



Kent County Council **Spending the Council's** **Money**

**The Council's Rules for Procurement and
Spending Activity**



| | |
|---|-----------|
| PART A: INTRODUCTION | 4 |
| 1. PURPOSE | 4 |
| 2. FORMAL STATUS OF SCM | 4 |
| 3. KEY PRINCIPLES..... | 4 |
| 4. COMPLIANCE | 5 |
| 5. SCOPE | 6 |
| 6. THE ROLE OF ANYONE BUYING ON BEHALF OF THE COUNCIL..... | 7 |
| 7. RESPONSIBILITIES AND ACCOUNTABILITIES OF THE WIDER COUNCIL | 8 |
| 8. PROCUREMENT PIPELINE | 12 |
| 9. APPROVALS FOR CONTRACTING ACTIVITY | 13 |
| PART B: REQUIREMENTS FOR SOURCING GOODS, SERVICES AND WORKS | 14 |
| 10. SUMMARY OF PROCEDURES FOR PROCURING, CONTRACT AUTHORISATION AND MANAGEMENT, AND CONTRACT MODIFICATIONS BY AGGREGATE CONTRACT VALUE..... | 14 |
| TABLE A – PROCUREMENT PROCEDURES – CONTRACTS SUBJECT TO THE PROCUREMENT ACT 2023 (PA23) | 14 |
| TABLE B – PROCUREMENT PROCEDURES – CONTRACTS SUBJECT TO THE PROVIDER SELECTION REGIME (PSR) | 14 |
| TABLE C – CONTRACT AUTHORISATION AND MANAGEMENT | 15 |
| TABLE D – CONTRACT MODIFICATIONS..... | 15 |
| 11. CALCULATING THE AGGREGATE CONTRACT VALUE | 17 |
| 12. DETERMINING THE APPLICABLE PROCUREMENT REGULATIONS | 17 |
| 13. PROCUREMENT BUSINESS CASES | 18 |
| 14. USING EXISTING CONTRACTUAL ARRANGEMENTS | 18 |
| 15. FRAMEWORK AGREEMENTS AND DYNAMIC MARKETS | 18 |
| 16. LIGHT TOUCH CONTRACTS | 20 |
| 17. CONCESSION CONTRACTS..... | 20 |
| 18. TEMPORARY STAFF, CONTRACTORS, AND CONSULTANTS..... | 21 |
| 19. COLLABORATION WITH OTHER PUBLIC BODIES | 21 |
| 20. LIABILITY AND SECURITY..... | 22 |
| 21. FINANCIAL SECURITY | 22 |
| 22. CONFLICTS OF INTEREST AND PREVENTING FRAUD, BRIBERY AND CORRUPTION | 23 |
| 23. DOCUMENT RETENTION..... | 23 |
| PART C: REQUIREMENTS FOR QUOTATION OR TENDERING PROCEDURES | 24 |
| 24. ENGAGING THE COMMERCIAL AND PROCUREMENT DIVISION | 24 |
| 25. SPECIFICATIONS | 24 |
| 26. PRELIMINARY MARKET ENGAGEMENT | 25 |
| 27. DUTY TO CONSIDER LOTS..... | 25 |
| 28. REQUIREMENTS TO ADVERTISE AND PUBLISH INTENDED PROCUREMENT ROUTE | 26 |
| 29. COMPETITIVE TENDERING PROCEDURES..... | 27 |
| 30. CONDITIONS OF PARTICIPATION AND BASIC SELECTION CRITERIA | 28 |
| 31. SETTING AWARD CRITERIA AND EVALUATION METHODOLOGY | 29 |
| 32. KEY PERFORMANCE INDICATORS..... | 30 |
| 33. FORMS OF CONTRACT | 31 |
| 34. INVITATIONS TO TENDER | 31 |
| 35. POST-SELECTION QUESTIONNAIRE (SQ) AND TENDER CLARIFICATIONS | 32 |
| 36. SUBMISSION, RECEIPT AND OPENING OF TENDERS | 32 |
| 37. EVALUATION | 34 |
| 38. REQUEST FOR QUOTATIONS | 34 |
| 39. EXCLUDING SUPPLIERS..... | 35 |
| 40. INTENTION TO AWARD, CONTRACT AWARD, AGREEMENT AND SIGNATURE | 36 |
| 41. PUBLICATION OF AWARDED CONTRACT DETAILS..... | 37 |
| 42. CONTRACT TIERING AND CONTRACT MANAGEMENT RESPONSIBILITIES..... | 38 |
| 43. MANAGING AND REPORTING ON CONTRACT PERFORMANCE..... | 39 |
| 44. CONTRACT PAYMENTS AND REPORTING ON PAYMENTS..... | 40 |
| 45. CONTRACT MODIFICATIONS, EXTENSIONS AND NOVATIONS..... | 41 |
| 46. CONTRACT EXPIRY AND TERMINATING CONTRACTS | 43 |

| | | |
|--------------------------------------|---|-----------|
| 47. | DISPOSING OF SURPLUS GOODS, MATERIALS OR ASSETS | 43 |
| 48. | EMERGENCY PURCHASES | 44 |
| 49. | SUBSIDIES | 44 |
| 50. | WAIVERS | 44 |
| 51. | PROCUREMENT OVERSIGHT AND INVESTIGATION | 45 |
| APPENDIX 1: DEFINITIONS | | 46 |

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, 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. Repeated or egregious instances of non-compliance with SCM (e.g., those which result in unlawful practice) may result in disciplinary action being taken.

2. Formal Status of SCM

- 2.1. SCM is referenced in the Council'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 and Procurement within the Council. Where the law is changed in a way that affects SCM, those with delegated responsibility will issue a bulletin and the change must be observed until these documents are 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 integrity.
 - 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, while considering how to maximise public benefit and creating healthy competition and markets for the goods, services, and works purchased.
 - e. In respect of health care services, the Council meets its statutory duty to act with a view to securing the needs of the people who use the services, improving the quality of the services, and improving the efficiency in the provision of the services.
 - f. To be transparent to our residents about how the Council spends their money.
 - g. To ensure that public money is spent legally and fairly.
 - h. To support the Council to achieve its corporate aims, including the delivery of its sustainability and social value objectives, delivery in line with the public sector equality duty, encouraging the growth of local businesses and reducing or removing the barriers

facing, Small and Medium Enterprises (SMEs) and Voluntary, Community, and Social Enterprises (VCSEs) when accessing contracting opportunities.

- i. To ensure the Council has due regard to the national policy priorities for public Procurement that are outlined in the National Procurement Policy Statement (NPPS).

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 Procurement Act 2023 and the Public Procurement Regulations 2024¹
 - b. The Health Care Services (Provider Selection Regime) Regulations 2023 ('the PSR')
 - c. The Public Contracts Regulations (PCR) 2015²
 - d. The Utilities Contracts Regulations (UCR) 2016³
 - e. The Concession Contracts Regulations (CCR) 2016⁴
 - f. The Defence and Security Public Contracts Regulations (DSPCR) 2011⁵
 - g. The Public Services (Social Value) Act 2012

¹ Applicable to procurements commencing on or after the 'go live' date for the Act and Regulations – 24 February 2025.

² Applicable to contracts awarded under this regime until the point that they expire or are re-tendered.

³ Applicable to contracts awarded under this regime until the point that they expire or are re-tendered.

⁴ Applicable to contracts awarded under this regime until the point that they expire or are re-tendered.

⁵ Applicable to contracts awarded under this regime until the point that they expire or are re-tendered.

- h. The Modern Slavery Act 2015
- i. Local Government Act 1999 (LGA 1999)
- j. Competition Act 1998

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 exemptions 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-exhaustive list – other exemptions may apply under the applicable procurement legislation). The earliest possible engagement with Commercial and Procurement and Legal colleagues should be undertaken when scoping to ensure that the correct procedures are followed. Exemption from compliance with SCM does not negate the need to consider the most appropriate route forward to achieve value for money.

5.3. In accordance with Section 50 of SCM, Officers may also seek a Waiver to deviate from SCM to the extent that it relates to a Waiver to internal Council made rules and would not contravene the Procurement Act 2023, PCR 2015, CCR 2016, the PSR, or other applicable legislation.

| Exemption | Relevant Policy/Law |
|--|---|
| Contracts for the acquisition or lease of land and/or real estate. | Kent County Council Property Management Protocol Section 123 of the Local Government Act. Schedule 2 of the Procurement Act 2023. 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. Schedule 2 of the Procurement Act 2023. Regulation 10 of the Public Contracts Regulations 2015 |
| Non-trade mandatory payments to third parties, such as insurance claims, pension payments, or 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 currently contracted services. | Corporate Grants Procedure – where a genuine grant award and not a public contract for services. |
| Loans and investments. | Kent County Council Financial Regulations and Treasury Management Strategy. Schedule 2 of the Procurement Act 2023. 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, paragraph 86. |

| | |
|--|----------------------------------|
| Direct payments to customers following care assessment (e.g., payments under Self-Directed Support or Individual Budgets). | Section 12 of The Care Act 2014. |
| Where an adult with care and support needs expresses a preference for particular accommodation. | Section 30 of The Care Act 2014. |

6. The Role of Anyone 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, legislation and regulations listed in Sections 4.5 and 4.6.
- b. Ensuring that adequate consideration has been taken to determine if procurement is the correct approach to delivering the required provisions.
- c. Acting with integrity at all stages of procurement and in contract management and having due regard to any actual or perceived conflicts of interest that may arise, putting in place mitigating actions, and keeping documented conflicts assessments under review..
- d. Having regard to the particular barriers facing SMEs and VCSEs wishing to access contract opportunities and proactively considering how to reduce or remove them.
- e. Being aware of, avoiding and discouraging the influence of anti-competitive practices such as cartel behaviour, bid rigging, and conduct practised in collusion or in concertation, also being mindful of potential breaches of the Competition Act 1998 more generally.
- f. Throughout all procurement and contracting activity, working to achieve the delivery of value for money, whilst considering how to maximise wider public benefit,
- g. 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.
- h. Ensuring there is adequate budget available for any purchase.
- i. 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.
- j. Ensuring specifications are drafted to meet the identified needs and requirements and that proper consideration is given to value for money and corporate requirements around sustainability, social value, equality and diversity, and data and privacy.
- k. Engaging with the Commercial and Procurement Division as early as possible to obtain advice, guidance, and support and where they are required to in accordance with Section 10 of SCM. This point of engagement should be as soon as it is determined that procurement is the correct approach and always ahead of preliminary market engagement.
- l. Ensuring the total aggregate contract value is calculated in accordance with Section 11 of SCM.
- m. Undertaking contract tiering to assess the level of risk associated with the contracts to be managed and to determine appropriate resourcing and support required. This exercise is to be undertaken as soon as possible after it is decided that procurement is the appropriate route to meet the requirement, prior to contract award, and during contract management).
- n. Following the guidance set out by the Commercial and Procurement Division around buying on behalf of the Council and the management of contracts in accordance with their value, risk, and complexity.
- o. Engaging with the Commercial and Procurement Division at the earliest opportunity where a Challenge or Representation is made against a procurement or contracting decision taken, ensuring responses are reviewed by an appropriately qualified, independent Officer, and acting fairly, impartially, and provided within prescribed timescales.
- p. Ensuring that, where required, a commercial case, as a part of an overall business 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 and Procurement Division and, as relevant, the Finance Team and Legal Team.

