £25,000.
- (b) Managers that report to Head of Service (up to and including HC12 pay grade) may authorise commencement of a procurement activity for total aggregate contract value up to £100,000.
- (c) Heads of service (HC13 pay grade) may authorise commencement of a procurement activity for a total aggregate contract value of up to £250,000.
- (d) Service Directors, Directors or the Chief Executive (HoS1 and HoS2 pay grade) may authorise commencement of a procurement activity for a total aggregate contract value of up to £500,000.
- (e) Commencement of a procurement activity in excess of £500,000 must be authorised by Directors or the Chief Executive (in excess of HoS2 pay grade) and in accordance paragraph 4.6.15 and paragraph 3.3.15 of the constitution.

Basic principles

4.6.11 All procurement procedures must:

- (a) Realise value for money by seeking to achieve the optimum combination of whole life costs and quality of outcome/s,
- (b) Be consistent with the highest standards of integrity,

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- (c) Operate in a transparent manner, ensuring fairness and equal treatment in evaluating tenders and allocation of public contracts,
 - (d) Support all relevant council priorities and policies including the Medium Term Financial Plan,
 - (e) Comply with the Council's Procurement and Commissioning Strategy and the Social Value Statement,
 - (f) Comply with all legislative requirements including the Human Rights Act 1998 and the Equality Act 2010,
 - (g) Comply with the Procurement Objectives which are :
 - i. Delivering value for money,
 - ii. Maximising public benefit
 - iii. Transparency and
 - iv. acting with integrity
 - (h) Be funded through the allocation of an appropriately established budget or external grant funding.

4.6.12 The CPRs shall be applied to the contracting activities of any partnership for which the council is the accountable body unless the council expressly agrees otherwise.

4.6.13 All members and officers¹ of the council must disclose any conflict of interest that they may have relating to a procurement or a contract to which these rules relate and in which they are acting on behalf of the council. If any member or officer has such an interest, they may be excluded from taking any further part in the procurement process and must ensure that they comply with Part 5 (the codes and guidance) of the constitution. If there is any risk of a perception of a conflict of interest, then the relevant Director will decide how serious that risk is and decide whether that person should continue to take part in the procurement.

4.6.14 Where contracting a consultant which does not fall inside the IR35 regulations (i.e. be considered an employee for tax and NI purposes); or the consultant is not filling an established post, CPRs must be complied with. Any ambiguity on whether a contract is an employment contract or a consultancy contract covered by these rules should be referred to HR Services.

Operational or non-key executive decisions

4.6.15 Where an award of a contract is above £50,000, a Record of Operational Decision (RoOD) and/or Key Decision dependent on value will be required and will need to be published, including the financial amount in the decision / recommendation. Additionally, a decision will be required for procurements of contracts jointly with one or more other contracting authorities.

Key executive decisions

4.6.16 Where the authority is to commence a procurement activity, contract variation, contract extension or award a contract which is a key decision, the scope of the authority must be set out in the key decision and procurement options considered must be documented as an element of the report.

¹ Including those contracted to deliver services on the council's behalf.

Planning a procurement

- 4.6.17 Good planning is vital to the success of any procurement. Sufficient planning time must be built into any procurement activity to allow for adequate preliminary market engagement, development of good quality specifications and tender documentation. Allow a reasonable time for the market to respond to the tender paying due regard to the procurement timescales set out in the relevant legislation and/or the Contracting Toolkit or seek advice from Commercial Services. Ensure sufficient time is also allocated to the tender timeline for clarifications, evaluation, due diligence stages and contract award stages of the procurement process. Use the pre-procurement checklist to guide what is needed throughout the process.
- 4.6.18 Check to see if there is an existing council contract that you can use to fulfil your requirement. Explore opportunities to work collaboratively across directorates, consider what is the best approach to deliver the best outcome and value to the council as a whole.
- 4.6.19 Risk assessment – Authorised Officer must carry out a risk assessment on the procurement and ensure any risks identified are managed and/or mitigated through the procurement process and/or in the contract.
- 4.6.20 Preliminary market engagement is permitted for the purpose of :
- Developing the Council's requirements and approach to the procurement
 - Designing a procedure, conditions of participation or award criteria
 - Preparing the tender notice and associated tender documents
 - Identifying suppliers that may be able to supply the requirement (understanding the market).
 - Identifying likely contractual terms
 - Building capacity amongst suppliers in relation to the contract

If the procurement is valued over the relevant threshold, a preliminary market engagement notice must be published on the government's Central Digital Platform/Find a Tender.

- 4.6.21 When engaging with potential suppliers, the council must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from a single supplier, who may have a commercial interest in the procurement opportunity, as this may prejudice the transparency principles or distort competition and prohibit them from submitting a bid or result in them be excluded from the bidding process. The council may carry out market testing to inform the specification from a number of potential suppliers.
- 4.6.22 Consideration should be given to how service users can actively participate in the designing, delivery and quality-monitoring of their service. What is the best form of community or service-user engagement or consultation?
- 4.6.23 Where the procurement involves a potential change to services provided by the council ensure compliance with the council's duty to consult under Section 3 Local Government Act 1999, the Equality Act 2010
- 4.6.24 Prior to carrying out the procurement process an assessment of the total value of the contract must be carried out to determine the competition requirements. Officers must estimate the value of a contract as the maximum amount it could expect to pay under the contract including where applicable, amounts already paid and any contract extensions.

