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Dear Member

COUNTY COUNCIL - THURSDAY, 25 MAY 2023

I am now able to enclose, for consideration at the Annual General Meeting of the Council on Thursday 25 May 2023, the following reports which were unavailable when the agenda was published.

Agenda Item No

13 **Spending the Council's Money (Pages 1 - 34)**
Main Report plus Annexes 1 and 2

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Watts', is written over a faint circular stamp.

Benjamin Watts
General Counsel

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By: Roger Gough, Leader of the Council
Peter Oakford, Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services
Zena Cooke, Corporate Director for Finance

To: County Council

Date: 25th May 2023

Subject: Review of the Council's current spending rules (Spending the Council's Money)

Summary: This report summarises a review and update of the Council's Contract Standing Orders 'Spending the Council's Money' and the subsequent revisions to the Constitution.

Recommendation:

County Council is asked to:

- i. Approve the revised Contract Standing Orders ("Spending the Council's Money") – as attached as Annex 2 and recommended by Governance & Audit Committee
 - ii. Approve revisions to the Constitution wording on contract standing orders – as attached as Annex 1
-

1. Introduction

"Spending the Council's Money" was initially published in June 2010 as a document that provided both mandatory rules and guidance for carrying out contracting activities in the Council. Section 135 of the Local Government Act 1972 requires that local authorities have such standing orders in place.

With changes to government regulations, technology and the Council's structure, the original document has become outdated. In 2021/22, the elements of "Spending the Council's Money" that were for guidance were reviewed and a new suite of guidance was issued for staff. However the mandatory elements of "Spending the Council's Money", including our procurement thresholds, have not been reviewed until now.

Governance & Audit committee have reviewed the proposed rules and an updated version of “Spending the Council’s Money”, consisting of a set of mandatory rules for the Council’s external spending activity, is attached (as Annex 2) for approval.

2. Case for Change

A key motivation for the update is to make the content up-to-date and easily understandable. However, this is also about ensuring that everyone who is spending the Council’s money knows and adheres to the rules that are in place.

Since the conception of “Spending the Council’s Money”, prices of goods and services have increased significantly, and many local authorities have higher thresholds that reflect this, whilst KCC’s thresholds have not changed. This means that KCC’s rules have become more restrictive, compared to other local authorities, leading to additional bureaucracy for relatively small amounts of spend, compared with the Council’s overall budget.

There is nothing that has fundamentally changed within the contract standing orders to address any perceived weaknesses in control and governance issues, but any set of rules that are simplified and laid out to make them easy to understand and navigate should improve the control environment and ensure that governance is easier to follow and monitor. For example, there are now clear sections covering the need for a procurement business case and an annual procurement pipeline to test that major procurements are adequately resourced.

A recent report by Grant Thornton¹ on lessons learned from recent auditor reports in Local Government procurement and contract management highlighted a number of key recommendations which support the proposed changes to “Spending the Council’s Money”. These include:

- a. Having clear procurement and contract management processes and rules in place, that are clearly communicated and understood
- b. Where there is non-compliance, it should be dealt with promptly, rectified and lessons learned should be shared
- c. Ensuring roles and responsibilities of individuals involved in procurement and contract management are clear, for both the local authority and for suppliers

3. Amendments to Constitution wording

Following the review of Spending the Council’s Money, there is a requirement to update the Constitution as there is a small section in the Constitution (sections 13.3 to 13.23). regarding contract standing orders. Proposed changes to the Constitution are attached as Annex 1. Adherence to standards will be reported to the Chief Executive as well as those Elected Members charged with governance.

¹ Grant Thornton (December 2022) ‘Local government procurement and contract management’ Available at: [Local government procurement and contract management \(grantthornton.co.uk\)](https://www.grantthornton.co.uk/local-government-procurement-and-contract-management)

4. Spending the Council's Money - Summary of Content

Responsibilities and Conduct

“Spending the Council's Money” clearly establishes the responsibilities of different teams and officers involved in procurement activity, which previously has not been defined in their entirety. In addition to this, the document delegates some authority over decision making to the Head of Commercial role.

The document also clearly states the expectations of staff and other individuals who are buying on behalf of the Council.

Contract Pipeline

“Spending the Council's Money” mandates the requirement to establish a Contract Pipeline. This is simply a forward look of potential commercial activity for the Council and may include the procurement of a contract or a framework, a call-off from a framework, a significant contract amendment or a contract extension. It is important to better engage with markets, plan and manage resources, improve transparency and improve governance and decision-making. This is an element that we are aware will be required in the upcoming changes to public procurement regulations.

The document also implements a new requirement for approval of increases of actual aggregate contract value of 5% more from that budgeted before contract award, to help scrutinise value for money decisions more effectively.

Requirements for Sourcing Goods, Services and Works

“Spending the Council's Money” defines the expected considerations and activities that must take place in order to ensure that the chosen procurement route will be appropriate for the related value and risk and deliver value for money.

Some of the elements included in this section are procurement thresholds, calculating the contract value, business cases, using existing arrangements and Local Authority Trading Companies (LATC's), financial security and using framework agreements.

Many of these elements, other than the procurement thresholds, have not been clearly defined as a mandatory requirement up until this point. However, they are important for consistent practice and to support the Council in saving money through reducing inefficient and inappropriate procurement activity.

Requirements for Quotations and Tender Procedures

“Spending the Council's Money” defines the required activities and documentation for running quotation and tender procedures and the details for how these should be carried out and completed.

The previous version of “Spending the Council's Money” included the mandatory requirements for these procedures, with guidance that differed based on circumstances. This made the document large and unwieldy and required frequent

updating and circumstances changed. This version only states the mandatory requirements (which shouldn't fundamentally change in the short to medium term), with the rest of the guidance covered by Commissioning Standards.

5. Changes to Procurement Thresholds

"Spending the Council's Money" makes changes to the current value thresholds that determine the procurement procedures required to be undertaken. The key changes are summarised in the table below.

Procurement Procedure	Current Threshold	New Threshold
Minimum of one written quote required	Up to £7,999	Up to £24,999
Minimum of three written quotes required	£8,000 - £49,999	£25,000 - PCR Threshold (approx. £177,897**)
A competitive tendering process that follows Council defined procedures and/or regulatory procedures where the thresholds for these are met. This excludes works procurements*.	£50,000 +	PCR Threshold (approx. £177,897**) - £999,999
A competitive tendering process that follows Council defined procedures and/or regulatory procedures where the thresholds for these are met*.	N/A	£1,000,000 +

**Previously this requirement included works procurements. This refers generally to building, construction and engineering related works., "Spending the Council's Money" allows a competitive quotation procedure to be undertaken for works procurements up to £1m.*

***Indicative value excluding 20% VAT*

The new proposed thresholds were derived following research into KCC's contracting activity and other local authority's thresholds and a series of review meetings with a sub-group of the Governance and Audit Committee.

Additionally, the new thresholds define further required elements of the procurement procedure including advertising in line with public procurement regulations, contract award approval and contract signature.

6. Governance and Audit Committee review of Spending the Council's Money

The Governance and Audit Committee were asked to approve amendments made to the Council's Standing Orders (Spending the Council's Money) on the 18th May 2023 and the full papers submitted for this can be found at Annex 2. Prior to the Committee meeting, a G&A subgroup panel was set up and a number of meetings were held in February 2023 to work through the document. Each section was reviewed in detail and discussed with the group and any feedback was recorded and actions to review were noted. Following these meetings, an updated version of the document was produced. The sessions were extremely valuable in being able to test and challenge the proposal

and ensure that all elements had been worked through. There was general agreement and support for the proposal from the group and at the Committee meeting on the 18th May 2023 the Committee approved the revisions to 'Spending the Council's Money' as attached as annex 2 and recommended that the revised version be presented to full Council for noting alongside the proposed amendments to the Constitution.

7. Future Changes to the Rules

There is a strong link between Spending the Council's Money, other Council policies such as the Financial Regulations and government regulations such as The Public Contract Regulations.

We are already preparing for the changes that both the Public Procurement Reforms and the NHS Provider Selection Regime will bring in late 2023, however there will inevitably be some changes required to the Procurement Rules as a result of the reforms. Public Procurement Reforms refers to the Government's proposal to repeal the current EU law-based procurement regulations and replace them with new rules and procedures that would cover local government. The NHS Provider Selection Regime (PSR) refers to a new set of rules for arranging healthcare services in England.

Additionally, changes to technology, systems and the teams in the future may require small changes to be made to the Procurement Rules before we intend to review them again.