- q. Planning an appropriate, proportionate timetable for any procurement or sourcing exercise subject always to any regulatory requirements on timescales.
 - r. Ensuring that suppliers are treated the same with no supplier put at an unfair advantage or disadvantage in the Council's procurement or contracting activity.
 - s. Ensuring that any TUPE and pensions related issues are properly considered prior to inviting tenders or quotations with legal advice sought where appropriate.
 - t. Ensuring that there is appropriate insurance cover in place for any awarded contract in accordance with Council guidance.
 - u. Ensuring that any procurement requirements and contract terms take account of any head-contract or funder requirements where the goods or services are part or wholly funded by Central Government or the relevant third-party funder.
 - v. Ensuring that accurate contract information is maintained, and that for all contracts each with a total aggregate contract value of £30,000 or more (including VAT), and longer than three months in duration, the Commercial and Procurement Division are provided with accurate contract information in order to create a record on the Council's contract management system.
 - w. Ensuring that all contract records on the Council's contract management system remain up to date with changes made throughout the lifetime of the contract.
 - x. Determining and following the required governance route and obtaining all necessary approvals for the procurement and, where required, decisions in contract management.
 - y. Ensuring that appropriate legal guidance and support is sought in accordance with Section 10 of SCM and where required for Contract Modifications, extensions and Novations.
 - z. Ensuring that appropriate legal guidance and support is sought prior to taking any action related to supplier performance or any finding that the supplier is or has become an "excluded" or "excludable" supplier for the purposes of the Procurement Act 2023
 - aa. 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 Trading Ltd.).
 - bb. Ensuring that ICT is consulted on any procurement involving ICT.
 - cc. Having proper regard for all necessary legal, financial, and professional advice received.
 - dd. Facilitating and ensuring the publication of Notices, which may include contract documentation and performance information (appropriately redacted), in accordance with the requirements of the relevant legislation and as stipulated in Section 10 and Part C of SCM.
 - ee. Maintaining a full record and audit trail of all procurement and contract management activity, including decisions made and evidence that all relevant issues and criteria have been considered and that reasons for any decisions are justified. This documentation must be accessible and available to the Commercial and Procurement Division on request.
 - ff.
 - gg. Ensuring fraud, bribery and corruption risks have been appropriately considered, seeking specialist advice from Internal Audit and Counter Fraud, as and when required.
 - hh. 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 £30,000 inc. VAT). The Commercial and Procurement Division 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 Procurement and the Commercial and Procurement Division.
 - 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 the 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 Scheme of Delegation, bearing in mind the total aggregate contract value, before undertaking any procurement and contracting.
 - e. Engaging with the Commercial and Procurement Division, ensuring they are notified in advance of all proposed contracts each with a total estimated aggregate value above the Public Procurement Threshold for goods and services regardless of whether the contract is for goods, services, or works. As a minimum, this point of engagement should be as soon as it is determined that procurement is the correct approach and always ahead of

preliminary market engagement. This will support development of the Procurement Pipeline and enable the commissioning of appropriate legal advice to ensure to ensure compliance with SCM.

- f. Officers must engage with the Commercial and Procurement Division at the earliest opportunity, regardless of contract value prior to any classification of the supplier as “excluded” or “excludable” both for the purposes of any procurement or the application of any contractual remedies related to such a classification (including rights to terminate).
- g. For any contracts subject to the Provider Selection Regime, Officers must engage with the Commercial and Procurement Division at the earliest opportunity, regardless of contract value, prior to any procurement, contract award, or Contract Modification, to determine the appropriate involvement. This is to minimise the legal risk to the Council.
- h. Ensuring their Officers undertake contract tiering to assess the level of risk associated with contracts to be managed, working closely with the Commercial and Procurement Division.
- i. Nominating appropriately skilled and qualified Officers to undertake procurement and contract management activity, where this takes place within their area of responsibility.
- j. Ensuring their staff act with integrity at all stages of procurement and in contract management, having due regard to any actual or perceived conflicts of interest that may arise, putting in place mitigating actions, and keeping documented conflicts assessments under review.
- k. Ensuring all sourcing decisions ultimately represent value for money and are within the budgetary limits that have been approved, alongside an appropriate consideration of how to maximise wider public benefit in all contracting activity.
- l. Ensuring their Officers engage with the Commercial and Procurement Division before procuring any contract with a total aggregate contract value above the applicable Public Procurement Threshold , in order for them to provide advice on the most appropriate sourcing route and, where relevant, in accordance with Section 10, lead on the procurement.
- m. Ensuring their Officers follow the guidance set out by the Commercial and Procurement Division when procuring any contract with a total aggregate value below the applicable Public Procurement Thresholds. Services should always engage the Division where there are concerns about their ability to undertake the project or the risk and complexity.
- n. For any contracts subject to the Provider Selection Regime, Officers must engage with the Commercial and Procurement Division at the earliest opportunity and prior to undertaking any procurement, contract award or Modification to contracts subject to that regime. That is regardless of the value of such contracts and is aimed to minimise the legal risk to the Council.
- o. Ensuring there is due regard to the particular barriers facing SMEs, and VCSEs wishing to access contract opportunities and consideration given as to how to remove or reduce them.
- p. Ensuring in all procurement and contracting activity undertaken in their Services, suppliers are treated the same and no supplier is put at an unfair advantage or disadvantage.
- q. Ensuring their Officers seek guidance from the Commercial and Procurement Division at the earliest opportunity where a Challenge or Representation is made against a procurement or contracting decision taken by the Council, ensuring responses are fair, impartial, and provided within prescribed timescales.
- r. Ensuring their Officers seek appropriate legal advice in accordance with Section 10 of SCM where required for contract Modifications, extensions and Novations to determine the level of legal advice required to mitigate legal risk.
- s. Providing for appropriate and effective management of all contracts under their area of responsibility and managing relationships with Key Suppliers identified.
- t. Officers must engage with the Commercial and Procurement Division prior to any publication of any Notices in relation to poor performance (including assessments against any KPIs if applicable) or the application of any contractual remedies (including rights of termination) related to publication by any other contracting authority of any Notice related to the supplier’s performance.

- u. Ensuring sufficient funds are available for relevant procurement and contracting activity and allocating appropriate funds within their budget.
- v. Ensuring their Officers provide the Commercial and Procurement Division with the information they need in a full and timely manner to publish the Notices required in accordance with the relevant legislation and as stipulated in Section 10 and Part C of SCM.
- w. Ensuring arrangements are in place for maintaining full records and audit trails of all procurement and contract management activity for their Services, including decisions made, evidencing that all relevant issues and criteria have been considered and that reasons for any decisions are justified. This documentation must be accessible and available to the Commercial and Procurement Division on request.
- x. Ensuring the fraud, bribery and corruption risks have been appropriately considered, seeking specialist advice from Internal Audit and Counter Fraud.
- y. Reporting any non-compliance with SCM or relevant legislation to the Monitoring Officer.

7.7. The Commercial and Procurement Division is responsible for:

- a. Working closely with Officers, Senior Officers (Heads of Service and above), and Finance to agree, develop and deliver a Procurement 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 from £30,000 (including VAT) up to the Public Procurement Threshold for goods and 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 Public Procurement Threshold for goods and services and over £1m for works.
- e. For any contracts that are subject to the Provider Selection Regime, the Division will lead on all procurements (unless it determines otherwise based on a consideration of the risk and complexity of the procurement and the commercial skills required).
- f. Ensuring that there is early engagement with the Council's Legal Team on any planned procurement activity in the Procurement Pipeline so that appropriate legal support can be provided or commissioned to support the procurement activity.
- g. Ensuring efficient and effective purchasing and procurement practices are in place.
- h. Acting with integrity at all stages of procurement and in contract management and having due regard to any actual or perceived conflicts of interest that may arise, putting in place mitigating actions, and keeping documented conflicts assessments under review..
- i. 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.
- j. Taking a commercial lead on all high-risk contracts (identified through contract tiering), working alongside named Contract Managers within Services and, as and when required, legal advisors.
- k. Taking a commercial lead on Contract Modifications, contract extensions, and Novations where it is deemed necessary, ensuring that legal advice is taken promptly.
- l. 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.
- m. Advising Services and helping to ensure there is an appropriate consideration of the particular barriers facing SMEs, and VCSEs wishing to access contracting opportunities with proper regard given as to how to reduce or remove them.
- n. Advising Services and helping to ensure appropriate consideration of how wider public benefit, including in line with sustainability and social value objectives can be delivered across the Council's supply chain.
- o. Taking a commercial lead, engaging the Legal Team as necessary, to respond fairly and, impartially, and within any legally prescribed timescales to Challenges and

Representations made against a procurement and contracting decision taken by the Council. Any such Challenges and Representations will be reviewed by an appropriately qualified, independent Officer.