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- 4.6.25 For goods, services or works contracts, the amount the council could expect to pay includes the following:
- a) the value of any goods, services or works provided by the council under the contract other than for payment;
 - b) amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised;
 - c) amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised;
 - d) amounts representing premiums, fees, commissions or interest that could be payable under the contract;
 - e) amounts representing prizes or payments that could be payable to participants in the procurement.
- 4.6.26 When estimating the value of a concession contract this needs to take into account the maximum amount the supplier could expect to receive as a result of the contract, reflecting the requirement that some revenues must be estimated to come from sources other than payments by the contracting authority.
- 4.6.27 Where officers are unable to estimate the value of a contract (for example because the duration of the contract is unknown), the value is to be treated as having an estimated amount of more than the threshold amount for the type of contract and an above threshold procedure must be followed.
- 4.6.28 Where the procurement is split into lots, the total cost of all the lots must be included in the valuation.
- 4.6.29 Officers must not deliberately disaggregate the value of a Contract and/or split the value up to reduce the number of quotes to be obtained or carry out multiple procurements to avoid the CPRs and/or relevant legislation.
- 4.6.30 If there are any known risk which can't be quantified at the start of the contract, these must be included in the scope. This may allow the contract to be modified at a later stage should the risk materialise.
- 4.6.31 Where officers are seeking quotes for the same or similar goods and/or services on a regular basis, they must offer the opportunity to new suppliers periodically. Where the goods and/or services are used on a regular basis, the establishment of a framework or call off contract should be considered to prevent disaggregation of spend to avoid the CPRs and/or relevant legislation.
- 4.6.32 Wherever it is mutually advantageous to do so, the council may seek to conduct procurements in collaboration with partner organisations. Where shared costs, joint procurements or joint contracting is taking place between collaborating authorities it is advised that an agreement detailing such arrangements should be drawn up between the partners. The partners should appoint a lead partner and agree to comply with the lead partner's contract rules as long as they are no less stringent than the council's and the lead partner comply with the relevant legislation).
- 4.6.33 All procurements require a tender pack, which as a minimum should include:
- The specification (describing the service you require)
 - A draft copy of the contract terms and conditions (describing what the contract will look like with any successful bidder)
 - An invitation to quote (ITQ), invitation to tender (ITT) or other document which sets out the tender process, with instructions for bidding and the evaluation criteria.

- Other documents that are relevant to the tender e.g. plans or drawings, TUPE information, draft property rental/lease agreement, a particular policy or procedure document(s), additional service data or information etc.

Specifications and options appraisal

- 4.6.34 At the start of any procurement activity, the Authorised Officer and, where the Authorised Officer is a Project Manager at least one officer from the service area responsible for providing the service, must develop the service specification and/or existing service design together with the requisite business case or service plans that identifies as a minimum:
- (a) Why the service is being commissioned; what is the need?
 - (b) The budget available and the length of the proposed contract.
 - (c) Assessment of the risks associated with the procurement and how they can be successfully managed.
 - (d) Identify any known risks the contract that could arise during the term of the contract and ensure these are addressed in the contract.
 - (e) Which, if any, social value outcomes will be achieved from the commissioning exercise, and how they can contribute towards meeting the council's overall priorities.
 - (f) A clear description of the goods, services or works required. This can be expressed as outputs or outcomes
 - (g) Financial implications.
 - (h) Where applicable the Priority Supplier Programme information.
 - (i) Ensure that the application of the Transfer of Undertaking Protection of Employment Regulations 2006 (TUPE) is considered and obtain advice from Commercial Services or Legal Services before proceeding with inviting tenders or quotes. Provide the relevant information to potential suppliers.
 - (j) Comply with the technical specification requirements in the relevant legislation.
 - (k) Ensure contract management is considered early and that the mechanisms for monitoring the contract are embedded in the specification and the contract.
 - (l) Exit requirements at the end of the contract, such as Personal Data, TUPE, demobilisation, hand over to new supplier.
- 4.6.35 The provision of 4.6.25(e) may apply to services contracts, or services together with the purchase or hire of goods or the carrying out of works, where it is proportionate and relevant to do so to enable or facilitate compliance with the duty imposed by section 1 of the Public Services (Social Value) Act 2012.
- 4.6.36 Documents relevant to the procurement including any decisions taken during the procurement process must be clearly documented and show options considered and recommendations to be taken forward. These documents must be retained for a period of 3 years from the date the contract is entered into or if not entered into, the date it was awarded, or the procurement process was ended. The documents must be stored in an appropriate storage area on the council's network that is accessible to other members of staff within the service area.
- ### **Reserving procurements to supported employment providers**
- 4.6.37 On a case by case basis, a competitive flexible procedure may provide for suppliers that are not supported employment providers, as defined in clause 32(4) Procurement Act 2023, to be excluded from participating in, or progressing as part of, the procedure.
- 4.6.38 On a case by case basis, a competitive flexible procedure may provide for suppliers that are not public service mutuals, as defined in clause 33(6) Procurement Act 2023 to be excluded from participating in, or progressing as part of, the procedure.

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- 4.6.39 When opting to reserve a procurement Authorised Officers are required to record the rationale / approval of their decision and keep with other procurement documents. This needs to be clearly stated in the relevant notices and tender documents.

Frameworks and Dynamic Markets

- 4.6.40 All frameworks agreements and dynamic markets used must be legally compliant and legally accessible to the council. The Authorised Officer is responsible for ensuring that the proposed route is permissible under the framework or dynamic market and ensure that due diligence is carried out to ensure it meets the needs of the council. The award of a contract via a single supplier framework or a direct award under a framework must be able to demonstrate value for money.
- 4.6.41 Where officer wish to create Open Frameworks or Dynamic Markets, advice from Commercial Services must be sought at an early stage.

Notifications

- 4.6.42 Authorised Officers and Contract Managers must ensure that Notifications are published where required under the relevant legislation during all stages of the procurement and during the life of the contract. See the section on notices in Appendix 3 and the Contracting toolkit for further information.

Procurement Routes

- 4.6.43 All contracts must be procured in accordance with these CPR's.
- 4.6.44 All contracts procured under the Public Contract Regulations 2015 will continue to be governed by those regulations until the end of the contract.
- 4.6.45 All contracts that are covered by the Provider Selection Regime (PSR), must be procured under the Provider Selection Regime (PSR) following the appropriate route to market as set out in PSR Legislation, and follow PSR legislation for Contract Modifications, and Notifications.
- 4.6.46 There is no minimum threshold value for the application of the PSR and therefore it applies to ALL Contracts in scope of the regime regardless of value.
- 4.6.47 The PSR is retrospective; therefore, any Contracts that are covered under the PSR must be extended or varied in line with PSR Legislation, including all Notifications.
- 4.6.48 Goods, Services, Works and Concessions contracts must be procured in accordance with the Procurement Act 2023 from the date it comes into effect.

Light Touch Services

- 4.6.49 Light Touch process for above threshold procurements can only be used where the procurement is covered by the relevant [CPV](#) codes set out in Schedule 1 (Light Touch Services) of the Procurement Act 2023. All Light Touch procurements must follow the Procurement Act 2023 regarding notices and timescales for Light Touch Services.