In order to avoid the Procurement Rules becoming outdated with these changes, authority for approving non-substantive changes to Spending the Council's Money should be delegated to the Section 151 officer in conjunction with the General Counsel.

Non-substantive changes will include:

- Changes required due to changes in law or changes to relevant KCC policies
- Changes required due to changes in roles or teams that are relevant to Spending the Council's Money
- Changes required due to the adoption of new procurement systems or technologies
- Changes required due to changes to the names of procurement documentation and procedures

Non substantive changes would be reported annually to Audit & Governance committee.

8. Practical Next Steps

A communications programme will be carried out with support from Internal Communications to inform all staff of the new document and changes to existing rules. The wording in the Constitution refers to the new rules and so once updated both will be aligned.

9. Appendices

Annex 1: Proposed changes to Constitutional wording on contract standing orders

Annex 2: Spending the Council's Money

Annex 1 - Proposed Constitutional Text for 'Contracts and Tenders Standing Orders'

It is the responsibility of anyone who buys on behalf of the Council to ensure that all purchasing or procurement of goods, services, or works comply with:

- a) legal requirements, including public procurement regulations
- b) the Council's Financial Regulations,
- c) 'Spending the Council's Money' (as approved by the Governance and Audit Committee),
- d) the Financial Regulations
- e) the Council's Code of Conduct (i.e. the 'Kent Code')
- f) the Council's Corporate Grants Procedure
- g) the Council's Anti-Bribery Policy
- h) the Council's Anti-Fraud Strategy and Policy
- i) standards for the management of property, information technology resources and staff,
- j) any conditions attached by the Leader or the full Council to the exercise of powers delegated by them, and

Non-compliance with any of these requirements will be reported to the Monitoring Officer who will ensure this is reported to the Governance and Audit Committee. Disciplinary action may be taken in line with the Council's Code of Conduct against anyone who breaches these requirements.

Authority

All transactions must either fall within the powers delegated to Senior Managers or have been approved by a decision (in accordance with the Council's Constitution) of the Cabinet, the Leader, an authorised Cabinet Member, the full Council or one of its Committees or Sub-Committees.

No contract, agreement or other document shall be signed or sealed unless it gives effect to:

- a) a decision or resolution (in accordance with the Council's Constitution) of the Leader, an authorised Cabinet Member, the Cabinet, or one of its committees or sub-Committees with decision-making authority), or
- b) a decision by an Officer exercising delegated powers.

Budgetary provision must exist before any contract can be entered into. This provision should be explicit in a Budget approved by resolution of the full Council.

Where there is no specific Budget line, the Director of the relevant service and the Head of Commercial may approve expenditure up to £1,000,000, provided the expenditure can be met within budget. Above £1,000,000 a formal decision by the Leader, the Cabinet or an authorised Cabinet Member is required in accordance with the Council's Constitution.

Thresholds

The financial values (exclusive of Value Added Tax) are defined within Spending the Council's Money and refer to the total aggregate contract value. Anybody who is buying on behalf of the Council must follow the procedure set out in the Spending the Council's Money for the total aggregate contract value of their procurement. The definition of aggregate contract value is also defined in the Spending the Council's Money.

In addition, public procurement regulations set thresholds for public contracts above which specific procedures are required to be followed. Anyone who buys on behalf of the Council should understand these regulations and follow the procedures as necessary.

There must be no attempt to avoid any of these thresholds by deliberately manipulating the requirement or frequency of ordering.

The Award

Senior Managers may sign documents on behalf of the Council or authorise Officers to do so in accordance with the Delegated Authorities Matrix in the Financial Regulations.

Any contract with a value in excess of £1m must be made in writing and either:

- a) affixed with the common seal of the Council and be attested by at least one authorised Officer (see section 13.18), or
- b) signed as a deed by at least one authorised Officer (as defined in 13.18) unless otherwise determined by the Monitoring Officer.

The common seal of the Council shall be affixed to any deeds (unless a specific statutory provision permits otherwise) and any document or agreement if the Monitoring Officer considers it appropriate for the purpose of transacting the Council's business or safeguarding its interests.

The affixing of the Common Seal, either by physical or electronic means (as defined in section 11.21), may only be attested by the Monitoring Officer, or Officers authorised by them in writing to do so.

The Monitoring Officer shall ensure a register is maintained of all documents and agreements that are sealed including the name of the person who witnessed the affixing of the seal.

Where a process that is non-compliant with Spending the Council's Money is required to determine the contractor, a waiver must be sought. A waiver cannot be given to contravene any applicable public procurement legislation. A waiver can be approved by the Officer delegated responsibility for the Council's procurement activity unless the value of the award exceeds £1,000,000 with which they will also seek approval from the Section 151 Officer and Monitoring Officer. The approved Award Report must be sent to the Monitoring Officer within two days of the contract being awarded so that they may notify Members of the Scrutiny Committee on a quarterly basis.

Where there is a requirement (legal or otherwise) for a 'wet ink' signature on legal agreements, they will be sealed and/or signed physically. Otherwise, section 13.23 may apply.

Where the law, and (where applicable) any additional requirements of a public registry (for example, HM Land Registry) allow, electronic signatures may be permitted, and will be accepted as a fair representation of a willingness to enter into a contract with the Council, as long as the following apply:

- a) the Contract will be entered into in relation to being either under seal or under hand,
- b) the electronic signature is a true representation of the authorised person's written signature, and
- c) is supported with a contemporaneous document of authenticity and authorisation from the Supplier.



Kent County Council Spending the Council's Money

The Council's Rules for Procurement and
Spending Activity



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Part A: Introduction

1. Purpose

- 1.1. This document, 'Spending the Council's Money' is referred to hereafter as 'SCM'. SCM is the mandatory rules and processes that must be followed and complied with when spending money on behalf of Kent County Council ("the Council"). The purpose of SCM is to ensure that prior to any expenditure being incurred that there is proper consideration of the process, and that any procurement or contracting is carried out in a fair, open, and transparent way such that the outcome will represent value for money to the Council and the county's residents.
- 1.2. It is important to understand that whilst SCM is an internal Council document it does seek to incorporate and embed procedures across the Council to also ensure compliance with external obligations placed upon the Council, including those found in relevant procurement legislation, applicable case law and both statutory and non-statutory guidance. Non-compliance with SCM would therefore not only be a breach of an internal Council set of rules but could result in the Council acting unlawfully in terms of procurement legislation, applicable case law and guidance.

2. Formal Status of SCM

- 2.1. SCM is referenced in KCC's Contracts and Tenders Standing Orders ('the Orders'), which are written into the Constitution and made under Section 135 of the Local Government Act 1972.
- 2.2. The Corporate Director for Finance, as the Council's Section 151 Officer, is the custodian of SCM. However, the Section 151 Officer may delegate the responsibility for keeping SCM under review and up to date to the Head of Commercial within the Council. Where the law is changed in a way that affects SCM, then those with delegated responsibility will issue a bulletin and the change must be observed until these documents have been revised to reflect the changes. Where there is a difference between current legislation, applicable case law and/or statutory and non-statutory guidance governing procurement, contracting and public expenditure ("current law and guidance") and SCM, the current law and guidance prevails.

3. Key Principles

- 3.1. SCM is underpinned by the following key principles:
 - a. To ensure that there is accountability for the Council's external spending.
 - b. To ensure that those spending money for or on behalf of the Council act in the best interests of the Council and with high standards of probity.
 - c. To manage the Council's exposure to financial and legal risk
 - d. To ensure that the Council meets its statutory duty to deliver best value for money and creates healthy competition and markets for the goods, services, and works purchased.
 - e. To be transparent to our residents about how the Council spends their money.
 - f. To ensure that public money is spent legally and fairly.
 - g. To support the Council to achieve its corporate aims, including supporting our sustainability and social value objectives, delivery in line with the public sector equality duty, and

encouraging the growth of local businesses, Small and Medium Enterprises (SMEs) and Voluntary, Community, and Social Enterprises (VCSEs).