- p. Ensuring the publication of Notices, which may include contract documentation and performance information (appropriately redacted), in accordance with the requirements of the current law and guidance and as stipulated in Section 10 and Part C of SCM.
- q. Engaging the Legal Team as necessary in relation to any proposed publication in relation to poor performance or the classification of a supplier as “excluded” or “excludable” under the Procurement Act 2023, or any action proposed to be taken as a result of any publication or classification by other contracting authorities.
- r. Ensuring there is a full record and audit trail maintained for all procurement and contracting activity led on by the Division. Ensuring that all contracts with a total aggregate contract value at or above £30,000 (including VAT) have a record created on the Council’s contract management system.
- s. Reporting any non-compliance with SCM or relevant legislation to the Monitoring Officer and, where required by the relevant legislation, publishing details of the Council’s compliance and a summary of the procurement and contracting activity undertaken.

8. Procurement Pipeline

8.1. To enable the Council to maintain an accurate oversight of procurement activity across the full range of Council services and is able to meet its statutory obligation to publish upcoming contracting opportunities, the Head of Commercial and procurement is responsible for the development of the Procurement Pipeline in liaison with Corporate Directors.

8.2. This is to identify the following:

- a. For each Directorate, all contracts each with an aggregate value above the Public Procurement Threshold for goods and services, regardless of whether the contract is for goods, services, or works, which are due to be procured, extended, renewed, or replaced.
- b. The applicable public procurement legislation (e.g., Procurement Act 2023, the PSR, or other applicable legislation)
- c. The aggregate contract value across the life of each contract.
- d. The tier (risk level) of the contract.
- e. The contract subject matter.
- f. The procurement activity required.
- g. The estimated date when any Tender Notice will be published.
- h. The estimated date when further Notices are expected to be published for the contract, namely the Contract Award Notice (pre-award) and Contract Details Notice (post-award).
- i. The expected start date for the commencement of the contract or extension.
- j. Whether there is an option to extend the existing contract or not.
- k. The expected start date of any new contract or extension.
- l. Likely legal advice that will be required, in consultation with the Council’s Legal Team.
- m. Whether the cost will be met from capital, revenue, or a combination.

8.3. The Procurement Pipeline must be developed and agreed as a part of the business planning cycle, as a minimum covering the period of the next 18 months, before it is then submitted to the CMT for approval.

8.4. Under the Procurement Act 2023, the Council must publish an appropriately adapted version of the Procurement Pipeline, satisfying the requirements of Section 93 of the Procurement Act 2023.

8.5. Where the aggregate contract value is projected to be exceeded by 5% or more than the value stated within the Procurement Pipeline that has been approved by the CMT, the S151 Officer

and Finance Business Partners must be consulted with and, where required, approve that change in contract value in line with the summary tables below and the contract award must be put on hold pending that approval.

- 8.6. If the need arises during the year for procurement activity on contracts at or above the Public Procurement Threshold for goods and services which have not been pre-approved through the developed Procurement 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 (including VAT) | Director of the relevant Service, the Head of Commercial and Procurement, S151 Officer, and the CMT. |
| £100,000 - £1m (including VAT) | Director of the relevant Service in consultation with the Head of Commercial and Procurement and S151 Officer. |

9. Approvals for Contracting Activity

- 9.1. Officers must ensure they seek approval for all procurement and 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. Summary of Procedures for Procuring, Contract Authorisation and Management, and Contract Modifications by Aggregate Contract Value

Table A – Procurement Procedures – Contracts Subject to the Procurement Act 2023 (PA23)

| Aggregate Contract Value (inclusive of VAT) | Procurement Method | Who is authorised to carry out the procurement? | Must the contract be formally advertised? | Legal Advice Required |
|--|---|--|---|--|
| Up to £29,999.99 | One written quote | Any Officer | No | No requirement provided there is use of the Council's standard template contracts, held by the Commercial and Procurement Division, and on their advice that the terms selected are appropriate. |
| £30,000 – up to the Public Procurement Threshold for Goods and Services (£214,904) OR up to £1m for Works | Three written quotes (Unless using another compliant route under the PA23, such as a tendering procedure, a Framework, Dynamic Market, or DPS) | Any Officer (Unless the Commercial and Procurement Division, Legal Team, and/or Officers in Services have concerns about the Service's ability to undertake the project or the risk and complexity) | Only required where Officers undertake a tendering procedure under the PA23, with advertisement required to the Central Digital Platform and the Council's tendering portal | No requirement provided there is use of the Council's standard template contracts, held by the Commercial and Procurement Division, and on their advice that the terms selected are appropriate. Where a Framework Agreement and call off terms have already had a legal review, there will be no requirement for there to be a further legal review on future call offs provided that there are no changes proposed to be made to the call off terms. If changes are proposed early engagement with Legal should be undertaken. |
| Above the Public Procurement Threshold for Goods and Services (£214,904) OR above £1m for Works | A fully PA23 compliant tendering procedure (Unless using another compliant route available under the PA23 such as a Framework, Dynamic Market, or DPS) | The Commercial and Procurement Division | Yes, advertisement is required to the Central Digital Platform and the Council's tendering portal | Commercial and Procurement Division will contact the Council's Legal Team at the outset of the procurement to arrange for external legal support. The legal advice required will be scoped with Services input and will be determined based on the risk and complexity of the requirement. Where a Framework Agreement and call off terms have already had a legal review, there will be no requirement for there to be a further legal review on future call offs provided that there are no changes proposed to be made to the call off terms. If changes are proposed, early engagement with Legal should be undertaken |

Table B – Procurement Procedures – Contracts Subject to the Provider Selection Regime (PSR)

| Aggregate Contract Value (inclusive of VAT) | Procurement Method | Who is authorised to carry out the procurement? | Must the contract be formally advertised? | Legal Advice Required |
|--|---|--|---|--|
| Up to £29,999.99 | A provider selection process permitted under the PSR (e.g., Direct Award A, Direct Award B, Direct Award C, the Most Suitable Provider Process, or the Competitive Process) | The Commercial and Procurement Division (Unless the Commercial and Procurement Division and Legal Team determine otherwise based on the commercial acumen required and the project's risk and complexity) | Specific advertising and Notice requirements apply depending on the provider selection process followed under those regulations | No requirement provided there is use of the Council's standard template contracts, held by the Commercial and Procurement Division, and on their advice that the terms selected are appropriate. |
| £30,000 – up to the Public Procurement Threshold for Goods and Services (£214,904) OR up to £1m for Works | | | | No requirement provided there is use of the Council's standard template contracts, held by the Commercial and Procurement Division, and on their advice that the terms selected are appropriate. Where a Framework Agreement and call off terms have already had a legal review, there will be no requirement for there to be a further legal review on future call offs provided that there are no changes proposed to be made to the call off terms. If changes are proposed early engagement with Legal should be undertaken. |
| Above the Public Procurement Threshold for Goods and Services (£214,904) OR above £1m for Works | | | | Commercial and Procurement Division will contact the Council's Legal Team at the outset of the procurement to arrange for external legal support. The legal advice required will be scoped with Services input and will be determined based on the risk and complexity of the requirement. Where a Framework Agreement and call off terms have already had a legal review, there will be no requirement for there to be a further legal review on future call offs provided that there are no changes proposed to be made to the call off terms. If changes are proposed, early engagement with Legal should be undertaken |

Table C – Contract Authorisation and Management

| Aggregate Contract Value (inclusive of VAT) | Who must approve the contract award? | Must the intention to award and the award itself be published? | Who can sign the contract on the Council's behalf? | Contract authorisation (for the creation of orders) | Where should the contract details be maintained? | Must there be a named contract manager? |
|--|---|---|--|--|--|---|
| Up to £29,999.99 | | No | | | Locally within the Service | No |
| £30,000 – up to the Public Procurement Threshold for Goods and Services (£214,904) OR up to £1m for Works | Up to £50k, the budget manager Up to £250k, the Service Head Up to £500k, the Service Director Up to £1m, the CMT Director | Only required where Officers undertook a tendering procedure under the PA23. The intention to award the contract and the award itself (made after standstill) must be published to the Central Digital Platform. Specific requirements apply to PSR contracts depending on the procedure followed. | Up to £500k, the Service Director OR Senior Commercial and Procurement Officer (to £250k) and Commercial and Procurement Manager / Sourcing Support Team Manager (to £500k) | Up to £50k, buyer can approve Up to £100k, Commercial and Procurement Officer / Senior Buyer can approve Up to £250k, Senior Commercial and Procurement Officer | On the Council's Contract Management System | Yes, within the Service |
| Above the Public Procurement Threshold for Goods and Services (£214,904) OR above £1m for Works | 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 Procurement Pipeline by 5% or more, the Section 151 Officer and Finance Business Partners must be consulted prior to award | Yes, the intention to award the contract and the award itself (made after standstill) must be published to the Central Digital Platform. Contracts with a total value of £5m (including VAT) or more also require a redacted copy of the contract and 3 KPIs to be published. Specific requirements apply to PSR contracts depending on the procedure followed. | Up to £1m, the CMT Director OR the Strategic Commercial and Procurement Lead Above £1m, the CMT Director OR Head of Commercial and Procurement with Cabinet or Cabinet Member approval to award and express authorisation of the Monitoring Officer to sign or seal | Up to £500k, Commercial and Procurement Manager OR Sourcing Support Team Manager Up to £1m, Strategic Commercial and Procurement Lead Above £1m, Head of Commercial and Procurement when correct political or previously delegated authority is in place | On the Council's Contract Management System | Yes, within the Service |