EVALUATION CRITERIA AND STANDARDS

Evaluation criteria

- 4.6.50 Authorised Officers will use criteria linked to the subject matter of the contract to determine that a tender submission is the most advantageous tender.
- 4.6.51 When setting award criteria, the Authorised Officer must be satisfied that they—
- (a) relate to the subject-matter of the contract,
 - (b) are sufficiently clear, measurable and specific,
 - (c) do not break the rules on technical specifications as set out in the legislation, and
 - (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.
- 4.6.52 In setting award criteria, the Authorised Officer must-
- (a) describe how tenders are to be assessed by reference to them and, in particular, specify whether failure to meet one or more criteria would disqualify a tender (the “assessment methodology”), and
 - (b) if there is more than one criterion, indicate their relative importance by—
 - i. Weighting each as representing a percentage of total importance
 - ii. Ranking them in order of importance, or
 - iii. Describing it in another way.
- 4.6.53 In setting award criteria for the assessment of tenders by reference to lots, the Authorised Officer –
- (a) may limit the number of lots that may be awarded to any one supplier , and
 - (b) In doing so, must provide and objective mechanism for supplier selection in circumstances where a supplier would otherwise exceed the limit.
- 4.6.54 The “most advantageous tender” is the tender that the council considers-
- (a) Satisfies the council’s requirements, and
 - (b) Best satisfies the award criteria when assessed by reference to-
 - i. The assessment methodology set out in the quote/tender, and
 - ii. If there is more than one criterion, the relative importance of the criteria set out in the quote/tender.
- 4.6.55 Issues that are important to the council in terms of meeting its corporate objectives can be used to evaluate bids. The criteria can include for example considering sustainability and environmental characteristics or support for the local economy. The bidder approaches to continuous improvement and setting targets for service improvement or future savings could also be included. All criteria must relate to the subject matter of the contract, be set out clearly in the tender documents and be in line with the council’s corporate objectives and must be objectively quantifiable and non-discriminatory.

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- 4.6.56 Where Authorised Officers intend to carry out site visits, demonstrations, presentations or interviews as part of the evaluation process, this must be made clear in the ITT and include whether this will be scored separately to the tender submission or used to moderate scores. If scored separately, bidders must be informed of the evaluation criteria and weighting/s in the procurement documents.
- 4.6.57 The procurement documents shall clearly explain the evaluation criteria, making clear how the evaluation criteria specified in the process will be applied. Where the scoring criteria is weighted, the ITT will clearly set out the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.
- 4.6.58 As part of the evaluation process the council must undertake due diligence checks which seek to determine the commercial stability of the successful bidder/s to inform the decision to award a contract. In determining the types of due diligence checks to undertake, consideration must be given to market risk, complexity and value of the tender. Depending on the value of the contract and the risk to the council, the checks will include at least one or more of the following::
- Search on the government's Companies House database
 - A recent credit report on the organisation
 - An assessment of the supplier's completed financial workbook
 - A recent assessment of fraud
- 4.6.59 Authorised Officers must check that none of the bidders are on the Debarred List, excluded from bidding or are excludable. Where bidders are on the Debarred List or excluded from bidding in accordance with the legislation, their bids must be excluded from the procurement process, where the bids are excludable, advice must be sought from Commercial Services and/or Legal Services before the bids are excluded. The reason for excluding bids must be recorded.
- 4.6.60 Tenders, quotations or selection questionnaires which are received after the stated deadline shall be automatically rejected. In exceptional circumstances, Authorised Officers, in consultation with and following the approval of the Deputy S151 Officer, can accept a late tender. 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. 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. Where only one submission is received and where this submission has arrived late, but is compliant in every other respect, the Deputy S151 Officer may consider the tender for acceptance.
- 4.6.61 An evaluation panel of at least 2 people should be established for the assessment of any qualitative questions in the invitation to quote/tender. The panel should be made up of people with the requisite knowledge and skills relevant to the goods, services or works being procured. Above UK threshold contracts (as determined in the CPRs) shall be evaluated and agreed involving the Commercial Services team and any other officers relevant to the decision making process.
- 4.6.62 Sufficient time should be allocated for the completion of compliance checks, evaluation, moderation, due diligence and governance.
- 4.6.63 Bidders can only alter their tenders or quotes after the date specified for their receipt (but before the formal acceptance of the tender or quote), where examination by the Authorised Officers reveals arithmetical errors or discrepancies that affect the tender or quote figure. The bidder shall be given details in writing of such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.
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- 4.6.64 All other post-tender clarifications shall only be undertaken following consultation with Commercial Services and Legal Services. Any clarifications cannot disclose commercially sensitive information supplied by other bidders.
- 4.6.65 The council shall require bidders to explain the price of costs proposed in the tender where the tender appears to be abnormally low in relation to the works, goods or services.

Tender/Quotation acceptance

- 4.6.66 The council shall only accept a tender and award a contract to the bidder submitting the most advantageous tender/quote within budget.
- 4.6.67 For procurements above £25,000 the Authorised Officer must produce a procurement evaluation report showing:
- (a) the subject matter and value of the contract
 - (b) the procurement route followed
 - (c) the names of the selected and rejected bidders and reasons for their rejection/selection
 - (d) the value of the bids received
 - (e) any conflicts of interest detected and subsequent measures taken
 - (f) the reasons for deciding not to award a contract/framework agreement/establish a Dynamic Purchasing System (if applicable)
 - (g) the result of the assessment of each tender
 - (h) comparison of assessment results
 - (i) details of due diligence checks carried out
 - (j) the recommendation on which bidder should be awarded the contract detailing the value and term of the contract to be awarded including potential extensions, if applicable.
- 4.6.68 Where bids are considered to be abnormally low, before disregarding a tender on this basis the Authorised Officer or Procurement Officer must first notify the bidder and provide it with a reasonable opportunity to demonstrate that it will be able to perform the contract at the price offered. If the bidder demonstrates to the Authorised Officer or Procurement Officer's satisfaction that it will be able to perform the contract for the price offered, the tender may not be disregarded as abnormally low.
- 4.6.69 Written notification to successful and unsuccessful bidders of the outcome of a procurement process should be provided as soon as practicable and in accordance with the relevant legislation via the e-tendering system. .
- 4.6.70 Where necessary publish a Contract Award Notice on the Central Digital Platform via the e-tendering portal to communicate the outcome of the tender. For procurements above the UK threshold or where the relevant legislation provides for a standstill period, the contract cannot be formally awarded until the bidders have been informed and the mandatory standstill period has elapsed without any challenges arising from the bidders.
- 4.6.71 The successful bidder must not be allowed to commence provisions of the goods, services or works until a formal written contract has been completed. The Authorised Officer must ensure that a completed copy of the contract is added to the council's contract register.
- 4.6.72 When the contract has been completed, Authorised Officers must publish a Contract Details Notice and for Contracts above £5 million a copy of the redacted contract on the Central Digital Platform via the e-tendering portal.