4. Compliance

- 4.1. SCM applies to all Members and Officers and those working for, or on behalf of, the council. That means:
 - a. Individuals, permanent or temporary, and whether via a contract of employment or engaged through an agency or otherwise as a contractor or consultant.
 - b. Schools and business/trading units.
 - c. Third parties undertaking procurements specifically on the Council's behalf.
- 4.2. Anyone who buys goods, services or works on behalf of the Council, including Members, Officers, temporary staff, contractors, and consultants, must always comply with SCM.
- 4.3. Confirmed breaches of SCM must be reported to the Monitoring Officer, who will report them to Internal Audit and the Governance and Audit Committee as the parties responsible for monitoring and oversight of the Council's compliance with SCM.
- 4.4. Those found to be in breach of SCM will be subject to investigation which will lead to proportionate action being taken which may include disciplinary action in line with the Council's relevant Code of Conduct.
- 4.5. All such individuals who are buying on behalf of the Council must follow the Council's policies, as amended from time to time, particularly those relevant to SCM that are listed below:
 - a. Contracts and Tenders Standing Orders
 - b. Financial Regulations.
 - c. Scheme of Delegation
 - d. Code of Conduct (i.e., the 'Kent Code')
 - e. Property Management Protocol
 - f. Corporate Grants Procedure
 - g. Anti-Bribery Policy
 - h. Anti-Fraud and Corruption Strategy
 - i. Whistle Blowing Policy and Procedure
- 4.6. The legislation by which public procurement is governed in the UK must also be followed, including but not limited to the following legislation as amended from time to time:
 - a. The Public Contracts Regulations (PCR) 2015
 - b. The Utilities Contracts Regulations (UCR) 2016
 - c. The Concession Contracts Regulations (CCR) 2016
 - d. The Defence and Security Public Contracts Regulations (DSPCR) 2011
 - e. The Public Services (Social Value) Act 2012
 - f. Local Government Act 1999 (LGA 1999)
- 4.7. The Council must also comply with any applicable case law and statutory guidance issued in connection with the above legislation, as such guidance is amended from time to time.

5. Scope

- 5.1. Apart from the exceptions listed below, SCM covers all Council spend with external suppliers regardless of how they are funded, or which systems are used to place orders with suppliers.

This includes services sourced from other local authorities or public bodies under the relevant legislation.

- 5.2. There are circumstances when exemptions exist under the procurement regime and/or where the Council's internal rules may not apply to the requirement you are seeking to commission (see table below for a non-exclusive list – other exemptions may apply under the applicable procurement legislation). Early engagement with Commercial and Legal colleagues should be undertaken when scoping to ensure that the correct procedures are followed. Exclusion from compliance with SCM does not negate the need to consider the most appropriate route forward to achieve value for money.

Exclusion	Relevant Policy/Law
Contracts for the acquisition or lease of land and/or real estate	KCC Property Management Protocol Section 123 of the Local Government Act Regulation 10 of the Public Contracts Regulations 2015
Contracts for permanent or fixed-term employment (not including agency staff, contractors and consultants)	HR/Recruitment Policies Regulation 10 of the Public Contracts Regulations 2015
Non-trade mandatory payments to third parties, such as insurance claims, pension payments, payments to public bodies	These are not subject to competition due to their nature and are not in consideration for the provision of supplies, services or works.
A declared emergency authorised by the Emergency Planning Officer	The Civil Contingencies Act 2004
Awarding of Grants where this is not an extension of funding for current contracted services	Corporate Grants Procedure – where a genuine grant award and not a public contract for services.
Loans and investments	KCC Financial Regulations and Treasury Management Strategy Regulation 10 of the Public Contracts Regulations 2015
Placement of a child with Special Educational Needs where already directed following statutory assessment	Children and Families Act 2014 and ESFA guidance 2019-20 para 86
Direct payments to customers following care assessment (for example, payments under Self-Directed Support or Individual Budgets)	Section 12 of The Care Act 2014
Discharging the obligations placed on the Monitoring Officer pursuant to the Constitution	KCC's Constitution at 11.21

6. The Role of Buying on Behalf of the Council

6.1. Anyone who buys on behalf of the Council is responsible for:

- a. Complying with SCM and all policies and regulations listed in 4.5 and 4.6
- b. Ensuring that adequate consideration has been taken to determine if procurement is the correct approach to delivering required provisions
- c. Acting with probity at all stages of procurement activity and have due regard to any conflicts of interest that could influence the outcome of procurements
- d. Purchasing from existing contracts and, internal and external framework agreements in the first instance wherever they are appropriate for the requirement in question and can be used in a legally compliant way

- e. Ensuring there is adequate budget available for any purchase
 - f. Raising a properly completed purchase order and ensuring it is approved *before* the requirements are delivered to the Council, regardless of which finance system is used
 - g. Ensuring specifications are drafted to meet the identified needs and requirements and that proper consideration is given to equality and diversity, data and privacy, sustainability and social value
 - h. Engaging with the Commercial Team as early as possible to obtain advice, guidance and support and where they are required to in accordance with section 10 of SCM
 - i. Ensuring the total aggregate contract value is calculated in accordance with Section 11 of SCM
 - j. Undertaking contract tiering to assess the level of risk associated with the contracts to be managed
 - k. Following the guidance set out by the Commercial Team around buying on behalf of the Council and the management of contracts in accordance with their value, risk, and complexity
 - l. Ensuring that where required, a commercial case is developed that is efficient and suitable for the purchase and market concerned, considering any other relevant sourcing options with assistance from the Commercial Team and, the Finance and the Legal Team
 - m. Planning an appropriate, proportionate timetable for any procurement or sourcing exercise subject always to any regulatory requirements on timescales
 - n. Ensuring that any TUPE and pensions related issues are properly considered prior to inviting tenders or quotations with legal advice sought where appropriate
 - o. Ensuring that there is appropriate insurance cover in place for any awarded contract in accordance with Council guidance
 - p. Ensuring that accurate contract information is maintained, and that for all contracts each with a total aggregate contract value of £25,000 or more (excluding VAT), the Commercial Team are provided with accurate contract information in order to create a record on the Council's contract management system
 - q. Ensuring that for all contracts each with a total aggregate contract value of £25,000 or more (excluding VAT) information on the Council's contract management system remains up to date with changes throughout the lifetime of the contract
 - r. Determining and following the required governance route and obtaining all necessary approvals for the procurement and, where required, decisions in contract management
 - s. Ensuring that appropriate legal guidance and support is sought in accordance with Section 10 of SCM and where required for contract variations, extensions and novations.
 - t. Ensuring that HR is consulted, and the appropriate approval obtained for requirements of temporary staff, contractors, or consultants outside the agreed corporate contract with Connect2Kent (a trading subsidiary of Commercial Services Ltd.)
 - u. Having proper regard for all necessary legal, financial, and professional advice received
 - v. Maintaining a full record and audit trail of all procurement activity, including decisions made, and communications with suppliers
 - w. Ensuring the fraud, bribery and corruption risks have been appropriately considered, seeking specialist advice from Internal Audit and Counter Fraud
 - x. Reporting any non-compliance with SCM or relevant legislation to the Monitoring Officer
- 6.2. Contracts are to be managed day-to-day by a named Officer within Services, who will be either a dedicated contract manager or an Officer who has those responsibilities as part of a broader role (the only exception to this requirement for a named contract manager being for those contracts valued below £25,000 excl. VAT). The Commercial Team will provide the commercial lead to support the contract manager on all high-risk contracts identified through the Council's contract tiering model.

7. Responsibilities and Accountabilities of the Wider Council

- 7.1. Members of the Council are responsible and accountable for providing strategic direction on procurement activity and arrangements, in line with the Member role in decision-making set out in the Constitution.
- 7.2. Executive Members of the Council are responsible and accountable for:
 - a. Approving relevant financial expenditure to be incurred through contracting where the Constitution would require a Key Decision or Significant Decision of the Executive
 - b. Taking relevant decisions around financial expenditure made through contracting in line with the Scheme of Delegation
- 7.3. The Section 151 Officer is responsible for:
 - a. Ensuring, in liaison with the Monitoring Officer, that the appropriate requirements are in place in this document and other relevant policies to govern financial expenditure made through contracting with external parties
 - b. Ensuring the correct financial processes and systems are in place to manage financial expenditure made through contracting with external parties
 - c. Delegating appropriate responsibility for managing financial expenditure made through procurement to the Head of Commercial and the Commercial Team
 - d. Reporting any non-compliance with SCM or relevant legislation to the Monitoring Officer
- 7.4. The Monitoring Officer is responsible for:
 - a. Determining and maintaining, in liaison with the Section 151 Officer, the appropriate systems for monitoring and reporting on non-compliance with SCM.
 - b. To determine if reported breaches constitute non-compliance and report non-compliance with SCM to Internal Audit and Governance and Audit Committee
 - c. Enabling the provision of appropriate legal advice to the Council and the management of legal risk .
- 7.5. Internal Audit and Counter Fraud are responsible for:
 - a. Providing independent assurance that the procurement rules have been followed through risk-based auditing
 - b. Providing support and advice on conducting fraud risk/impact assessments where required
 - c. Recording and reporting on financial irregularities within contracting activity undertaken
- 7.6. Corporate Directors, Directors, and/or Heads of Service (as applicable under the Council's Scheme of Delegation) are specifically responsible for:
 - a. Providing strategic direction for all procurement undertaken in their area of responsibility
 - b. Ensuring that adequate consideration has been taken to determine if procurement is the correct approach to delivering required provisions
 - c. Ensuring all procurement and decision-making adheres to the Scheme of Delegation
 - d. Obtaining the necessary internal governance, whether by way of a Leader and/or Cabinet Member decision as, required by the Council's Constitution Scheme of Delegation bearing in mind the total aggregate contract value, before undertaking any procurement and contracting activity
 - e. Engaging with the Commercial Team, ensuring they are notified in advance of all proposed contracts each with a total estimated aggregate value above the PCR 2015 threshold for services, and over £1m for works to support the development of the Contract Pipeline and to enable the commissioning of appropriate legal advice to ensure to ensure compliance with SCM