Table D – Contract Modifications

| Aggregate Contract Value (inclusive of VAT) | Who must approve the contract modification? | Must the contract modification and any other details be published? | Who can sign the modification on the Council's behalf? | Required engagement beyond the relevant Service and Cabinet Members | Where should the contract modification be saved? |
|--|--|---|--|--|--|
| Up to £29,999.99 | | No | | No further engagement required, except where it is believed that the modification may trigger procurement or legal risks. | Locally within the Service |
| £30,000 – up to the Public Procurement Threshold for Goods and Services (£214,904) OR up to £1m for Works | Up to £50k, the budget manager Up to £250k, the Service Head Up to £500k, the Service Director Up to £1m, the CMT Director | Only required where Officers tendered the original contract under the PA23 and the modification increases or decreases the value of the contract by 10% or less (goods and services) or 15% or less (works). Specific requirements apply to PSR contracts depending on the procedure followed. | The Service Director and CMT Director have no limit on the value of the contracts they can sign modifications for (with Cabinet or Cabinet Member Decision to award the modification and expression authorisation of the Monitoring Officer to sign and seal). | No further engagement required, except where it is believed that the modification may trigger procurement or legal risks. At this threshold, Officers should be particularly mindful of the risk for contract modifications to take the total aggregate value of the contract above the UK public procurement thresholds at which point additional regulatory requirements apply. | On the Council's Contract Management System |
| Above the Public Procurement Threshold for Goods and Services (£214,904) OR above £1m for Works | 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 the contracts they can approve modifications for. | Only required where Officers tendered the original contract under the PA23 and the modification increases or decreases the value of the contract by 10% or less (goods and services) or 15% or less (works). Contracts with a total value of £5m (including VAT) or more also require a redacted copy of the modified contract to be published. Specific requirements apply to PSR contracts depending on the procedure followed. | The Commercial and Procurement Manager / Sourcing Support Team Manager can sign modifications up to £500k where delegated in writing by the relevant Service Director. | Engage with the Commercial and Procurement Division. | On the Council's Contract Management System |

10.1. Officers should note that the above summary tables are not exhaustive of the requirements that must be followed the different value thresholds. There will also be some limited exceptions to the above requirements, which are permitted under the relevant procurement regulations for certain types of contract (e.g., those awarded under Frameworks, Dynamic Markets, or DPS', light touch regime contracts, concessions contracts, and more). Officers should refer to Part C of SCM and guidance issued by the Commercial and Procurement Division and available on KNet for a more comprehensive understanding of the requirements and expectations on Officers.

10.2. As outlined in Section 24 of SCM, it is critical that Officers engage at the earliest opportunity with the Commercial and Procurement Division on all contracts planned with an estimated total aggregate value above the Public Procurement Thresholds for goods and services, regardless of whether the contract is for goods, services, or works. For those contracts subject to the PSR, Officers should engage with the Division prior to any procurement, contract award, or Contract Modification. Regardless of the value of the contract and the regulations that apply, Officers should engage with the Division where their ability to undertake the project or are concerned about the risk and complexity of the procurement. This early engagement will help to ensure that the appropriate level of support is provided and the necessary steps are taken by Officers procuring.

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 inclusive 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 Markets, Officers must engage the Commercial and Procurement Division in accordance with Section 15 of SCM. The contract value must be calculated to include the total maximum estimated value, inclusive of VAT, of all the contracts envisaged to be awarded for the total term of the Framework Agreement or the Dynamic Market. In the case of a Framework awarded under an Open Framework, the value of the Framework is to be treated as including the value of all Frameworks awarded, or to be awarded.

12. Determining the Applicable Procurement Regulations

- 12.1. Where Officers are procuring or contracting on behalf of the Council, they must adhere to the relevant public procurement regulations (as set out in Section 4.6).
- 12.2. The Procurement Act 2023, and the associated regulations, as set out in Section 4.6, apply to the procurement, award, entry into, and management of contracts for procurement goods, services, and works where the procurement commenced on or after the 24 February 2025. While the Procurement Act 2023 is applicable to contracts with a total aggregate contract value above the Public Procurement Thresholds, there are also several provisions applicable to contracts below those Thresholds.
- 12.3. The PCR 2015, and its associated regulations, will continue to apply to contracts, including Framework Agreements and Dynamic Purchasing Systems (DPS'), that were awarded under that regime until the point they expire or are re-tendered. Officers must note that, under the Procurement Regulations 2024, all existing DPS will terminate on or before 23 February 2029.
- 12.4. Regardless of contract value, when procuring 'health care services' whether alone or as part of a 'mixed procurement' as defined in Regulation 3 and Schedule 1 of the PSR, Officers must follow the requirements of the PSR.
- 12.5. A 'mixed procurement' means the procurement of health care services and other goods or services that are procured together with those health care services. For the PSR to apply, the main subject matter of the procurement (more than 50% of the estimated lifetime value of the contract) must be for health care services rather than other goods or services and the Council must be of the view that the other services or goods could not reasonably be supplied under a separate contract without having or being likely to have a material adverse impact on the Council's ability to act in accordance with the procurement principles set out in Regulation 4 of the PSR.

- 12.6. As well as the requirements of SCM, Officers should follow guidance set out by the Commercial and Procurement Division around procuring and contracting under the different regulations. As stated in Section 24 of SCM, the Commercial and Procurement Division should be engaged early where Officers are concerned about the risk and complexity, or their ability to undertake, a project.
- 12.7. Where PSR applies, the Commercial and Procurement Division should be engaged before any procurement, contract award, or Contract Modification to determine the right level of involvement.

13. Procurement Business Cases

- 13.1. Any procurement with a total contract value below the Public Procurement Threshold for goods, services or works should have a completed business case using the Council's Low Value Procurement Business Case template.
- 13.2. Any procurement with a total contract value above the Public Procurement 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.
- 13.3. While Services are the owners and primary authors of any completed business case, the Commercial and Procurement Division will develop the Commercial Case through close working with Services, where the Division is leading the procurement.

14. Using Existing Contractual Arrangements

- 14.1. Prior to proceeding with any new procurement and contracting process, Officers must first, subject to any specific regulatory requirements (e.g., compliance with the requirements of PSR and any other sector specific regulatory requirements), determine whether the identified need can be met through contracting with the Council's Local Authority Trading Companies, utilising existing Council contracts, or by calling off of a Framework Agreement or Dynamic Market (or, prior to 23 February 2029, an existing DPS) that has been established by or has been recommended by the Commercial and Procurement Division and Legal Team as a legally compliant route to market.
- 14.2. Only where it is determined that the identified need cannot be met through such arrangements as outlined in 14.1, or it has been determined in consultation with the Commercial and Procurement Division that such arrangements will not deliver best value, can Officers proceed with a new procurement and contracting process.
- 14.3. Officers must note that all DPS established under the PCR 2015 will expire on or before 23 February 2029, and from 24 February 2029, it will not be possible to award contracts under a DPS.

15. Framework Agreements and Dynamic Markets

- 15.1. All requirements to set up new Frameworks, including 'Open Frameworks', or Dynamic Markets that will be managed by the Council must be referred to the Commercial and Procurement Division, who will make the appropriate arrangements and, as necessary, will consult with the Council's Legal Team. From 24 February 2025, no new DPS may be established but existing DPS may be used prior to 24 February 2029.

- 15.2. Any Framework or Dynamic Market that is developed by the Council must include contract terms that allow the arrangements to be reviewed at trigger points to ensure that they continue to reflect value for money throughout their life.
- 15.3. An 'Open Framework' is a scheme of Frameworks that provides for the award of successive Frameworks on substantially the same terms. However, an Open Framework must provide for the award of a Framework at least once during the period of three years beginning with the day of the award of the first Framework, and each period of five years beginning with the day of the award of the second Framework.
- 15.4. When establishing Frameworks, the Notices that must be published to the Central Digital Platform are a Tender Notice, with the detail of the procedure being used to procure the Framework, a Contract Award Notice, prior to the award being made, and a Contract Details Notice, once the award of the Framework has been made.
- 15.5. When re-opening and awarding Frameworks in the scheme of an Open Framework, a new Tender Notice must be published to the Central Digital Platform alongside a Contract Award Notice, prior to the award being made, and a Contract Details Notice, once the award is made.
- 15.6. There are specific Notices that must be published to the Central Digital Platform for Dynamic Markets. These separate Notices cover the advertisement, establishing, modification, and the termination of a Dynamic Market under the applicable legislation.
- 15.7. Where the Council accesses an existing Framework Agreement, Dynamic Market, or (prior to 24 February 2028) a DPS (the latter having been procured under the PCR 2015), the Framework Agreement, Dynamic Market, and DPS terms and conditions of contract must be used, amended as appropriate, as permitted by the Framework Agreement, Dynamic Market, or DPS and the applicable procurement legislation.
- 15.8. Before accessing existing Frameworks, Dynamic Market, or DPS' established by third parties, due diligence checks must be carried out, including by engaging the Commercial and Procurement Division, who may also consult with the Council's Legal Team. This is to ensure that the Council can lawfully access and use the identified Framework Agreement, Dynamic Market, or DPS and that the call-off contract terms are fit for purpose and provide value for money.
- 15.9. 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 Dynamic Market or DPS will be via a further competition).
- 15.10. For Frameworks regulated by the Procurement Act 2023 or the PCR 2015, 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 (e.g., the supplier provides the most advantageous solution for the need).
 - d. An assessment has been made to ensure it meets the needs in terms of innovative solutions and represents value for money, taking into account procurement costs.