Awarding a contract (signature and sealing)

4.6.73 Where the scheme of delegation provides the authority:

- (a) Service Directors and Directors within the relevant directorate (as defined by the requisite pay grade) and the Chief Executive have the authority to award and sign a contract, or authorise Legal Services to sign, or where sealing is required in 4.6.74, authorise the sealing of a contract, authorise a contract variation/ extension or authorise an early contract termination of a contract up to the value of £500,000.
- (b) Directors within the relevant directorate (as defined by the requisite pay grade) and the Chief Executive have the authority to award and authorise the sealing of a contract, authorise a contract variation/ extension or authorise an early contract termination of a contract in excess of £500,000 in value, providing authority to award the contract has been obtained by way of a key decision.

4.6.74 Contracts can be signed in accordance with 4.6.73, however contracts must be executed as deeds by affixing the common seal of the council in the following circumstances:

- (a) contracts above the key decision value – unless agreed otherwise by Legal Services;
- (b) new framework agreements;
- (c) all building and works-related contracts – unless agreed otherwise by Legal Services;
- (d) where there is no consideration (i.e. money or money's worth) by one party (e.g. grant agreements, where the council is paying a voluntary sum to an organisation but the organisation is not giving anything in return); and,
- (e) other high risk contracts (as advised by Legal Services) where a longer limitation period of 12 years is required.

4.6.75 Before a contract can be sealed by the council, the Authorised Officer must provide Legal Services with the relevant decision to award in writing from the appropriate decision maker. The sealing of the contract by Legal Services is simply affixing the common seal and does not indicate that legal advice has been sought or that Legal Services approve the contract.

4.6.76 Authorised Officers shall ensure that each contract is on one of the council's standard contract templates or that the terms and conditions of the contract are/is approved by Legal Services prior to going out to tender/quote.

Bonds and parent company guarantees

4.6.77 A Bond or Parent Company Guarantee will be required on all works contracts above £1,000,000 unless considered inappropriate by the S151 Officer following consultation with the Monitoring Officer.

4.6.78 Bonds or Parent Company Guarantees may be required for any other contract if considered appropriate by the S151 Officer following consultation with the Monitoring Officer.

4.6.79 Bonds shall be a minimum of 10% of the contract value.

Urgent decisions

4.6.80 Tenders need not be invited in accordance with the provisions of the council's CPRs if an urgent decision is required, for example for the protection of life or property or due to an emergency not of the council's making or attributable to the actions of the council, to maintain the functioning of a public service, if in the opinion of the relevant Director it is considered to be in the council's interests or necessary to meet the council's obligations under relevant legislation.

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- 4.6.81 The council must be able to evidence that it is a genuine emergency, that the events causing extreme urgency were unforeseeable and not of the council's making or attributable to the actions of the council, that is impossible to comply with the usual timescales for a procurement including through a framework or accelerated procurement, and that the situation is not attributable to the council.
- 4.6.82 Wherever possible though, at least 3 credible quotations must be sought and any decision made or contract awarded shall be made by the relevant Director and reported to the relevant Cabinet Member.
- 4.6.83 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 CPRs at the earliest practicable opportunity.
- 4.6.84 A Record of Operational Decision to award a contract must be published for contract values above £50,000 and the financial value included within the decision.

Contract management

- 4.6.85 Contract Management is part of Procurement Act 2023. It places obligations on the Council to ensure that contracts procured under that legislation are managed effectively.
- 4.6.86 All Contracts must have a named Contract Manager on Business World. Directors and Service Directors are responsible for ensuring that Contract Managers carry out effective Contract Management in line with the Council's [Contract Management Framework](#) to ensure value for money throughout the lifetime of the Contract. Directors and Service Directors must ensure there are sufficient resources, skills, and capacity to effectively manage the contract to ensure that the council receives the Goods, Services or Works as procured.
- 4.6.87 All contracts over £5,000 are to be entered on the council's contracts register. This information should be updated if there is a change or variation made to the contract. Contract Managers and Commissioners are responsible for updating and adding additional contracts to the register as they are let or varied and using the register to inform subsequent tender planning.
- 4.6.88 The Contract Manager shall proactively manage the contract throughout its life cycle in accordance with the council's Contract Management Framework and in particular shall:
- (a) Classify the contract as Tier-3 "routine", Tier-2 "focused /leveraged", "and Tier-1 "strategic" by value and risk;
 - (b) Undertake a series of activities for each stage of the contract's life cycle – set up, delivery and exit; and
 - (c) Undertake a formal contract review in accordance with the framework.
- 4.6.89 The Contract Manager shall manage the contract throughout its life cycle having regard to the council's Contract Management Toolkit and good contract management practices. The contract manager shall maintain all records relating to the contract in an appropriate storage area on the council's network that is accessible to other members of staff within the service area.
- 4.6.90 The Contract Manager shall manage a supplier's performance throughout the contract life to ensure that milestones, KPIs, deliverables and outcomes and social value commitments are achieved. Risks and where appropriate, business continuity shall be managed as detailed within the contract documentation. Management data needs to be published in accordance with the Local Government Transparency Code.
- 4.6.91 Contract spend must be managed and monitored, and any additional budget or overspend must be managed in accordance with the Financial Rules.

- 4.6.92 The Contract Manager must notify Treasury@herefordshire.gov.uk of any council asset leased, given or used by the contractor at the start or during the term of the contract.
- 4.6.93 The Contract Manager shall ensure that a new procurement is commenced in plenty of time to replace the current contract if the goods, services or works are still required at the end of the current contract.

Modifications to contracts

Under the Public Contracts Regulations 2015 (applies to contracts procured before 24th February 2025)

- 4.6.94 Where a contract extension or variation is provided for in the original contract agreement, is within budget and the aggregate value of the contract is under £500,000 there is no need for a new decision. Where the variation will take the value of the contract over £500,000, a key decision will be required.
- 4.6.95 Where the value of the contract is below the UK threshold and there is no provision in the contract for a variation or extension, a decision will be required. Extension and variation will only be granted in limited circumstances having regard to the Public Contracts Regulations 2015.
- 4.6.95.1 Where the variation or extension to the contract results in an increase in value of less than 10% of the original contract price for services and supply contracts and less than 15% of the original contract price for works contracts, the decision can be made by the relevant Director or Service Director. Where several successive modifications are made, the value shall be the net cumulative value of the successive modifications.
- 4.6.95.2 Where the variation or extension to the contract results in the increase in value of more than 10% of the original contract price for services and supply contracts and more than 15% of the original contract price for works contracts, and the value of the contract remains below the relevant UK Threshold, the decision can be made by the relevant Director or Service Director in consultation with Commercial Services and Legal Services. Where several successive modifications are made, the value shall be the net cumulative value of the successive modifications.
- 4.6.96 Where the value of the contract exceeds the UK threshold, extension and variation will only be considered where they comply with Regulation 72 of the Public Contracts Regulations 2015. The decision can be made by the relevant Director or Service Director in consultation with Commercial Services and Legal Services.
- 4.6.97 Any variation or extension must not alter the overall nature of the contract or the framework agreement and shall not be aimed at circumventing these rules and the legislation.
- 4.6.98 Where notices of variations are required under the legislation, these notices must be published on the Central Digital Platform in accordance with the legislation.