- f. Ensuring their Officers undertake contract tiering to assess the level of risk associated with contracts to be managed (both as part of developing the Contract Pipeline and prior to contract award)
- g. Nominating appropriately skilled and qualified Officers to undertake procurement and contract management activity, where this takes place within their area of responsibility
- h. Ensuring their staff act with probity at all stages of procurement activity and have due regard to any conflicts of interest that could influence the outcome of procurements
- i. Ensuring all sourcing decisions ultimately represent value for money and are within the budgetary limits that have been approved
- j. Ensuring their Officers engage with the Commercial Team before procuring any contract with a total aggregate contract value above the PCR 2015 threshold for services, and over £1m for works in order for them to provide advice on the most appropriate sourcing route
- k. Ensuring their Officers seek appropriate legal advice in accordance with Section 10 of SCM where required for contract variations, extensions and novations to determine the level of legal advice required to mitigate legal risk
- l. Providing for appropriate and effective management of all contracts under their area of responsibility and managing relationships with key suppliers identified
- m. Ensuring sufficient funds are available for relevant procurement and contracting activity and allocating appropriate funds within their budget
- n. To ensure the fraud, bribery and corruption risks have been appropriately considered, seeking specialist advice from Internal Audit and Counter Fraud
- o. To report any non-compliance with SCM or relevant legislation to the Monitoring Officer

7.7. The Commercial Team is responsible for:

- a. Working closely with Officers, Senior Officers (Heads of Service and above), and Finance to agree and deliver a Contract Pipeline that will be authorised by the CMT
- b. Providing expert category and market knowledge to help Services within the Council find the right suppliers in the right way and at the right time, irrespective of the contract value
- c. Providing advice and guidance, and support to procure where it is deemed necessary, to Services where the total estimated aggregate value of the contract resulting from sourcing activity will be £25,000 to the PCR 2015 threshold for services and up to £1m for works
- d. Leading on all procurements where the estimated total aggregate contract value of the contract resulting from the procurement exercise will exceed the PCR 2015 threshold for services and over £1m for works
- e. Ensuring that there is early engagement with the Council's legal team on any planned procurement activity in the Contract Pipeline so that appropriate legal support can be provided or commissioned to support the procurement activity
- f. Ensuring efficient and effective purchasing and procurement practices are in place
- g. Acting with probity at all stages of procurement activity and have due regard to any conflicts of interest that could influence the outcome of procurements
- h. Maintaining guidance in relation to buying on behalf of the Council and the management of contracts, according to the value, risk, and complexity of the contract
- i. Taking a lead on all high-risk procurements (identified through the Council's contract tiering model), working alongside named contract managers within Services and named legal advisors
- j. Taking a commercial lead on contract extensions, variations and novations where it is deemed necessary, ensuring that legal advice is taken promptly
- k. Taking a commercial lead in developing strategic relationships with key suppliers (identified through supplier segmentation), working alongside Senior Officers (Heads of Service and above) within Services
- l. Embedding sustainability and social value objectives across the Council's supply chain
- m. Ensuring transparency over contracts, and contract opportunities, including making sure that there is an appropriate audit trail maintained for all procurement and contracting activity

- n. Ensuring that all contracts with a total aggregate contract value at or above the Public Contract Regulations 2015 requirement for advertising opportunities on Contracts Finder, have a record created on the Council's contract management system
- o. Reporting any non-compliance with SCM or relevant legislation to the Monitoring Officer

8. Contract Pipeline

- 8.1. To enable the Council to maintain an accurate oversight of procurement activity across the full range of Council Services, the Head of Commercial is responsible for the development of the Contract Pipeline in liaison with Corporate Directors. This is to identify the following:
- a. For each directorate, all contracts held each with an aggregate value above the PCR 2015 threshold for services, and which are due to be procured, extended, renewed, or replaced
 - b. The aggregate contract value across the life of each contract
 - c. The tier (risk level) of the contract
 - d. The procurement activity required
 - e. Likely legal advice that will be required, in consultation with the Council's Legal Team
 - f. The expected start date for the commencement of the contract or extension
 - g. Whether there is an option to extend the existing contract or not
 - h. The expected start date of any new contract or extension
 - i. Whether the cost will be met from capital, revenue, or a combination
- 8.2. The Contract Pipeline must be developed and agreed during the business planning cycle before it is then submitted to the Corporate Management Team (CMT) for approval.
- 8.3. Where the aggregate contract value is projected to be exceeded by 5% or more than the value stated within the Contract Pipeline that has been approved by the CMT, the S151 Officer must be consulted with and, where required, approve that change in contract value in line with the summary table below and the contract award must be put on hold pending that approval.
- 8.4. If the need arises during the year for procurement activity on contracts at or above the PCR 2015 threshold for services and over £1m for works which have not been pre-approved through the Contract Pipeline, then approval to procure must be sought by the Director of the Service concerned, before any procurement activity may begin, in line with the below:

£1m and above (excluding VAT)	Director of the relevant Service, S151 Officer, and the CMT
£100,000 - £1m (excluding VAT)	Director of the relevant Service in consultation with the S151 Officer

9. Approvals for Contracting Activity

- 9.1. Officers must ensure they seek approval for all contracting activity and decisions in line with the Constitution, the Scheme of Delegation and the requirements outlined in section 10 of SCM.

Part B: Requirements for Sourcing Goods, Services and Works

10. Procedures for Procurement by Aggregate Contract Value

Aggregate Contract Value (exclusive of VAT)	Procurement Method	Who is authorised to carry out the procurement?	Must the contract be formally advertised?	Who must approve the contract award?	Who signs the contract on the Council's behalf?	Is a contract award notice needed?	Where should the contract details be maintained?	Must there be a named contract manager?	Legal Advice Required
Up to £24,999.99	Minimum of one written quote (Unless using another compliant route such as a framework)	Any Officer	No	Budget holder	Not required (need fulfilled via approval of Purchase Order)	No	Locally within the Service	If necessary due to the nature of the contract	Use of up to date templates or automated document production technology depending on the nature of the requirement.
£25,000 - up to PCR value 2015 for Goods, Services or up to £1m for Works	Minimum of three quotes (Unless using another compliant route such as a framework) For works procurements above £1,000,000, a fully PCR compliant tendering procedure must be used.	Any Officer, following consultation with the Commercial Team and Legal Team, if required	Only needs to be advertised on the Council's tendering portal if Officers have chosen to undertake an open competitive tender	Budget holder can approve up to £50k Head of Service (or delegated manager) can approve up to £100,000 Service Director may approve up to £500k and a CMT Director up to £1m	Senior Commercial Officer or Head of Service	Yes, on Contracts Finder	On the Council's Contract Management System	Yes, within the Service	Use of up to date templates or automated document production technology depending on the nature of the requirement, seeking advice at the earliest instance from the Legal Team if required. [Legal advice will not be required where the contract to be let is for legal services.]
Page 18 Above PCR 2015 value for Goods, Services or above £1m for Works	For goods and services above the PCR 2015 thresholds, a fully PCR compliant tendering procedure must be used. For health, educational, cultural, and social care-related services above the Regulatory Thresholds and eligible under the Light Touch Regime, a tendering process permitted under that regime can be followed. For works procurements, a quotation procedure can be used up to £1,000,000 with a minimum of 3 quotations required. For works procurements above £1,000,000, a fully PCR compliant tendering procedure must be used.	The Commercial Team will lead the procurement (where the contract has been included on the approved Contract Pipeline, otherwise approval for the procurement activity must be sought in line with section 8)	Yes, must be published via Contracts Finder, the Council's tendering portal and the Find a Tender Service. (Unless route to market is via a framework or direct award which requires no advertisement.)	Service Director may approve up to £500k and a CMT Director up to £1m Above £1m approval must be sought from The Leader, Cabinet or Cabinet Member. The Leader, Cabinet, and Cabinet Member have no limit on the value of contracts they can award. Where the contract value is projected to exceed the value in the approved Contract Pipeline by 5% or more, Finance Business Partners must be consulted prior to the award.	Up to £500k, the Service Director and Category Manager. Over £500k, up to £1m, the CMT Director with Head of Commercial. Above £1m, the CMT Director and the officer delegated responsibility for the Council's procurement activity with Leader, Cabinet, or Cabinet Member approval to award and express authorisation of the Monitoring Officer to sign or seal.	Yes, on Contracts Finder and the Find a Tender Service (FTS)	On the Council's Contract Management System	Yes, within the Service.	Contact the Council's Legal Team. Advice must be sought at the earliest possible stage