- 15.11. For health care services Frameworks regulated by the PSR, Officers should consult Regulations 16-18 of the PSR and the relevant PSR statutory guidance to determine the flexibilities permitted when making direct awards.
- 15.12. A call to further competition can be made under the terms of a Framework (where expressly provided for in the Framework), Dynamic Market, or a DPS. All suppliers on the Framework, Dynamic Market, or DPS capable of performing the contract must be invited to tender against the requirement in accordance with the Framework, Dynamic Market, or DPS mechanisms provided and the applicable procurement regulations. In the case of pursuing competition under a Dynamic Market or DPS, a Tender Notice must be published with the correct details.
- 15.13. Except for health care services contracts regulated by the PSR, each contract award under a Framework, a Dynamic Market, or a DPS must be published on the Central Digital Platform in accordance with the applicable legislation. This will be through a Contract Details Notice that must be published following the award of the contract in accordance with the Framework, Dynamic Market, or DPS.
- 15.14. For contracts awarded under a Framework for health care services regulated by the PSR, Officers are required to publish their intention to award the contract where they are following the competitive process to award the contract.
- 15.15. For contracts awarded under a Framework for health care services regulated by the PSR, Officers are also required to publish a Notice of the award of the contract on the Central Digital Platform. This applies for contracts made with or without a competition. Officers are to consult the PSR for details of what information needs to be included in the Notice depending on the call-off procedure used.
- 15.16. Advice must be sought from the Commercial and Procurement Division, who may also consult with the Legal Team, for any proposed modifications to Frameworks, Dynamic Market, or DPS contract terms. This includes any modifications to the call-off or selection process, planned re-opening and awarding in the scheme of an Open Framework, conditions of membership for a Dynamic Market or DPS, and the re-assessment or proposed removal of suppliers from such arrangements (including where a supplier has been classified as “excluded” or “excludable”). Details of any variation may require the publication of further Notices to the Central Digital Platform.

16. Light Touch Contracts

- 16.1. Light touch contracts are contracts for certain social, health, education, and other services that are provided directly to individuals or groups of people and which, under Section 9 of the Procurement Act 2023, receive special treatment and greater flexibility under the regulations. Light touch contracts must meet specific provisions to be considered to be a light touch contract and advice must be sought from the Commercial and Procurement Division, who may also consult with the Legal Team.

17. Concession Contracts

- 17.1. 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 or 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 Section 8 of the Procurement Act 2023 and

advice must be sought from the Commercial and Procurement Division, who may also consult with the Legal Team. Any existing concession contracts and any concession contracts where the procurement begins before 24 February 2025 will continue to be subject to the CCR 2016.

18. Temporary Staff, Contractors, and Consultants

18.1.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 or assessment to be made.

18.2. 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.

18.3. 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.

18.4. 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 and Procurement Division for advice on using appropriate Frameworks.

18.5. No temporary worker, contractor, or Consultant may be procured or engaged outside of the corporate contract with Connect2Kent without prior approval from the Council's People Strategy Manager (Resourcing) and in consultation with the Commercial and Procurement Division.

18.6. 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 £30,000 or more (including any applicable VAT), 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 tables under Section 10.

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

19. Collaboration with Other Public Bodies

19.1. 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. This may mean the Council leading procurements and contracting on behalf of other public bodies or vice-versa.

19.2. However, where this is proposed, it should be noted that the relevant legislation as stipulated in Section 4.6 will continue to apply as will the principles outlined in SCM. Ahead of any such collaboration with other public bodies, advice must be sought from

the Head of Commercial and Procurement in conjunction with the Section 151 Officer and the Legal Team before entering into such arrangements.

20. Liability and Security

- 20.1. 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 KNet. Advice should be obtained from the Insurance Team in accordance with that Council guidance.
- 20.2. 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, as part of a wider assessment of the need for proportionality between the Council's requirements and removing or reducing barriers to participation for small businesses. Reasonable approaches to apportioning risk should be adopted through using limits and exclusions of liability and insurance cover requirements taking into account insurable risks and associated costs. However, in these instances, advice should be sought from the relevant Officer within the Insurance Team.
- 20.3. 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.

21. Financial Security

- 21.1. For all procurements above the Public Procurement Threshold for goods and services, regardless of whether the contract is for goods, services, or works, the Commercial and Procurement Division should determine if a supplier requires additional financial checks based on the perceived financial risk. The Commercial and Procurement Division and Finance must confirm that suppliers are financially robust prior to contract award and Services are expected to monitor this, in consultation with the Division and Finance, during the life of the contract.
- 21.2. However, as set out in Section 30.4 of SCM, when assessing a supplier's financial capacity as a part of testing their capacity to perform the contract, Officers must not require suppliers to submit audited annual accounts unless they are, or were, required to have audited accounts in accordance with Part 16 of the Companies Act 2016.
- 21.3. Advice should be obtained from the Finance Team, the Commercial and Procurement Division, and Legal Team if there are concerns about the financial stability of a supplier prior to contract award and through the duration of the contract to enable steps to be taken to mitigate risk.
- 21.4. 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. However, these requirements should be proportionate to the risk and the need to consider how to remove or reduce barriers to participation for SMEs and VCSEs.

21.5. Where either the total aggregate value of the contract exceeds £1m (excluding VAT) within any twelve month period, 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 the Finance Team 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.

21.6. Advice from the Legal Team should also be taken on any and all such forms of guarantee, bond or security being used.

22. Conflicts of Interest and Preventing Fraud, Bribery and Corruption

22.1. Officers must comply with the requirements under Part 5 of the Procurement Act 2023 to take all reasonable steps to identify and mitigate actual or perceived conflicts of interest that may arise in relation to a procurement. Officers must prepare a conflicts assessment once it has been decided that procurement is the appropriate route to meet the required need, thereafter, keeping this documented assessment under review throughout the procurement process and during the life of the contract.

22.2. To protect the Council against the risk of fraud, bribery, and corruption, 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 Schedule 6 of the Procurement Act 2023, Regulation 57(1) of the PCR 2015 or Regulation 38(8) of CCR 2016.

22.3. 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 Procurement and seek advice from the Council's Counter Fraud Team and Legal Team.

22.4. Further to the above, 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 and gifts and hospitality must be recorded in line with guidance set out on the intranet.

22.5. In addition to what is outlined in this section, declarations of interest should be made through the Council's annual declaration of interest process and prior to the commencement of any procurement exercise that an individual is to be involved with.

23. Document Retention

23.1. The retention of procurement and contractual information is prescribed in the Limitation Act 1980, the Procurement Act 2023, the PCR 2015 and the PSR as applicable. In summary, the following is required:

- 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 explain and justify decisions taken in all stages of the procurement procedure including tender documents for unsuccessful bidders as required by Section 98 of the Procurement Act 2023, PCR 2015 Regulation 84, and PSR Regulation 24, as applicable.
- d. Records created by contract management meetings for contracts executed under hand (retained for the life of the contract and 6 years thereafter).
- e. Records created by contract management meetings for contracts executed under seal as Deeds (retained for the life of the contract and 12 years thereafter).

23.2. Additional document retention requirements are outlined and updated from time-to-time in guidance that can be found on KNet and must be complied with.

Part C: Requirements for Quotation or Tendering Procedures

24. Engaging the Commercial and Procurement Division

- 24.1. At the earliest opportunity, Officers must engage the Commercial and Procurement Division and Legal Team in any procurement exceeding an estimated total aggregate contract value above the Public Procurement Threshold for goods and services, regardless of whether the contract is for goods, services, or works. As a minimum expectation, this point of engagement should be as soon as it has been determined that procurement is the correct approach to delivering the required provisions and always in advance of any preliminary market engagement. This is to allow for the Council's Procurement Pipeline to be updated and for resources to be planned accordingly.
- 24.2. Regardless of the estimated total contract value, Officers must contact the Commercial and Procurement Division for advice and support on any procurement if they are concerned about their ability to carry out the procurement or the risk or complexity of the procurement.
- 24.3. Where the procurement or contracting is in-scope of the PSR, Officers must engage with the Commercial and Procurement Division at the earliest opportunity and prior to any proposed procurement, Contract Modification, and contract award taking place. The Division, who may also consult with the Council's Legal Team, will determine the appropriate level of involvement, and any external support required depending on the risk and complexity of the procurement and the commercial acumen and experience required.

25. Specifications

- 25.1. Officers must ensure that specifications are drafted to meet the identified needs with proper consideration given to value money and corporate objectives around supporting social value, sustainability, equality and diversity, and data and privacy.
- 25.2. While Officers may choose between different types of specification (e.g., input- or output-focused) dependent on their requirements, Section 56 of the Procurement Act 2023 requires that specifications do not refer to a particular design, licensing model, or a description of characteristics where they could refer to performance or functional requirements. Specifications must also not refer to a UK Standard unless the standard adopts internationally recognised equivalents, or there is no such equivalent.

- 25.3. Specifications must not refer to particular trademarks, trade names, patents, designs or types, places of origin, or producers or suppliers, unless the Council considers it necessary in order to make its requirements are understood. However, if such matters are referred to, the procurement documentation must also ensure that tenders or proposals demonstrating quality or performance will not be disadvantaged.
- 25.4. Officers in Services are responsible for developing specifications, but the Commercial and Procurement Division can be engaged to provide a commercial review and input on specifications where the Division will the lead procurement for the contract.

26. Preliminary Market Engagement

- 26.1. How Officers are permitted to engage with the market, prior to issuing any tender, is governed by Section 16 of the Procurement Act 2023.
- 26.2. The Council may choose to engage in preliminary market engagement to:
- a. Develop the Council's requirements and approach to the procurement.
 - b. Design a procedure, Conditions of Participation, or award criteria.
 - c. Prepare a Tender Notice and associated tender documents.
 - d. Identify suppliers that may be able to supply the goods, services, or works required.
 - e. Identify likely contractual terms.
 - f. Build capacity among suppliers in relation to the contract being awarded.
- 26.3. When undertaking preliminary market engagement, Officers should take steps to ensure that suppliers participating in the engagement do not receive an unfair advantage, and competition in relation to the contract award is not otherwise distorted. If a supplier gains an unfair advantage, and the advantage cannot be avoided, then the supplier must be excluded from participating in the tender. However, advice should be sought from the Commercial and Procurement Division in such circumstances.
- 26.4. Where preliminary market engagement is planned, a Preliminary Market Engagement Notice be published to the Central Digital Platform.⁶ In the event that Officers consider that prior publication is not appropriate in a given situation, Officers should engage with the Commercial and Procurement Division in advance in order to agree whether an exception is appropriate and any appropriate safeguards. This is to minimise legal risk to the Council. While the Commercial and Procurement Division will process the Notice, Officers in Services must provide the information required in a full and timely manner.
- 26.5. Preliminary market engagement for contracts that are regulated by the PSR is subject to separate requirements under those regulations. Specifically, it is recommended that such engagement be undertaken where a Most Suitable Provider Process is followed.
- 26.6. Officers in Services are expected to lead on preliminary market engagement, but the Commercial and Procurement Division can be engaged to advise on the most appropriate approach and can support the delivery of the engagement, particularly for procurements that the Division will thereafter lead on.