Under the Health Care Services (Provider Selection Regime) Regulations 2023

- 4.6.99 Modification to contracts that fall within the listed services under these regulations will only be considered where they comply with Regulation 13 of the Health Care Services (Provider Selection Regime) Regulations 2023. The decision can be made by the relevant Director or Service Director in consultation with Commercial Services and Legal Services.

Under the Concessions Contract Regulations 2016 (applies to contract procured before 24th February 2024)

- 4.6.100 Modification to contracts under these regulations will only be considered where they comply with Regulation 43 of the Concessions Contract Regulations 2016.

Under the Procurement Act 2023 (applies to contract procured after 24th February 2024) (also applies to Concessions Contracts)

- 4.6.101 Where a contract extension or variation is provided for in the original contract agreement, is within budget and the aggregate value of the contract is under £500,000 there is no need for a new decision. Where the value of the variation is over £500,000 or the modification will take the value of the contract over £500,000 a key decision will be required.
- 4.6.102 Where the value of the contract is below the UK threshold and there is no provision in the contract for a variation or extension a decision will be required. Extension and variation will only be granted in limited circumstances having regard to the Procurement Act 2023 and the Procurement Regulations 2024:
- 4.6.102.1 Where the variation or extension to the contract results in an increase in value of less than 10% of the original contract price for service and supply contract and less than 15% of the original contract price for works contracts, the decision can be made by the relevant Director or Service Director. Where the modification will take the value of the contract above the relevant threshold, the contract becomes a 'Convertible Contract' and can only be modified in accordance with clause 74 and Schedule 8 of the Procurement Act 2023.
- 4.6.102.2 Where the variation or extension to the contract results in the increase in value of more than 10% of the original contract price for service and supply contracts and more than 15% of the original contract price for works contracts and the value of the Contract remains below the relevant Threshold, the decision can be made by the relevant Director or Service Director in consultation with Commercial Services and Legal Services. Where the modification will take the value of the contract above the relevant threshold, the contract becomes a 'Convertible Contract' and can only be modified in accordance with clause 74 and Schedule 8 of the Procurement Act 2023.
- 4.6.102.3 Any variation or extension must not be substantial or alter the overall nature of the contract or the framework agreement and shall not be aimed at circumventing these rules and relevant the legislation.
- 4.6.103 Variations to light touch contract are permissible under the Procurement Act 2023 and do not have to comply with the clause 74 or Schedule 8 of the Procurement Act 2023. Any variation must be approved by the Director or Service Director depending on the value of the variation in consultation with Commercial Service and Legal Services.
- 4.6.104 Where notices of the variations are required under the legalisation, these notices must be published on the Central Digital Platform in accordance with the legislation.

Exemptions (Waivers)

- 4.6.105 An exemption to the CPRs is only to be used **in exceptional circumstances**. Authorised Officers and/or Contract Managers are responsible for ensuring that exemptions to the rules are approved in advance of any action undertaken in all instances. If an application to let a contract without genuine competition is granted, the Authorised Officer or Contract Manager must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value.

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- 4.6.106 Exemptions will only be considered in circumstances not of the council's making or attributable to the actions of the council.
- 4.6.107 Exemptions from these CPRs shall only be given in the following exceptional circumstances:-
- 4.6.107.1 Where the supplies, works or services are of a unique or specialised nature or are identical or similar to or compatible with an existing provision so as to render only one or two sources of supply appropriate, including:
- An upgrade; or
 - Where the contract concerns wholly or mainly, repairs to or the supply of parts for existing proprietary machinery, plant or equipment and the repairs to or the supply of parts cannot be carried out practicably by alternative suppliers; or
- 4.6.107.2 The supplies to be purchased are proprietary articles or are sold only at fixed prices; or
- 4.6.107.3 The price of services or supplies to be purchased is controlled by trade organisations, or if for other reasons there would be no genuine competition; or
- 4.6.107.4 Where in the opinion of the Director or Service Director in consultation with the S151 Officer and the Monitoring Officer considers that the services to be provided or the work to be executed or the supplies or materials to be purchased are urgent; or
- 4.6.107.5 Specialist consultants, solicitors, barristers, agents, artists or professional advisers are required and:
- there is no satisfactory alternative; or
 - evidence indicates that there is likely to be no genuine competition; or
 - it is, in the opinion of the Director or Service Director, in the council's best interest to engage a particular consultant, solicitor, barrister, agent, artist or adviser; or
- 4.6.107.6 Where the council is purchasing a property, or is taking a service back in-house, which has associated contracts and in the opinion of the Director or Service Director in consultation with the Monitoring Officer and S151 Officer it is in the council's best interests to acquire those contracts; or
- 4.6.107.7 The works to be executed or the supplies or materials to be purchased can only be carried out or supplied by a statutory body.
- 4.6.108 Where it is possible to exempt these Contract Procedure Rules, any such exemption must be approved in writing by the relevant Director or Service Director or the Chief Executive, in consultation with the S151 Officer and the Monitoring Officer.
- 4.6.109 An "Exemption to Contract Procedure Rules" form must be completed by the Authorised Officer or Contract Manager seeking the exemption and must provide evidenced reasons as to the legitimate need for the exemption. The form is available from Commercial Services. The Authorised Officer or Contract Manager must ensure completed exemption forms are signed by the relevant Director or Service Director or the Chief Executive and returned to the Commercial Services team who will record them on the exemptions register.
- 4.6.110 No exemption from the CPRs is permissible for contracts above the UK Threshold under the Public Contract Regulations 2015, the Procurement Act 2023, the Procurement Regulations 2024 or for contracts that are regulated by the Health Care Services (Provider Selection Regime) Regulations 2023 or the Concessions Contract Regulations 2016.