11. Calculating the Aggregate Contract Value

- 11.1. Aggregate contract value must be calculated in accordance with the applicable legislation but broadly speaking this means the estimated total aggregate value payable in pounds sterling exclusive of Value Added Tax (VAT) over the entire contract period, including any options, renewals and extensions of the contract.
- 11.2. Officers must make an effort to calculate an accurately estimated contract value over the contract period to ensure that the appropriate procurement route is taken that adheres to SCM and legislation.
- 11.3. Contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding the application of SCM or legislation.
- 11.4. In the case of framework agreements or Dynamic Purchasing Systems (DPS's) the contract value must be calculated to include the total maximum estimated value, net of VAT, of all the contracts envisaged to be awarded for the total term of the framework agreement or the DPS.

12. Procurement Business Cases

- 12.1. Any procurement with a total contract value below the PCR 2015 thresholds for goods, services or works should complete a business case using the Council's Low Value Procurement Business Case template.
- 12.2. Any procurement with a total contract value above the PCR 2015 thresholds for goods, services or works must have completed a Commercial Case as part of a wider business case using the Council's High Value Procurement Business Case template.

13. Using Existing Contractual Arrangements

- 13.1. Prior to proceeding with any new procurement and contracting process, Officers must determine whether the identified need can instead be met through contracting with the Council's Local Authority Trading Companies (LATC's), utilising other existing Council contracts, or by calling off of a framework agreement or DPS that has been established or recommended by the Commercial Team as a legally compliant route to market.
- 13.2. Only where it is determined that the identified need cannot be met through such arrangements as outlined in 13.1, or such arrangements will not deliver best value can Officers proceed with any new procurement and contracting process.

14. Framework Agreements and Dynamic Purchasing Systems (DPS)

- 14.1. All requirements to set up new frameworks or DPS' to be managed by the Council must be referred to the Commercial Team, who will make the appropriate arrangements.
- 14.2. Any framework or DPS that is developed by the Council must include contract terms that allow the arrangements to be reviewed at trigger points to ensure they continue to reflect best value for money

- 14.3. Where the Council accesses an existing framework agreement or DPS, the Framework Agreement or DPS terms and conditions of contract must be used, amended as appropriate as permitted by the framework agreement or DPS and the applicable procurement legislation.
- 14.4. Before accessing existing frameworks established by third parties, due diligence checks must be carried out, including taking relevant legal advice, to demonstrate that the Council can lawfully access and use the identified framework agreement or DPS and that the call off contract terms are fit for purpose and provide value for money.
- 14.5. Call-offs from a framework will be via a direct award process or a further competition (depending on the call-off procedure(s) included in the framework and call-offs from a DPS will be via a further competition.
- 14.6. A direct award may be made from a framework that permits direct awards where it:
- a. Sets out all the terms governing the provision of the goods, services, or works and they do not require amendment or supplementary terms and conditions.
 - b. The objective conditions for making a direct award to a particular supplier on the framework are clear and unambiguous in the contract arrangements.
 - c. Value for money can be demonstrated through the direct award (for example, the supplier provides the most economically advantageous solution for the need).
 - d. An assessment has been made to ensure it meets the needs in terms of innovative solutions and also represents value for money, taking into account the cost of procurement.
- 14.7. A call to further competition can be made under the terms of a framework (where expressly provided for in the framework) or a DPS. All suppliers on the framework or DPS capable of performing the contract must be invited to tender against the requirement in accordance with the framework or DPS mechanisms provided and the applicable procurement regulations.
- 14.8. Each contract award under a framework or a DPS (with a value over £30,000 including VAT) must be published on Contracts Finder in accordance with Procurement Policy Note 01/23.
- 14.9. Advice must be sought from the Commercial Team and the Legal Team for any proposed variations to the framework or DPS contract terms.

15. Concession Contracts

- 15.1. Concession contracts are contracts under which the Council outsources works or services to a contractor or provider, or makes available an asset, which the contractor or provider then has the right to commercially exploit to recoup its investment and make a return. The key feature is that the contractor/provider bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs. Concession contracts must meet certain criteria to be considered to be a concession in accordance with the Concession Contracts Regulations 2016 and advice must be sought from the Commercial Team and Legal Team.

16. Temporary Staff, Contractors, and Consultants

- 16.1. A Consultant is a person (not an employee), agency, or firm engaged for a limited period of time on a project or requirement specific basis to carry out a specific task or set of tasks which meet a desired set of outputs or outcomes. A consultant provides

subject matter expertise, support, and/or experience to the Council either because it does not possess the skills or resources in-house or requires an independent evaluation/assessment to be made.

16.2. This definition excludes:

- a. Agency staff, interim, or role-specific duties which should be sourced through the Council's corporate contract with Connect2Kent
- b. Routine services, e.g., maintenance, cleaning, and security
- c. Professional services, e.g., architects, structural engineers, forensic archaeologists, specialist social care support, training etc.

16.3. Regardless of value, Officers must ensure that they follow the processes outlined on [KNet](#) when contracting temporary and agency staff and consultants. They must also ensure that they are compliant with the [Kent Scheme Terms and Conditions](#).

16.4. In the event that Officers are unable to successfully source the required staff or consultant through the process outlined on KNet, they must engage with the Commercial Team for advice on using appropriate frameworks.

16.5. No temporary worker, contractor, or Consultant may be procured or engaged outside of the corporate contract with Connect2Kent without the prior approval from People Strategy Manager (Resourcing).

16.6. Where it is agreed that a temporary worker, contractor or Consultant may be sourced outside of the corporate contract, and the total aggregate value of such engagement is estimated to be £25,000 or more, competition is to be sought in the same manner as would be required for any procurement of the same value following the requirements outlined in the summary table under section 10.

16.7. If the total estimated aggregate value of such an engagement exceeds £50,000 the decision to award the contract must be made in consultation with the relevant Cabinet Member.

17. Collaboration with Other Public Bodies

17.1. The Council may enter into collaborative agreements for the procurement of goods, services, and works with other public bodies or Central Purchasing Bodies where this offers best value for money for Kent residents. However, where this is proposed, advice must be sought from the Head of Commercial in conjunction with the Section 151 Officer and the Legal Team before entering into such arrangements.

18. Liability and Security

18.1. To protect the Council, insurance is required where the Council purchases goods, services, or works provided by a supplier. The minimal levels of insurance cover for Public Liability Insurance, Employers' Liability Insurance, Professional Indemnity (Negligence) Insurance and other relevant insurances are set out in guidance on the Council's intranet. Advice should be obtained from the Insurance Team in accordance with Council guidance.

18.2. In some instances where the contract value, risk, or scope may be particularly high, additional insurance cover may be required. Equally, where some contracts may be suitable for micro businesses, lower levels of insurance may be considered. However,

in these instances, advice should be sought from the relevant officer within the Insurance Team.

18.3. Where the Council is providing goods, services, or works to another organisation (that is not a part of the Council), Services must not arrange their own insurance policies and should contact the Insurance Team in the first instance who arrange cover on behalf of the Council.

19. Financial Security

19.1. For all procurements above the PCR 2015 threshold for services, the Commercial Team should determine if a supplier requires additional financial checks based on the perceived financial risk. If required, the Commercial Team and Finance must confirm that suppliers are financially robust both prior to contract award and during the life of the contract.