27. Duty to Consider Lots

⁶ Section 17 of the Procurement Act 2023 requires that a contracting authority publish a preliminary market engagement notice prior to carrying out any engagement or to set out why it did not within the relevant tender notice. However, as a matter of good practice and to minimise legal risk, the Council requires that any preliminary engagement be preceded by a preliminary market engagement notice.

- 27.1. For contracts with an estimated aggregate value above the applicable Public Procurement Thresholds, Section 18 of the Procurement Act 2023 requires Officers to consider whether the goods, services, or works to be supplied under the contract could be supplied under more than one contract, and whether such contracts could most appropriately be awarded by reference to different lots.
- 27.2. As a part of this consideration, Officers should consider whether lotting would help to secure best value for money. Where it is considered that a contract could be awarded by reference to lots, then the tender must account for this, carefully considering the most appropriate lotting approach and the award criteria and evaluation methodology that would allow for the identification of the Most Advantageous Tenders (MATs).
- 27.3. Where it is decided not to progress with lotting, then Officers must ensure that the tender documentation should include the reasons for not taking this approach.
- 27.4. Officers in Services should work jointly with the Commercial and Procurement Division to determine whether lotting is appropriate and to document the decision taken.

28. Requirements to Advertise and Publish Intended Procurement Route

- 28.1. Where contracts are subject to the Procurement Act 2023, Section 21 of the legislation requires that contracts with an estimated total aggregate value above the applicable Public Procurement Thresholds are advertised through a Tender Notice that is published to the Central Digital Platform (unless an exemption applies under the applicable regulations). They must also be published on the Council's tendering portal.
- 28.2. Where appropriate, a Planned Procurement Notice, as permitted under Section 15 of the Procurement Act 2023, may be used to reduce the required tendering period and to provide suppliers, especially SMEs and VCSEs, advanced notice of an opportunity. However, any use of such a Notice must be on the advice of the Commercial and Procurement Division as there are specific regulatory requirements around their use, the timing, and the publication of the Notice to the Central Digital Platform.
- 28.3. Contracts with an estimated total aggregate value below the applicable Public Procurement Thresholds only need to be advertised to the Central Digital Platform, with a Tender Notice, and the Council's tendering portal where Officers will follow a tendering procedure. These requirements do not apply where the Council seeks quotations or only seeks tenders from particular or pre-selected suppliers as permitted under the regulations.
- 28.4. Irrespective of contract value, specific advertising and Notice requirements apply to health care services contracts and mixed health care services contracts regulated by the PSR depending on the provider selection process followed under those regulations. Where the intention is to follow the Most Suitable Provider Process available under the PSR, a Notice of the intended approach must be published to the Central Digital Platform in advance. Where the Council decides to follow a Competitive Process under the PSR, the Council must invite offers by submitting a contract Notice for publication, including all the information required in Schedule 8 to the PSR.
- 28.5. When advertising the tendering opportunity, in accordance with Section 29 of SCM, the procurement documentation must be made available at the same time that any required Tender Notice is published on the Central Digital Platform and the Council's tendering portal.

- 28.6. Any form of advertisement must state the place where interested providers may obtain the procurement documentation and the deadline for receipt of submissions.
- 28.7. While the Commercial and Procurement Division will publish the Notices at this stage, whether Planned Procurement, Tender, or any other Notices that are required, Officers in Services must provide the required information in a full and timely manner.
- 28.8. Where the Commercial and Procurement Division is leading the procurement, the Division will ensure that all other requirements for advertising are correctly followed to satisfy the relevant regulations. Where Officers in Services are leading the procurement, they will be responsible for ensuring that the requirements outlined in this section are appropriately followed.

29. Competitive Tendering Procedures

- 29.1. When undertaking a competitive tendering procedure, Officers are responsible for following the applicable procurement regulations set out in Section 4.6 of SCM and must ensure that the procedure is undertaken in accordance with the published Tender Notice and any associated, published procurement documentation.
- 29.2. Section 20 of the Procurement Act 2023 stipulates the tendering procedures that can be followed when procuring contracts under that legislation. These are:
- a. A single stage tendering procedure without a restriction on who can submit tenders (i.e., an 'open procedure'), or
 - b. Such other competitive tendering procedure as the Council considers appropriate for the purposes of awarding the contract (i.e., a 'competitive flexible procedure').
- 29.3. Where the estimated total aggregate value of a contract is below the applicable Public Procurement Thresholds, and the contract is not regulated by the PSR, Officers may choose to follow a quotation process as outlined in Section 36 of SCM instead of undertaking a tendering procedure. This is permitted for goods and services contracts with an estimated total value up to the Public Procurement Threshold for goods and services and for works contracts with such a value up to £1m, above which a fully Procurement Act 2023 compliant tendering procedure must be followed (which includes call-offs from Framework Agreements, Dynamic Markets or (prior to 24 February 2029) DPS).
- 29.4. Where Officers undertake a tendering procedure for contracts with an estimated total aggregate below the applicable Public Procurement Thresholds, Section 85 of the Procurement Act 2023 is the governing legislation and stipulates the procedure. Except in the limited circumstances outlined in Section 30.6 below, Officers must not restrict the submission of tenders for such contracts by reference to a supplier's suitability to perform the contract, including their legal and financial capacity or their technical ability to perform the contract.
- 29.5. Regardless of the total aggregate contract value, Officers may use another compliant route such as a Framework or Dynamic Market, as permitted in Section 15 of SCM.
- 29.6. Irrespective of contract value, for contracts which are for health care services and mixed health care services that are therefore regulated by the PSR, Officers must follow a provider selection process permitted under Part 2 of the PSR when procuring the contract. This may include a Competitive Process as permitted under that regime.

- 29.7. In any case, Officers must ensure the procedure chosen is a proportionate means of awarding the contract, considering the nature, complexity, and cost of the contract. When choosing and designing the procedures, Officers must have regard to the barriers to participation for SMEs and VCSEs and how to remove or reduce these.
- 29.8. The Commercial and Procurement Division will lead on the tendering of contracts for goods and services with an estimated total aggregate value above the Public Procurement Threshold for goods and services. The Division will also lead on the procurement of works contracts with an estimated total value above £1m.
- 29.9. Officers in Services may lead on the tendering of contracts for goods and services with an estimated total value up to the Public Procurement Threshold for goods and services. For works contracts, Officers in Services may lead on the tendering of such contracts up to an estimated total value of £1m.
- 29.10. Where the procurement or contract is in-scope of the PSR, Officers must engage the Commercial and Procurement Division prior to any proposed procurement or provider selection process taking place. The Division will determine the appropriate level of involvement, and any external support required depending on the risk and complexity and the commercial experience required.
- 29.11. Regardless of contract value and who can lead the tendering, Officers must contact the Commercial and Procurement Division for advice and support if they are concerned about their ability to carry out a procurement or its risk and complexity.

30. Conditions of Participation and Basic Selection Criteria

- 30.1. Where Officers seek to set Conditions of Participation in a tender, in accordance with Section 22 of the Procurement Act 2023, Officers must ensure that they are a proportionate means of ensuring that suppliers have the legal and financial capacity or the technical ability to perform the contract in question.
- 30.2. Subject to Section 30.7 below, Officers must refer to the Supplier Information System contained within the Central Digital Platform and use the Council's standard and most up to date Selection Questionnaire (SQ) to collect the information required and to assess suppliers against the Conditions of Participation. This is unless suppliers have already been pre-qualified through an alternative sourcing route such as a Framework Agreement, a Dynamic Market, or a DPS.
- 30.3. This pre-qualification of suppliers, by assessing against Conditions of Participation, enables the Council to test the suitability of suppliers bidding for Council contracts, through applying minimum standards of legal and financial standing and technical ability that prospective suppliers should meet. However, as well as being proportionate, all the methods and criteria for assessing the suitability of suppliers must be transparent, proportionate, objective, and non-discriminatory.
- 30.4. Where Officers choose to assess a supplier's legal and financial capacity as a part of testing their capacity to perform the contract, they must not:
- a. Require suppliers to submit audited annual accounts unless they are, or were, required to have audited accounts in accordance with Part 16 of the Companies Act 2016.
 - b. Require suppliers to have insurance relating to the performance of the contract to be in place before the award of the contract.

- 30.5. Where Officers choose to assess a supplier's technical ability as a part of testing their ability to perform the contract, they must not:
- a. Require them to have been awarded a contract by a specific contracting authority,
 - b. Break the rules on specifications (see Sections 25.2 and 25.3 of SCM), or
 - c. Require particular qualifications without allowing for their equivalents.
- 30.6. In accordance with Section 29.4 of SCM, when tendering for any contract with an estimated total aggregate value below the applicable Public Procurement Thresholds, Officers must not restrict the submission of tenders by reference to an assessment of a supplier's suitability to perform the contract, including their legal and financial capacity or their technical ability to perform the contract. However, for works contracts valued between the Public Procurement Threshold for goods and services and the Public Procurement Threshold for works, the Council Suppliers may use a pre-qualification stage using the Common Assessment Standard.
- 30.7. There are different requirements for health care services contracts and mixed health care services contracts regulated by the PSR where the Council is required to undertake reasonable and proportionate due diligence on providers. When using Direct Award Process C, the Most Suitable Provider Process, or the Competitive Process (except use of the Competitive Process to award a contract under a Framework) in the PSR, Officers must not award a contract to or conclude a Framework Agreement with a provider who does not meet the basic selection criteria formulated in accordance with Regulation 19 of and Schedule 16 to the PSR. The basic selection criteria may only relate to suitability to pursue a particular activity, economic and financial standing and technical and professional ability, and all requirements must be related and proportionate to the subject matter of the contract or the Framework.
- 30.8. Where the Commercial and Procurement Division is leading the procurement, the Division will lead on the activity outlined in this section and ensure that any testing of Conditions of Participation, or basic selection criteria under the PSR, satisfies the relevant regulations. Where Officers in Services lead the procurement, they will be responsible for ensuring that the requirements are correctly followed. As a part of the activity in this section, close working, including with the Council's Finance Team and Legal Team, will be required.