Training

- 4.6.111 Any officer leading a procurement activity shall be appropriately trained or have experience commensurate with the nature of the procurement activity being undertaken.
- 4.6.112 Any officer designated contract management responsibilities shall be appropriately trained or have experience commensurate with the nature of the contract management activity being undertaken.
- 4.6.113 Completion of the council's introductory finance and procurement module shall be mandatory on an annual basis for all officers with designated contract management or procurement responsibilities.

Trading and disposal of property

- 4.6.114 Any proposals to sell or trade in services, suppliers or assets must be referred to the Head of Legal Services.
- 4.6.115 Any proposals to dispose of council property other than land must be referred to the S151 Officer and comply with the Financial Procedure Rules and Financial Guidance. Proposals to dispose of land must be referred to the Strategic Assets Delivery Director.

Subsidy control

- 4.6.116 Where it is proposed to provide financial support to a contractor, or where a contractor's proposal entails financial support or a benefit from the council or another public body necessary to ensure the continuance of contracting activity, this could amount to a subsidy under the Subsidy Control Act 2022. Assistance which could be considered a subsidy may be through payments to the contractor, subsidised payments, and the provision of free or low cost equipment, free or low cost support or low cost loans.
- 4.6.117 If there is an element of subsidy to the procurement or contract, a determination of the type and amount of subsidy must be carried out. The Subsidy Control Act 2022 allows for some assistance where it is deemed to be Minimal Financial Assistance (MFA) or for Services of Public Economic Interest (SPEI).

MFA has a financial threshold so no recipient can receive more than the specified amount over the applicable period set out in the Subsidy Control Act 2022.

SPEI are essential services provided to the public. To designate a service as an SPEI, the council must be satisfied that:

- the service is provided for the benefit of the public; and
- the service would not be provided, or would not be provided on the terms required, by an enterprise under normal market conditions.

- 4.6.118 Where there is an element of subsidy to the proposed procurement, the advice of Legal Services must be sought prior to advertising the opportunity or concluding the contract.

Appendix 1 - GLOSSARY OF TERMS

Term	Definition
"Authorised Officer"	means the officer with delegated authority from the relevant director for the preparation of the tender pack and publication of the procurement opportunity, receipt of quotations and tenders and for facilitating the execution of contracts.
"Best Value"	means the council's duty under Section 3 of the Local Government Act 1999 to promote economies, efficiencies, and effectiveness.
"Commissioner"	means the person responsible for planning and scoping the requirements, which form the object of the contract.
"Concession Contract"	means an agreement whereby the council grants another person, whether legal or natural, the right to provide a service or function, or carry out works, at that person's risk, to the public, as more fully described in procurement legislation and with appropriate and measurable levels of service (KPIs).
"Contract Manager"	means the person responsible for the management of the contract, its scope, and maintaining day-to-day relationships with the supplier.
"Contract"	means a contract (whether in writing or otherwise) for goods, services, or for the execution of any works and also includes framework agreements, dynamic markets and concession contracts.
"Contracting Authorities"	means central government, local government bodies, bodies governed by public law or associations formed by any one or more of these.
"Contract Management Framework"	means the framework that details how to classify a contract based on both the annual contract value and level of risk and depending on how the contract is classified, sets out the contract management activities to undertake throughout the contract lifecycle. The activities within the framework follow best practice principles and provide a clear approach to managing and administering contracts to comply with the Council's contract procedure rules and to demonstrate and evidence contract management accountability and governance. This can be found on the commercial services pages of the council's intranet site.
"Convertible Contract"	A contract that, as a result of the modification, will take the value over the relevant threshold where the modification— (a) is a permitted modification under Schedule 8 (permitted modifications), (b) is not a substantial modification, or (c) is a below-threshold modification.
"Council"	means the County of Herefordshire District Council.
"Debarred List"	The list of debarred suppliers that are not permitted to participate in public procurements or be awarded public contracts.
"Dynamic Market"	means a list of qualified suppliers (i.e. suppliers who have met the 'conditions for membership' of the dynamic market) who are eligible to participate in future procurements.
"Equality Duty"	means any duty or requirement placed on the council or any other body by the Equality Act 2010 or any legislation amending or replacing it and any statutory instrument made thereunder.
"e-tendering portal"	means the on-line system maintained by the council for notifying potential suppliers and contractors of contract opportunities, issuing tender documentation, administering clarifications, receiving and receipting bids, awarding and managing contracts and maintaining compliance with the Local Government Transparency Code through the publication of contract spend.

Term	Definition
"Framework Agreement"	means a contract between the council and one or more suppliers that provides for the future award of contracts by the council to the supplier or suppliers. Open framework means a: 'scheme of frameworks that provides for the award of successive frameworks on substantially the same terms'
"Grant Agreement"	means an agreement whereby the council provides or receives monies to/from another person, whether legal or natural to provide a function or service without the expectation of any consideration to the council except the repayment of the monies if the services are not performed or not performed to a specified standard.
"Local Government Transparency Code"	means the information that the Council is required to publish under the Local Authority Transparency Code 2015 to be found at https://www.gov.uk/government/publications/local-government-transparency-code-2015 as amended or replaced from time to time.
"Notifications"	Any notice required to be published under the relevant legislation in relation to the procurement being carried out.
"Procurement Document"	means any document produced or referred to by the council to describe or determine elements of the procurement or the procedure, including the contract notice, the technical specifications, the descriptive document, the invitation to tender, proposed conditions of contract, formats for the presentation of documents by contractors, information on generally applicable obligations and any additional documents.
"Public Contracts"	Means a contract for goods, services or works, frameworks, or a concession contract
"Contracting Toolkit"	means procurement and contract management guidance and templates found on the commercial services pages of the council's intranet site.
"Quotation"	means a written estimate of the cost to execute works or supply goods, materials or services.
"Regulated below threshold Contract"	a 'regulated below-threshold contract' is a below-threshold contract that is not: (a) an exempted contract as defined in Schedule 2 Procurement Act 2023; (b) a concession contract; or (c) a utilities contract.
"Specification"	means a clear and comprehensive description of the Council's requirements, including technical specifications, description of the works, goods and or services required. This will vary according to the value and complexity of the purchase.
"Threshold"	means the threshold applying to local authorities at which goods, services and works are subject to Public Contract Regulations 2015 or at which goods, services or works, frameworks, or concession contracts are subject to the Procurement Act 2023.