19.2. Advice should be obtained from the Legal team and Finance team if there are concerns about financial stability prior to contract award and through the duration of the contract to enable steps to be taken to mitigate risk.

19.3. Tender documents must include a statement asserting that, where requested, suppliers need to provide security for performance and outline the level of security needed, the financial checks to be applied on tenders, how financial suitability will be assessed, and any checks that will be required during the life of the contract.

19.4. Where either the total aggregate value of the contract exceeds £1m (excl. VAT) within any twelve month period of the contract, or there is doubt as to the financial credibility of a supplier, but the Council has decided to accept the level of risk, then additional forms of security to a level determined by Finance may be required, for example:

- a. A Parent Company, Ultimate Company, or Holding Company guarantee, where the financial standing of those companies proves acceptable
- b. A Director's Guarantee or Personal Guarantee, where finances prove acceptable
- c. A Performance Bond, retained funds, or cash deposit
- d. Any other security (such as escrow arrangements), which has been determined to be appropriate by Finance

19.5. Advice from the Legal Team should be taken on all forms of guarantee, bond or security being used.

20. Fraud, Bribery and Corruption

20.1. Every contract shall include provision for termination of that contract (and recovery of losses) where the supplier, their employees, or anyone acting on the supplier's behalf:

- a. Offers, gives, or agrees to give anyone an inducement or reward in respect of any contract with the Council
- b. Commits an offence under the Bribery Act 2010, or
- c. Commits any of the offences listed in regulation 57(1) of the PCR 2015 or regulation 38(8) of CCR 2016.

20.2. In the event that anyone buying or managing a contract on behalf of the Council becomes aware of a supplier's involvement in fraudulent or corrupt activity, they must report this to the Head of Commercial and seek advice from the Council's Legal Team.

- 20.3. Officers must comply with the Council's [Code of Conduct](#), [Anti-Fraud and Corruption Strategy](#) and [Anti-Bribery Policy](#). Officers must not invite or accept any gift or reward in respect of the award or performance of a contract. Gifts and hospitality must be recorded in line with guidance set out on the intranet.
- 20.4. Officers must also comply with the requirement to make declarations of interest within the procurement process to ensure any actual or perceived conflicts can be appropriately managed.
- 20.5. Declarations of interest should be made through the annual declaration of interest process and prior to the commencement of any procurement exercise that an individual is to be involved with.

21. Document Retention

- 21.1. The retention of procurement and contractual information is prescribed in the Limitation Act 1980 and the PCR 2015. In summary:
- a. Contracts executed under hand (retained for 6 years after last action on a contract).
 - b. Contracts executed under seal as Deeds (retained for 12 years after last action on a contract).
 - c. Sufficient documentation to justify decisions taken in all stages of the procurement procedure including tender documents for unsuccessful bidders as required by PCR 2015 Reg 84
 - d. Records created by contract management meetings for contracts executed under hand (retained for the life of the contract and 6 years thereafter)
- 21.2. Records created by contract management meetings for contracts executed under seal as Deeds (retained for the life of the contract and 12 years thereafter). Additional document retention requirements are outlined and updated from time-to-time in guidance that can be found on the Council's intranet and must be complied with.

Part C: Requirements for Quotation or Tendering Procedures

22. Engaging the Commercial Team

- 22.1. Officers must engage the Commercial Team and Legal Team in any procurement exceeding a total aggregate contract value above the PCR 2015 threshold for services.
- 22.2. The Commercial Team and Legal Team should be notified of any upcoming procurement exceeding a total aggregate contract value above the PCR 2015 threshold for services at the earliest opportunity in order to plan resources and update the Contract Pipeline.
- 22.3. Officers must contact the Commercial Team and Legal Team for advice and support on any procurement with a total aggregate contract value less than the PCR 2015 threshold for services if they are concerned about the risk or complexity of the procurement or their ability to carry out the procurement. The teams will determine the appropriate level of involvement from them, and any external support required depending on the complexity of the procurement and the commercial acumen and experience of the team requesting the support.

23. Requirement to Advertise

- 23.1. Contracts which are equal to or exceed the Regulatory Thresholds set out in the PCR 2015 or other applicable procurement legislation must be advertised on the Find a Tender Service (FTS) by publishing a contract notice or, where advised by the Commercial Team, a Prior Information Notice (PIN), as defined in the regulations, can be used as a call for competition.
- 23.2. All contracts which are advertised on FTS must also be advertised on Contracts Finder within 24 hours of the time that the Council becomes entitled to post it, that is after either it appears on FTS, or where it has not appeared, but 48 hours have elapsed from the time the FTS has confirmed receipt of the notice to the Council.
- 23.3. All procurement documentation, including the contract terms, must be available from the time the contract notice is published on FTS if required by the chosen regulatory procedure.
- 23.4. All contracts above the Regulatory Thresholds must also be advertised through the Council's tendering portal where interested parties must be able to electronically access all procurement documentation.
- 23.5. It is a requirement that all contract opportunities above the Regulatory Thresholds for advertising are advertised on Contracts Finder.
- 23.6. Each contract opportunity with a total aggregate contract value estimated to be above the applicable PCR 2015 threshold for goods, services or works must be advertised on the Council's tendering portal or another secure electronic system, and Contracts Finder.
- 23.7. Each contract opportunity with a total aggregate contract value below the applicable PCR 2015 can be advertised on the Council's tendering portal if it is deemed beneficial, however, support must be sought from the Commercial Team to do this.
- 23.8. Each contract opportunity with a total aggregate contract value estimated to be at or above the applicable threshold for goods, services or works to be advertised on Contracts Finder must be advertised on the Council's tendering portal and Contracts Finder if Officers are choosing to run an open competitive tender process.
- 23.9. The Commercial Team is responsible for ensuring all contract notices and publications of contract opportunities above the Regulatory Thresholds are published in accordance with SCM. Below this threshold, it is the responsibility of the Service to ensure the rules are adhered to.
- 23.10. Any form of advertisement must state the place where interested providers may obtain the procurement documents and the deadline for receipt of submissions.

24. Use of Selection Questionnaires (SQs)

- 24.1. Officers must use the Council's standard and most up-to-date [Selection Questionnaire \(SQ\)](#) and adhere to regulatory requirements around such selection procedures for all procurements of contracts that are estimated to exceed the relevant Regulatory Thresholds unless suppliers have already been pre-qualified through an alternative sourcing route (e.g. framework or DPS).
- 24.2. This pre-qualification of suppliers enables the Council to test the suitability of suppliers bidding for Council contracts, through applying minimum standards of technical and

professional ability and financial and economic standing that prospective suppliers should meet.

24.3. However, all the methods and criteria for assessing the suitability of suppliers must be transparent, proportionate, objective, and non-discriminatory.

24.4. Officers must not use an SQ stage (or pre-qualification stage) for any contract with a value below the Regulatory Thresholds, regardless of whether it is for goods, services or works. However, for works contracts valued between the goods and services Regulatory Threshold and the works Regulatory Threshold, the Council may use a pre-qualification stage using a PAS91 Questionnaire.

25. Request for Quotations

25.1. Officers must ensure that all quotations from potential suppliers are provided against the same requirement and are requested/submitted within the same window of opportunity. If the requirement is clarified or changed through the process, all invited organisations must have the opportunity to quote against that revised requirement.

25.2. Officers are required to seek the number of quotations stipulated in the summary table in section 10. These quotations must be competitive.

25.3. For audit purposes, Officers must also ensure that an electronic record of all quotations received is retained in line with the Council's record retention policy.

25.4. If Officers receive a lower number of quotes back from suppliers than they are required to seek according to the appropriate procurement procedure defined in Section 10, they are not required to seek further quotes unless it is necessary to fulfill the need and achieve value for money.

25.5. Officers are required to use their own judgement to determine if a quote reflects value for money. However, if they feel unable to confidently do this, they must seek advice from the Commercial Team.