31. Setting Award Criteria and Evaluation Methodology

- 31.1. For contracts that are subject to the Procurement Act 2023, Officers should develop award criteria and an evaluation methodology that will enable them to accurately determine the Most Advantageous Tender (MAT). They may be developed and consulted on early as a part of preliminary market engagement and, thereafter, as set out in Section 34.2(e) of SCM, Officers must include the award criteria and evaluation methodology within the procurement documentation.
- 31.2. When setting the award criteria, Officers 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 specifications, (see Sections 25.2 and 25.3 of SCM), and
 - d. Are a proportionate means of assessing tenders, having regard to the nature, complexity, and cost of the contract.

- 31.3. Evaluation methodology must be designed to accurately determine the Most Advantageous Tender (MAT) with the correct balance between price and quality. This evaluation methodology should be developed through close consultation between Officers in Services and the Commercial and Procurement Division.
- 31.4. Officers should also be aware of any additional Council policies related to social value and sustainability in tender evaluations and apply these as required and appropriately linked to the subject matter of the contract.
- 31.5. For health care services contracts and mixed health care services contracts regulated by the PSR and using either Direct Award Process C, the Most Suitable Provider Process, or the Competitive Process, Officers must determine the appropriate balance of the five key criteria set out in Regulation 5 of the PSR of quality and innovation; value; integration, collaboration, and service sustainability; improving access, reducing health inequalities, and facilitating choice; and social value.
- 31.6. Any criteria that may be used to disqualify a supplier must be clearly specified within the tender. Suppliers may not be disqualified except where the tender has stipulated that failure to meet one or more of the specified criteria would disqualify a tender.
- 31.7. Where the Commercial and Procurement Division is leading the procurement, the Division will lead on the activity outlined in this section and ensure that the award criteria and evaluation methodology, or key criteria and evaluation of this under the PSR, satisfies the relevant regulations. Where Officers in Services lead the procurement, they will be responsible for ensuring that the requirements are correctly followed. As a part of the activity in this section, close working between the Division and Officers in Services will be required.

32. Key Performance Indicators

- 32.1. Officers should develop key performance indicators (KPIs) to help assess a supplier's performance against the contract. They should be developed early as a part of specification development and can be consulted on in preliminary market engagement, thereafter, being included in procurement documentation.
- 32.2. Any KPIs developed should be relevant and proportionate to the nature, size, and complexity of the contract. When developing KPIs, Officers must consider the risks associated with setting too many KPIs or potential for ambiguity around KPIs, which may lead to confusion with suppliers, higher pricing, and other unintended outcomes.
- 32.3. Officers should refer to guidance issued by the Commercial and Procurement Division around the development of KPIs and standard contract KPIs that may be relevant. Officers should also be aware of any additional Council policies related to social value and sustainability when setting KPIs and consider applying these proportionately.
- 32.4. Where contracts are subject to the Procurement Act 2023, Section 52 of the Act requires that any contract that is awarded with an estimated total aggregate value in excess of £5m must have a minimum of three KPIs specified within them with performance against these KPIs then monitored and reported by way of Notices. However, this requirement does not apply if the contract is awarded via a Framework.
- 32.5. Officers in Services are responsible for developing KPIs, but the Commercial and Procurement Division can be engaged to provide a commercial perspective and input on KPIs for contracts that the Division will lead the procurement for.

33. Forms of Contract

- 33.1. 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 different sets of Standard Terms and Conditions that must be applied to contracts based on their value and the nature of what is being procured (i.e., goods and services, or works). That is 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, Dynamic Market, 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.
 - d. The contract is a call-off from an existing Framework which includes an established form of contract.
 - e. Another form of contract is applicable and more appropriate for this procurement.
- 33.2. Officers must follow guidance provided in the Standard Terms and Conditions relevant to their procurement 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 and Procurement Division before following any alternative approach. The Commercial and Procurement Division will then consult with and request further approval from the Legal Team.
- 33.3. If bespoke or alternative Terms and Conditions will be used, Officers must contact the Commercial and Procurement Division who will seek advice from the Legal Team.
- 33.4. Where Officers are uncertain of the Standard Terms and Conditions applicable to their contract, they should consult with the Commercial and Procurement Division. Where the Division is already involved, they will work jointly with Officers in Services, and the Legal Team, as necessary, to determine the most appropriate form of contract.

34. Invitations to Tender

- 34.1. Whether undertaking a tendering procedure under the Procurement Act 2023 or the PSR, , Officers must issue Invitations to Tender and tendering instructions to every supplier who is or has been:
- a. Invited to tender following a pre-qualification process (where such a stage has taken place).
 - b. Listed on the relevant Framework Agreement, Framework lot, Dynamic Market, or DPS and who is capable and willing to tender.
 - c. Requested the supply of tender documents under an open tendering process.
- 34.2. 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 Procurement Act 2023, the PSR, 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.

34.3. Officers must, in writing, advise every supplier submitting a tender that:

- a. No extension of time will be allowed for the receipt of any tender, unless that is at the discretion of the Council.
- b. Tenders received after the date and time specified for receipt may be rejected.
- c. Any departure from 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 a part of the e-sourcing process unless it includes changes to tender documents that were made by the Officer responsible for the procurement.

34.4. Where the Commercial and Procurement Division is leading the procurement, the Division will lead on the activity outlined in this section, ensuring the requirements of relevant regulations are satisfied. Where Officers in Services lead the procurement, they will be responsible for ensuring that the requirements are correctly followed. As a part of the activity in this section, close working will be required between the Division and Officers in Services.

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

35.1. Officers must maintain a written record and clear audit trail of all clarifications received as a part of any pre-qualification stage and as a part of any tendering procedure undertaken, 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 clarifications requested, and the responses provided must be available for audit purposes).

35.2. Confirmation must be provided in the award report that paperwork submitted as a part of testing against any exclusion criteria and any Conditions of Participation has been checked and approved in line with the Council's requirements for due diligence outlined in guidance available on KNet.

35.3. Where the Commercial and Procurement Division is leading the procurement, the Division will lead on the activity outlined in this section, ensuring the requirements of relevant regulations are satisfied. Where Officers in Services lead the procurement, they will be responsible for ensuring that the requirements are appropriately followed.

36. Submission, Receipt and Opening of Tenders

- 36.1. Suppliers must be given an adequate period in which to prepare and submit a tender, with this time period at least satisfying the minimum timescales required in the applicable regulations and being commensurate to the complexity of the requirement.
- 36.2. When determining the appropriate timeframe, as well as the regulatory requirements, Officers should consider the need to have regard to the particular barriers facing SMEs and VCSES wishing to access contract opportunities and how to remove or reduce these barriers. This may include through considering tender response timescales that are more appropriate for SMEs and VCSEs.
- 36.3. Every tender over the applicable Public Procurement Thresholds , or which has otherwise been advertised on the Council's tendering portal must be received by a secure method using either the Council's tendering portal or another secure electronic system appropriate for the procurement.
- 36.4. Officers must have notified all suppliers of the correct tender return instructions, including the date, time, and place (e.g., the details of the Council's e-sourcing system).
- 36.5. In exceptional circumstances, the deadline for receipt of tenders may be extended with the agreement of the lead Commercial and Procurement Officer, if the extension of time will not disadvantage any tenderer.
- 36.6. No extension to the deadline can be given once the seal has been broken on the Council's tendering portal.
- 36.7. 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.
- 36.8. 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.
- 36.9. 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 lead Commercial and Procurement 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.
- 36.10. Officers must also 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.
- 36.11. Officers may also disregard any tender that offers a price that is considered to be abnormally low for the performance of the contract. However, before disregarding a tender on these grounds, Officers must notify the supplier that the price is considered

to be abnormally low and give the supplier reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered.

- 36.12. 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.
- 36.13. 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.
- 36.14. Where the Commercial and Procurement Division is leading the procurement, the Division will lead on the activity outlined in this section, ensuring the requirements of relevant regulations are satisfied. Where Officers in Services lead the procurement, they will be responsible for ensuring that the requirements are appropriately followed.

37. Evaluation

- 37.1. The evaluation of tenders should be undertaken only against the award criteria and evaluation methodology that was stipulated in the procurement documentation.
- 37.2. For procurements that are subject to the Procurement Act 2023, tenders are to be evaluated based on the assessment and identification of the 'Most Advantageous Tender' (MAT). An evaluation based on the MAT must consider both price and quality, including any social value or sustainability criteria, and does not require the tender to be awarded to the lowest priced bid alone.
- 37.3. For health care services contracts and mixed health care services contracts regulated by the PSR and using either Direct Award Process C, the Most Suitable Provider Process, or the Competitive Process, Officers must assess offers from providers taking into account the five key criteria set out in Regulation 5 of the PSR of quality and innovation; value; integration, collaboration, and service sustainability; improving access, reducing health inequalities, and facilitating choice; and social value.
- 37.4. Officers must ensure that a moderator is assigned to confirm the final scoring and to mediate any differences between the evaluation panel.
- 37.5. 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.
- 37.6. Each evaluator and moderator must complete a conflicts of interest form, disclosing any interest that may raise questions of impartiality. It must also be recorded how identified conflicts (actual or perceived) will be mitigated. This should be added to the conflicts of interest assessments that will have initially been developed at the outset of the procurement and that will be kept up to date throughout the process.
- 37.7. Where the Commercial and Procurement Division is leading the procurement, the Division will lead on the activity outlined in this section, ensuring the requirements of relevant regulations are satisfied. Where Officers in Services lead the procurement, they will be responsible for ensuring that the requirements are appropriately followed.