Appendix 2 - OFFICER RESPONSIBILITIES

1.1 Directors' responsibilities

1.1.1 All Directors are responsible for:

- a) monitoring compliance with the CPRs in relation to contracts funded by their directorate budget
- b) appointing staff to carry out commissioning, procurement and contract management functions and ensuring they support them in their roles and obtain regular briefings from them
- c) ensuring that the budget for any procurement has been approved
- d) awarding and signing and/or authorising the sealing of contracts
- e) approving variations, extensions and exemptions in accordance with the CPRs.

1.1.2 The Deputy S151 Officer has overall responsibility for the preparation and review of the CPRs in agreement with the Monitoring Officer/Director of Governance and Law and the S151 Officer.

1.2 Director of Governance and Law responsibilities

The Director of Governance and Law is responsible for:

- a) providing legal advice and guidance to members and officers on the operation of the CPRs and all contracting and procurement activity
- b) working with the Deputy S151 Officer and Commercial Services Manager on the preparation and review of the CPRs
- c) assisting the Chief Executive with the resolution of questions regarding the interpretation of the CPRs
- d) preparing or approving template contract documents
- e) advising on the preparation of contract documentation
- f) being consulted on exemptions from the formal tendering procedure in line with the CPRs
- g) facilitating the sealing of documents.

1.3 Contract Managers' responsibilities

Contract Managers are responsible for:

- a) keeping a record of all the procurement and contract documentation in respect of each contract they are managing, 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 and retained in accordance with retention schedule requirements
- b) Proactively managing the contract throughout its life cycle in accordance with the council's contract management framework
- c) entering contract information (including uploading a signed copy of the contract and any variations or extensions to the contract) onto the central contracts register for contracts in excess of £5,000 in order to comply with the transparency information/ code
- d) updating the contracts register together with associated documents if there is a change in contract value, scope or duration and where necessary ensure a FTS/ Contracts Finder notice is published
- e) ensuring that signed contract documents are available and retained in accordance with the council's retention schedule
- f) ensuring that contracts have been signed and/or sealed (where applicable) prior to the contract commencement date
- g) reading and understanding the contract documents and managing the contract in accordance with contract documents
- h) where relevant, monitor, measure and report on supplier's progress in delivering any social

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- value commitments / key value indicators
 - i) checking that valid insurance documents are provided by contractors, proving that the annual premium has been paid to cover the duration of the contract, and that copies are stored appropriately
 - j) reviewing the aggregate spend on contracts to ensure they remain in budget
 - k) ensuring that the council and contractor carry out their duties in accordance with the terms and conditions of contract
 - l) raising any issues or concerns with the relevant Directors and Service Directors in a timely manner and seeking advice from legal services where necessary.
 - m) providing timely information to Directors and Service Directors regarding contractors' performance including, but not limited to, delivery of KPIs, health and safety, business continuity, risk, contract terms and other events of default
 - n) ensuring that business continuity plans, where they are part of the contract, are kept up to date during the life of the contract
 - o) ensuring plans are in place to re-procure the service before the contract expires
 - p) ensuring contract expiry and exit plans are reviewed regularly and at least 6-12 months prior to contract expiry in preparation for exit and/or transition
 - q) notifying Legal Services of any transfers, novation and assignment required during the terms of the contract.

1.4 Commissioners'/ Authorised Officers' responsibilities

The Commissioner /Authorised Officer will be responsible for:

- a) liaising early on in the process with the Commercial Services team and Legal Services on all matters relating to contracting and procurement
- b) ensuring non-council staff (as defined at 1.9) engaged in the procurement process comply with these rules and consult Commercial Services as appropriate
- c) ensuring that written requirements are provided to non-council staff and that these include key stages of the procurement process at which the council will be consulted prior to, and or authorising, progressing to the next stage of the process
- d) ensuring there is a budget for the procurement
- e) ensuring all necessary decisions are made in a timely manner and maintaining a comprehensive log of all decisions made for each procurement, including copies of signed decision reports and any relevant supporting evidence
- f) considering whether social value is relevant to include in the tender process through early market engagement in accordance with the council's social value statement and social value internal guide
- g) drafting quotation/ tender documents for competitions utilising the templates which can be found on the Commercial Services intranet pages. Selecting the appropriate contract for the procurement using the council's standard contracts or any other contract approved by Legal Services
- h) maintaining records during the procurement process of the:
 - i. contracts awarded including the nature and value of contracts and the names of successful tenderers
 - ii. total value of contracts awarded to each successful tenderer during each financial year, where a framework or Dynamic Market is used
 - iii. names of unsuccessful tenderers and reasons why their tenders were not accepted
 - iv. details of any failure by a tenderer to comply with instructions to tenderers
 - v. details of the reasons for any tenders being withdrawn
 - vi. details of failures by contractors to submit tenders after having requested and been invited to do so
 - vii. reasons for exceptions to tendering procedures
 - viii. reasons for accepting late tenders

- i) undertaking required due diligence checks and obtaining copies of insurance documents, together with any other self-certified documents included in the ITT
- j) ensuring that contracts have been signed and/or sealed (where applicable) prior to the contract commencement date
- k) making arrangements for the retention of tender and all contract documentation in accordance with the council's record retention schedule for a minimum of 6 years (12 years if signed under seal) after the termination of the contract, including any extension or defects periods
- l) advising the Contracts Manager and Commercial Services team of contracts awarded and recording the details of all contracts over £5,000 on the contracts register, providing all detail necessary under the transparency code (including uploading a signed copy of the contract to the corporate contracts register – do not embed documents)
- m) considering the approach to succession planning to ensure that there is adequate leadership and governance in place for the successful delivery of major projects/programmes
- r) in conjunction with the Contract Manager consider continuity of service before a contract expires and ensure adequate plans are in place to re-procure the service before the contract expires.

1.5 Deputy S151 Officer responsibilities

Working with the Chief Finance Officer (S151), the Deputy S151 Officer is responsible for:

- a) providing advice on all aspects of the CPRs
- b) providing oversight to ensure that the council has an up-to-date commercial and commissioning strategy
- c) monitoring compliance with the CPRs and reporting non-compliance to the Director of Finance and the Director of Governance and Law for appropriate action
- d) preparing an annual report on the operation of and compliance with the CPRs for the Chief Finance Officer (S151), in consultation with the Director of Governance and Law and the audit and governance committee
- e) continually reviewing the CPRs to ensure they keep pace with developing best practice and advising amendments as necessary
- f) preparing an annual report on the exemptions recorded for the Solicitor to the Council
- g) providing training and support for employees involved in procurement and contract management activities
- h) 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
- i) guiding the council's strategic approach to developing social value through collaboration with partners and market development.