26. Invitations to Tender

26.1. The Officer responsible must issue Invitations to Tender and tendering instructions to every supplier who is or has been:

- a. invited to tender following a selection process
- b. listed on the relevant Framework, Framework lot or DPS and who is capable and willing to tender
- c. requested the supply of tender documents under an open tender

26.2. All Invitations to Tender must specify the goods, services or works that are required, together with the form of contract that will apply. All suppliers invited to tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis. All Invitations to tender shall also include (subject to any additional requirements under the PCR 2015 or other applicable procurement regulations):

- a. A specification that fully describes the Council's requirements
- b. A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer

to any other party (except where such a disclosure is made in confidence for a necessary purpose)

- c. A requirement for tenderers to fully complete all tender documents.
- d. Notification that tenders are submitted to the Council on the basis that they are prepared at the tenderer's expense and reserve the right for the Council to decide not to proceed to award without incurring any contractual liability and without becoming liable to reimburse any bidder costs or expenses
- e. A description of the award procedure and evaluation methodology
- f. The form of contract that the supplier will need to agree to
- g. The deadline for any questions asked during the tender
- h. The deadline for tender receipt

26.3. The Officer responsible must advise every supplier in writing submitting a tender that:

- a. no extension of time will be allowed for the receipt of any tender, unless at the discretion of the Council
- b. tenders received after the date and time specified for receipt may be rejected.
- c. any departure from the Tendering Instructions may lead to the tender being rejected
- d. the Council does not bind themselves to accept any tender or to accept any tender in full.
- e. the tender documents must be in electronic format.
- f. the tenderers signed form of tender cannot be different in detail to that provided as part of the e-sourcing process unless it includes changes to tender documents that were made by the Officer responsible for the procurement.

26.4. The Officer responsible must check that every tender sum has been calculated by reference to the minimum specification required and stipulated in the tender. If they discover any departure from the specification, they can, subject to what is stated in the procurement documentation, treat it as grounds for disregarding the tender. The Officer must also check that every tender sum is stated net of VAT or any other Tax or Duty.

27. Forms of Contract

27.1. Officers must issue an appropriate form of contract that suppliers will be required to agree to if they are awarded the contract. The Council has a set of Standard Terms and Conditions that must be applied to all contracts unless one of the following reasons is present:

- a. The requirements of the contract are judged to carry a level of risk and complexity that requires bespoke terms and conditions
- b. The contract is for an internal framework or DPS that will require bespoke terms and conditions to be agreed as a part of it being established
- c. It is deemed to be more appropriate for the supplier's terms and conditions to be applied to the procurement given the nature of the requirement or the market sector
- d. Another form of contract is applicable and more appropriate for this procurement

27.2. Officers must follow guidance provided in the Standard Terms and Conditions to ensure they include all mandatory clauses. Where any clauses need to be amended, or any of the above reasons for deviation apply, Officers must seek advice from the Commercial Team and Legal Team before following any alternative approach. The Commercial Team may request further approval from Legal Services.

27.3. If bespoke or alternative Terms and Conditions will be used, Officers must seek legal advice from the Legal Team

28. Submission, Receipt and Opening of Tenders

28.1. Every tender over the PCR 2015 thresholds must be received by a secure method using either the Council's tendering portal or another secure electronic system appropriate for the procurement.

28.2. Suppliers or providers who have expressed interest in a tender must be given an adequate period in which to prepare and submit a tender, consistent with the complexity of the contract requirement. The PCR 2015 includes specified tendering time periods that apply.

28.3. Officers must notify all suppliers of the correct tender return instructions, including the date, time, and place (i.e., the details of the Council's e-sourcing system).

28.4. In exceptional circumstances, the deadline for receipt of tenders may be extended with the agreement of the procurement lead officer, if the extension of time will not disadvantage a tenderer.

28.5. No extension to the deadline can be given once the seal has been broken on the Council's tendering portal.

28.6. All tenders received via the Council's tendering portal must be opened by those specified as responsible on the system. All tenders must be opened at the same time.

28.7. No person can be involved in the opening process who:

- a. Has not completed the Council's e-learning on procurement and contracting
- b. Has any pecuniary interest in any supplier used by the Council
- c. Is serving a probationary period
- d. Is the subject of disciplinary proceedings
- e. Has any outstanding dispute with the Council, or
- f. Has tendered their resignation

28.8. Any tender that does not comply with the Council's requirement as set out in the tender invitation should normally be excluded from consideration, with the circumstances recorded on the Council's tendering portal. Officers may, however, seek the agreement of the procurement lead officer to amend the requirements in appropriate circumstances. Any relaxation of the requirements must be disclosed when seeking approval required for acceptance of a tender.

28.9. If a request is made to accept a late tender due to technical issues or circumstances that could not have been foreseen, Officers should ensure that any additional time granted is minimal and does not allow for covert amendments or additions to tender content.

28.10. Any late tenders that are not accepted, and any marked tenders, must not be opened until the award to the successful supplier has been made.

29. Post-Selection Questionnaire (SQ) and Tender Clarifications

29.1. Officers must maintain a written record and clear audit trail of all post-SQ and tender clarifications detailing all contact with the tenderer, including the clarification

requested and the response provided. All communications must be recorded via the Council's tendering portal or another secure electronic system (all post-SQ and tender clarifications must be available for audit purposes).

29.2. Confirmation must be provided in the Award Report that paperwork submitted as a part of the SQ for due diligence has been checked and approved in line with the Council's requirements for due diligence outlined in guidance available on the intranet.

30. Evaluation

30.1. Tenders are to be evaluated based on the identification of the 'Most Economically Advantageous Tender' (MEAT).

30.2. An evaluation based on MEAT may consider both price and quality and does not require the tender to be awarded to the lowest priced bid alone.

30.3. Evaluation methodology must be designed to accurately determine the correct balance between price and quality, in consultation with the Commercial Team.

30.4. Officers should be aware of any additional policies related to social value and sustainability in tender evaluations and apply these as required where linked to the subject matter of the contract.

30.5. Officer responsible must ensure that a moderator is assigned to confirm the final scoring and to mediate any differences between the evaluation panel.

30.6. The evaluation panel must include at least two scorers and they must understand the purpose of the procurement, the requirements of the contract and the evaluation criteria.

30.7. Each evaluator and moderator must complete a conflicts of interest form, disclosing any interest that may raise questions of impartiality. It must be recorded how identified conflicts will be mitigated.

31. Contract Award, Agreement and Signature

31.1. Contracts must not be awarded where the Finance Officer has raised significant concerns regarding financial information provided as part of the tender process.

31.2. All transactions must fall within the powers delegated to Officers or have been approved by a decision or resolution (in accordance with the Council's Constitution) of an authorised Cabinet Member, the Cabinet, the Leader of the Council, or one of its committees or sub-committees.

31.3. Before notifying suppliers of a contract award, Officers must complete an Award Report and have this approved by the relevant authority as stipulated in the Scheme of Delegation.

31.4. The Award Report should:

- a. Be 'complete' in its own right, allowing the reader to understand the process and the decision. Reference should be made to any additional information available in the contract file.
- b. Show the recommendation and authorisation process with appropriate signatures.

- 31.5. Where a contract for a consultant (as defined in section 16) is estimated to cost £50,000 or more the decision to award the contract must be made in consultation with the relevant Cabinet Member.
- 31.6. The successful supplier/s must be notified in writing of the contract award through the Council's tendering portal or another secure electronic system and in accordance with the PCR 2015 or other procurement regulations (where applicable).
- 31.7. Where the award is for neither the original offer nor for all parts of the offer the written acceptance must be explicit as to what is being accepted.
- 31.8. Officers should notify all unsuccessful suppliers of the contract award in writing through the Council's tendering portal.
- 31.9. The agreement will generate rights and obligations on each party. To be legal, a contract must fulfil the following requirements:
- a. There must be 'offer and acceptance' (i.e., one party has made an offer that has been accepted by the other)
 - b. It must be the intention of each party to be legally bound.
 - c. There must be valuable consideration on each side (for example, one party may deliver, or undertake to deliver services for which the other party will pay)
 - d. The parties must have the legal capacity to enter the contract
 - e. The contract must be legal, and
 - f. The contract must not be procured by force, coercion, or undue influence, nor must it rest on fraud or misrepresentation
- 31.10. All contracts shall be entered into on behalf of and in the name of "The Kent County Council," this being the name of the Council prescribed by Section 2 of the Local Government Act 1972. Contracts cannot be entered into by committees, directorates, Members or Officers because they are not the correct legal entity for contracting purposes.
- 31.11. No contract, agreement or other document shall be signed or sealed unless it gives effect to:
- a. A decision or resolution of the Leader, the Cabinet, an authorised Cabinet Member or one of its committees or sub-committees; or
 - b. A decision by an officer exercising delegated power
- 31.12. Officers must ensure the contract is signed or sealed in accordance with the Constitution.
- 31.13. Legal advice must be taken where clarity is required over the correct form of execution required.

32. Contract Tiering and Management Responsibility

- 32.1. Senior Officers (Heads of Service and above) are ultimately responsible for the effective management of contracts within their area in line with guidance issued by the Commercial Team.
- 32.2. All contract management activities should be delivered by either a dedicated contract manager or by someone with that responsibility as part of a wider role.

- 32.3. The named contract manager must assess the level of risk of their contract by completing a tiering exercise using the tiering tool and guidance made available by the Commercial Team on the Council's intranet. The classification assigned to the contract following the tiering exercise must be recorded on the Council's contract management system.
- 32.4. The Commercial Team will take a commercial lead on all high-risk contracts identified through the tiering exercise, working alongside the named contract managers within Services and a named legal advisor.
- 32.5. The Head of Commercial is responsible for ensuring that training is available to support contract managers across KCC regardless of the tier of the contract they are managing. Senior Officers (Heads of Service and above) are responsible for ensuring that those managing contracts within their area are appropriately trained.

33. Contract Award Notices

- 33.1. For all contracts over the Regulatory Thresholds, a full contract award notice must be published by the Commercial Team to the FTS no later than 30 days after the contract award date and to Contracts Finder no later than 90 days after the contract award date (this includes call-offs from a DPS or Framework).
- 33.2. There is no requirement to publish contract award notices to FTS for call-off contracts from a framework agreement but there is a requirement to publish a contract award notice to Contracts Finder within 90 days of the contract award date where the value of the call-off contract is above £30,000 including VAT.
- 33.3. For all other contracts under the Regulatory Thresholds but above £30,000 including VAT, a simplified contract award notice must be published on Contracts Finder (again including all call-off contracts from framework agreements and DPS's) no later than 90 days after the award of a contract.

34. Contract Modifications, Extensions and Novations

- 34.1. Contracts that have been originally advertised with extension options can be extended subject to the acceptance required in the summary table included within Section 10.
- 34.2. In some circumstances proposed variations to contracts may trigger procurement or legal risks and advice must be sought from the Legal Team where this is the case.
- 34.3. For contracts over the Regulatory Thresholds, Officers must obtain agreement in line with the Scheme of Delegation before any modifications are made (whether in terms of value, duration, scope or otherwise).
- 34.4. All amendments must then be recorded in writing, signed or sealed appropriately, and retained.
- 34.5. Legal advice must be taken where clarity is required over the correct form of execution required.
- 34.6. In addition to any legal requirements, extensions or modifications may only be made if the value of the extension or modification added to the value of the original contract does not exceed the authorisation threshold in the summary table in section 10.

- 34.7. The extension or modification must have an approved budget allocation for it to be made.
- 34.8. Guidance issued by the Commercial Team on the Council's intranet outlines the circumstances under which contract extensions and modifications are permitted under the law.
- 34.9. Where a contractor sells, merges, or transfers their business to another organisation, the existing contract/s that the Council has with that contractor should be novated where that is determined to be acceptable to the Council. The Commercial Team and Legal Services must be consulted with to review the existing contract and the requested novation for Officers to determine its acceptability to the Council. Finance must also be consulted with to ensure that the proposed new organisation will be financially robust.

35. Disposing of Surplus Goods, Materials or Assets

- 35.1. Disposal of surplus goods, materials, or assets (including recycling of any goods, materials, or assets that have a scrap value), must follow the processes and controls defined in guidance on the Council's intranet. This is to ensure that the Council receives proper reimbursement, where appropriate, and that disposal is cost effective.
- 35.2. However, advice must always be sought from Finance when making valuations for such surplus goods, materials, or assets, and determining the correct process to follow. Infrastructure should also be consulted in the case of the disposal of buildings or land.

36. Waivers

- 36.1. Where the application of SCM prevents or inhibits the delivery or continuity of a Service, Officers may seek a waiver to deviate from SCM to the extent that they are internal Council made rules.
- 36.2. A waiver must be sought for any proposed procurement or contractual action which is not compliant with SCM. However, a waiver cannot be given if it would contravene the PCR 2015 or any other applicable legislation.
- 36.3. Officers must obtain approval for a waiver from the Head of Commercial using the pro-forma available on the Council's intranet. The request should identify the requirement that is subject to the request and the reason for which the waiver is sought, including justification and risk.
- 36.4. For waivers of SCM in relation to contracts with a value of £1m (excl. VAT) or more, the Head of Commercial will also seek approval from the Section 151 Officer and Monitoring Officer.
- 36.5. A waiver will not be granted retrospectively. This will be viewed as non-compliance with SCM and, as with all examples of non-compliance with SCM, will be reported to the Monitoring Officer and the Governance and Audit Committee.
- 36.6. The Commercial Team will maintain a log of all waivers sought, rejected and authorised.

37. Emergency Purchases

- 37.1. An emergency purchase that contravenes SCM is only allowed where there is an imminent risk to life or property or where there is a need to secure Council property or assets (for example, where there has been a break-in or equipment failure, such as a flood).
- 37.2. An emergency purchase above the Regulatory Thresholds must be compliant with Regulation 32 of PCR 2015 or another exemption set out in the PCR 2015 or other applicable procurement regulations.
- 37.3. Officers can use their Purchase Card, within their allocated limits, to pay in these situations. If the supplier does not accept Purchase Cards, then Officers may give a verbal order to proceed and then raise a purchase order the following working day. The Commercial Team must be notified of any emergency purchases on that following working day.
- 37.4. For the avoidance of doubt, the above sections 37.1 and 37.2 do not apply to those purchases made outside of the hours of 09:00 to 17:00 by emergency duty and social care teams.
- 37.5. Issues arising with contracts leading to a requirement for urgent mitigating actions are not necessarily considered Emergency Purchases. These should be dealt with as a part of risk mitigation within the contract management process.
- 37.6. Any emergency purchases made must be reported the relevant Head of Service and Service Director who will be responsible for reporting this to the Section 151 Officer.

38. Purchase Orders

- 38.1. Once the right supplier has been found in line with the processes required by SCM, Officers must not make verbal commitments but raise a Purchase Order (via iProcurement or an equivalent service-specific system). This must be approved in accordance with the Council's Financial Regulations and Scheme of Delegation before it is sent to the supplier, and before any goods or services have been received.

39. Subsidies

- 39.1. Officers must engage with the legal team for advice prior to proceeding with any subsidy and must inform the Monitoring Officer of all subsidies. All subsidies must be carried out in line with the Subsidy Control Act 2022 and where necessary a notice must be published to the National Subsidy Database. Notices will be published by the Legal Team and so Officers must ensure they provide all necessary data.

Appendix 1: Definitions

Spending the Council's Money – the Council's mandatory rules and processes for spending money on behalf of the Council

Non-compliance – purposefully or unknowingly breaching any of the rules or responsibilities stated in SCM

Procurement - the act of engaging and contracting with a third party to source or deliver goods, services and works projects on behalf of the Council

Sourcing – the act of obtaining goods, services and works through procurement or other applicable activities such as using existing contracts or frameworks

Statutory guidance – sets out what the Council must to do to comply with the law

Non-statutory guidance – sets out what the Council can and should do to implement best practice procedures

Delegated responsibility – responsibility for authorising or carrying out Council activities that has been bestowed upon an individual or team from the Executive power

Supplier – any individual, group or organisation that is contracted to supply or deliver goods, services and works on behalf of the Council

Key Supplier – any individual, group or organisation that delivers contracts on behalf of the Council that are deemed to be strategically important which may be defined by contract tiering or any Council strategy

Value for money – most advantageous combination of cost and quality that is affordable for the Council and will fulfill the requirement suitably

Probity – having strong moral principles, honesty and decency

Contract tiering – applying a rating to contracts based on their perceived value, risk and complexity which may be used to determine appropriate contract management measures

Contract variation – making an amendment to a contract as defined in PCR 2015

Contract extension – extending the duration of a contract as allowed and defined under the terms of that contract and PCR 2015

Contract novation – transferring the rights and obligations of one party under a contract to a third party

Framework agreement – an agreement between one of more contracting authorities and one of more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period

Dynamic Purchasing System – an electronic commercial purchasing tool for commonly used purchases the characteristics of which, as generally available on the market, meet their requirements and under which new suppliers are able to join at any time, subject to the rules in Regulation 34 of the PCR 2015.

Contract Pipeline – a forward look of potential commercial activity for the Council

Total Aggregate Contract Value - the estimated total aggregate value payable in pounds sterling exclusive of Value Added Tax (VAT) over the entire contract period, including any extensions of the contract

Waiver - a request to deviate from the rules of SCM

Subsidy - A subsidy or government incentive is a form of financial aid or support extended to an economic sector generally with the aim of promoting economic and social policy