1.6 Commercial Services team

The Commercial Services team is responsible for:

- a) maintaining a register of current contracts above £5,000, advising on the information needed from contracts and publishing on the council's website
- b) maintaining a pipeline of procurements above £25,000 in conjunction with Commissioners, Authorised Officers and Contract Managers
- c) working with Commissioners and Authorised Officers to carry out procurements above the UK Threshold
- d) providing advice on all aspects of the CPRs and supporting the development of

- procurement strategies
- e) monitoring compliance with the CPRs and reporting non-compliance to the Deputy S151 Officer and the Director of Governance and Law for appropriate action
- f) providing training and support for employees involved in procurement and contract management activities
- g) 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
- h) guiding the council's strategic approach to developing social value through collaboration with partners and market development
- i) advising Directors and Service Directors on the appropriate use of the exemption process in conjunction with Legal Services
- j) maintaining and reviewing a contract procedures exemption register
- k) ensuring the contracting toolkit, tender guidelines, and templates are reviewed annually to remain up-to-date with legislation and best practice.

1.7 Legal Services team

The Legal Services team is responsible for:

- a) providing legal advice on the CPRs and procurement legislation
- b) providing template contracts and approving contracts for use in procurements
- c) advising Directors and Service Directors on the appropriate use of the Exemption process in conjunction with Commercial Services
- d) working with the Commercial Services Manager and the Commercial Services team to ensure compliance with the CPRs and the Procurement Legislation.

1.8 Responsibilities of all council officers

All Officers are responsible for:

- a) following the CPRs and any codes of practice, guidance or instructions provided by the Commercial Services team and Legal Services
- b) ensuring that non-council staff comply with these rules and consult Commercial Services as appropriate
- c) following all relevant UK procurement laws
- d) following relevant council policy requirements in relation to procurement and contract management
- e) seeking advice from the Commercial Services team and Legal Services in the case of any uncertainty
- f) ensuring that any departure from these CPRs is agreed with the Commercial Services Manager or Deputy S151 Officer and Head of Law - Contracts and Property or the Director of Governance and Law and following the appropriate procedure
- g) reporting any suspected fraudulent, corrupt or other irregularity to the Chief Internal Auditor
- h) 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.

1.9 Non-council staff

1.9.1 Any person who is not an officer of the council, but is engaged by the council to advise, conduct, or supervise any stage of a tender, must:

- a) comply with the CPRs and financial rules
- b) produce on request, all records relating to the contract he/she is engaged on, to the

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- relevant Director or Service Director; and
 - c) pass all relevant records to the Authorised Officer/Contract Manager at the end of his/her appointment/engagement
 - d) sign a declaration of interest relating to any procurement and/or contract that they are involved with on behalf of the council and give it to the Commissioner/Authorised Officer.

Appendix 3 - Table of Notices

Notice name	Requirement	Purpose / variations	Exemptions
Pipeline notice	Mandatory (for organisations where spend is £100m+ PA) 12-month forward-look at planned procurements £2m+ value	N/A	Private utilities
Preliminary market engagement notice	Mandatory where pre-market engagement is anticipated or has taken place (or, explain in the tender notice reason for not publishing)	N/A	Private utilities
Planned procurement notice	Optional and best practice advises the market of an upcoming procurement. A qualifying planned procurement notice can reduce tender timescales to 10 days	N/A	N/A
Tender notice	Mandatory when undertaking an open or competitive flexible procedure (including to establish a framework and award a contract under an existing dynamic market) or a regulated below-threshold procedure	Below-threshold tender notice Tender notice: open procedure Tender notice: competitive flexible Tender notice: frameworks Tender notice: dynamic markets (for procurements awarding a contracting using an existing dynamic market or utilities dynamic market - not to establish a new dynamic market)	Qualifying utilities dynamic markets (existing members of the market may be invited directly)

		Tender notice: utilities dynamic markets	
Transparency notice	Mandatory when undertaking a direct award (publish prior to award)	N/A	Direct award: user choice contracts
Contract award notice	Mandatory communicates the outcome of the procurement and (commences standstill prior to awarding a contract open or competitive flexible procedure)	Contract award notices except those published by private utilities Contract award notices published by private utilities Contract award notices published by private utilities: direct awards Contract award notices published by private utilities: frameworks	Direct award: user choice contracts Defence and security contracts awarded under a defence and security framework
Contract details notice	Mandatory details of the awarded contract (including the redacted contract, for public contracts £5m+ and KPI information)	Contract details notice: open or competitive flexible procedure Contract details notice: frameworks Contract details notice: public contracts awarded in accordance with frameworks Contract details notice: direct award Contract details notice: below- threshold contracts	Private utilities Direct award: user choice contracts Framework contract - exempt from KPIs Light touch - exempt from KPIs Concession contracts - exempt from KPIs
Contract payment notice	Mandatory details of payments over £30,000 made under a public contract (quarterly)	N/A	Utilities contracts awarded by a private utility Concessions contracts Contracts awarded by a school

Contract performance notice	Mandatory to report: a. annual KPI scores for public contracts valued £5m+ b. poor supplier performance / breach of contract (within 30 days of event)	Performance against KPIs Notification of supplier poor performance / breach of contract	Private utilities - exempt from both Light touch - exempt from both Concession contracts - exempt from publishing KPIs only
Contract change notice	Mandatory prior to a qualifying modification taking place (copy of modified contract for public contracts over £5m)	Convertible contracts: contract change notice (<i>this is relevant when a contract modification would take the value of a below threshold contract above the relevant threshold which would make it a convertible contract</i>)	Defence and security contracts Private utilities Light touch contracts
Contract termination notice	Mandatory when a public contract ends	N/A	Private utilities Direct award: user choice contracts
Procurement termination notice	Mandatory where, after publishing a tender or transparency notice, the process is terminated without awarding a contract	N/A	Private utilities
Dynamic market notice	Mandatory when advertising, establishing, changing or terminating a dynamic market	Utilities dynamic market notice Qualifying utilities dynamic market notice	Private utilities are not required to update the dynamic market notice when the market ceases to operate A qualifying utilities dynamic notice must be provided to members of the market and is not required to be published

Payments compliance notice	Mandatory details of contracting authority performance against 30- day payment terms (twice annually)	N/A	Private utilities Concessions contracts Contracts awarded by a school
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