38. Request for Quotations

- 38.1. Where permitted to seek quotations under Section 10 of SCM, 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. Where the requirement is clarified or changed through the process, all invited organisations must have the opportunity to quote against that revised requirement.
- 38.2. As a minimum, Officers are required to seek the number of quotations stipulated in the summary table in Section 10. These quotations must be competitive.
- 38.3. 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.
- 38.4. 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 of SCM, they are not required to seek further quotes unless it is necessary to fulfill the need and achieve value for money.
- 38.5. Officers in Services are required to use their own judgement to determine if a quote reflects value for money.
- 38.6. For the avoidance of doubt, Officers cannot follow a quotation process where the estimated total aggregate value of their contracts is above the relevant Public Procurement Threshold for goods and services contracts or above £1m for works contracts, where a compliant tendering procedure must instead be followed. Additionally, when procuring health care services regulated by the PSR, Officers are required to follow a provider selection process permitted under the PSR and in line with the guidance provided by the Commercial and Procurement Division.
- 38.7. Officers in Services will typically lead the request for quotations process. However, they should refer to the advice and guidance available on KNet when undertaking this. Should Officers still have concerns about their ability to undertake this activity, they should contact the Commercial and Procurement Division at the earliest opportunity.

39. Excluding Suppliers

- 39.1. Before assessing any Conditions of Participation, tenders or quotations, and prior to determining the supplier to be awarded a contract, Officers must check whether suppliers, or their Connected Persons or Associated Persons and subcontractors, are on the Debarment List. Where it materialises that suppliers are on that list for a Mandatory Exclusion Ground, they must be excluded from the procurement process and must not be awarded the contract. In the case of their Associated Persons and subcontractors being on the list, suppliers should be provided with the opportunity to replace them.
- 39.2. Where suppliers, or their Associated Persons and subcontractors, are on the Debarment List for a Discretionary Exclusion Ground, or they otherwise self-declare that a Mandatory or Discretionary Exclusion Ground applies as part of the procurement process, Officers may exercise discretion on whether to exclude them. However, the supplier must be provided with the opportunity to 'self-clean' (i.e., to provide evidence that the circumstances are not continuing or are unlikely to re-occur and/or to replace the Associated Persons or subcontractor) before any exclusion.
- 39.3. Where the Commercial and Procurement Division is leading the procurement, the Division will ensure that the appropriate reviews, checks, and processes are undertaken, consulting with the Legal Team prior to any exclusion being made.

39.4. Where Officers in Services are leading the procurement, they are responsible for undertaking the initial review and checks in line with guidance available on KNet. However, they must engage with the Commercial and Procurement Division, who may also engage with the Council's Legal Team, prior to any exclusion taking place.

40. Intention to Award, Contract Award, Agreement and Signature

40.1. Before proceeding with the regulatory requirements around the award of contracts, as outlined between Sections 40.4 and 40.7 below, Officers must complete an Award Report and have this approved by the relevant authority as stipulated in Section 10 of SCM and the Council's Scheme of Delegation.

40.2. The Award Report should:

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

40.3. Additionally, where a contract for a consultant (as defined in Section 18 of SCM) is estimated to have a total value of £50,000 or more, the decision to award the contract must be made in consultation with the relevant Cabinet Member.

40.4. Following the above, the successful supplier/s and all unsuccessful suppliers must be notified in writing of the proposed contract award through the Council's tendering portal (or any other secure electronic system appropriately used for the procurement) and in accordance with the Procurement Act 2023, the PSR, or other applicable procurement regulations.

40.5. Officers must provide an assessment summary to each supplier who has submitted an assessed tender for contracts that are above the applicable Public Procurement Thresholds and which are not regulated by the PSR. These assessment summaries must satisfy the requirements of Section 50 of the Act and Regulation 31 of the Procurement Regulations 2024. For those contracts that are subject to the PSR, Schedule 9 of the PSR applies.

40.6. Following the provision of assessment summaries to suppliers, a Contract Award Notice must be published to the Central Digital Platform, in accordance with the applicable regulations (unless there is an exemption to this requirement under the regulations). This Notice will set out that the Council intends to enter into the contract. While the Commercial and Procurement Division will process the Notice, Officers in Services must provide the information required in a full and timely manner.

40.7. Contracts must not be awarded until first observing and concluding any mandatory standstill period required under the Procurement Act, the PSR, or other applicable procurement regulations or, where there is no legally prescribed standstill, any standstill period committed to in the Tender or Contract Award Notice. Any Challenges or Representations received during this period must be raised with the Commercial and Procurement Division, who may also consult with the Legal Team as necessary, so that they are able to provide a fair, impartial, and timely view on the most appropriate course of action.

40.8. Contracts must also not be awarded where the Finance Team has raised significant concerns regarding financial information provided as a part of the tender process.

- 40.9. 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.
- 40.10. Following the above, the successful supplier/s and all unsuccessful suppliers 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 Procurement Act 2023, the PSR, or other applicable procurement regulations.
- 40.11. 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.
- 40.12. The agreement with the successful supplier/s 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 (e.g., 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.
- 40.13. 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.
- 40.14. 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 responsibility.
- 40.15. Officers must ensure the contract is signed or sealed in accordance with the Constitution.
- 40.16. Where the Commercial and Procurement Division is leading the procurement, the Division will lead on the activity outlined in this section, ensuring the requirements of relevant regulations are satisfied. Where Officers in Services lead the procurement, they will be responsible for ensuring that the requirements are appropriately followed. The Legal Team must be engaged where clarity is required over the correct form of execution required.

41. Publication of Awarded Contract Details

- 41.1. Where contracts are subject to the Procurement Act 2023, Section 53 of the Act states that contracts with a total aggregate value above the applicable Public Procurement Thresholds must have a Contract Details Notice published to the Central Digital Platform within 30 days of the contract being entered into. This Notice will outline that

the Council has entered into the contract, and it must also be published on the Council's tendering portal.

- 41.2. For all other contracts under the Public Procurement Thresholds but above £30,000 (including VAT), and not regulated by the PSR, a simplified Contract Details Notice must be published on the Central Digital Platform as soon as reasonably practicable following the award. .
- 41.3. For contracts awarded under the Procurement Act 2023 with a value of more than £5m (including VAT), an appropriately redacted copy of that contract be published before the end of 90 days beginning with the day on which the contract is entered into. Officers must produce a redacted copy of the contracts and retain these alongside the original copy.
- 41.4. As a part of the tendering procedure, or when agreeing contract terms with a supplier, Officers must establish the commercially sensitive information that will be redacted. From the Council's perspective, Officers must also identify whether there is any operationally sensitive material that should be redacted.
- 41.5. Whilst material may be identified as sensitive, Officers must satisfy themselves that it is not the case that it is simply preferable to redact this information, but that it is permissible to do so under the applicable regulations.
- 41.6. As set out in Section 52 of the Procurement Act 2023, any contract that is awarded with an estimated total aggregate value in excess of £5m must also have a minimum of three KPIs specified within them, unless an exemption available under the regulations applies to the contract. The details of these KPIs must be published alongside the redacted copy of the contract, where required.
- 41.7. Where the Commercial and Procurement Division leads the procurement, they will work with suppliers to identify the commercially sensitive information to be redacted. However, where Officers in Services is leading the procurement, they will be responsible for this information. Officers in Services will always be responsible for identifying the operationally sensitive information that should be redacted.
- 41.8. The redaction of contracts will be undertaken by the Officer leading the procurement, with the support of available redaction software or, where that is not available and Officers are uncertain as to how to redact, in consultation with the Council's Information Governance Team and Legal Team, as necessary.
- 41.9. The Commercial and Procurement Division will publish the Contract Details Notice, the appropriately redacted copy of contracts, and KPI information, as required, but Officers in Services must provide the information required in a full and timely manner.

42. Contract Tiering and Contract Management Responsibilities

- 42.1. 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 and Procurement Division and available on KNet.
- 42.2. 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.
- 42.3. 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 and Procurement Division on KNet. This exercise must be undertaken as soon as possible after it has been decided that procurement is the appropriate route to meet the requirement, with the exercise repeated prior to contract award, and at regular intervals during the management of the contract.

- 42.4. The classification assigned to the contract following the tiering exercise must be notified to the Commercial and Procurement Division and recorded on the Council's contract management system. For those contracts within the Procurement Pipeline, the Commercial and Procurement Division will be able to take a lead on this contract tiering exercise, working closely with Officers in Services as a part of the procurement process and award of the contract. The named Contract Manager will retain responsibility for undertaking the tiering exercise during contract management.
- 42.5. The Commercial and Procurement Division will take a commercial lead on all high-risk contracts identified through the tiering exercise, working alongside the named Contract Managers within Services and any named legal advisor.
- 42.6. The Head of Commercial and Procurement is responsible for ensuring that training is available to support Contract Managers across the Council regardless of the tier of the contract that they are managing. Senior Officers (Heads of Service and above) are responsible for ensuring that those managing contracts within their area are appropriately trained.

43. Managing and Reporting on Contract Performance

- 43.1. For contracts awarded under the Procurement Act 2023 with a total aggregate value of more than £5m (including VAT), Section 52 of the Act requires the assessment and publication of information about the supplier's performance against the KPIs that have been published in accordance with Section 53 of the legislation and Section 41.6 of SCM. That is unless an exemption available under the regulations applies to the contract.
- 43.2. The supplier's performance against the identified KPIs must be assessed and published at least once every twelve months. Officers must report performance in line with the standardised rating system prescribed in the Procurement Regulations 2024, with the performance information published via a Contract Performance Notice on the Central Digital Platform.
- 43.3. Under Section 71 of the Procurement Act 2023, for contracts that are subject to the legislation and for which there is no exemption in the regulations, Officers may be required to publish information, via a Contract Performance Notice on the Central Digital Platform, where a supplier breaches the contract and/or in the event of poor performance.
- 43.4. Breaches are understood as being where a supplier fails to meet one or more of the key terms that were agreed at contract award. Officers must publish information on breaches where they are sufficiently serious to the extent that they result in full or partial contract termination, the award of damages, or a settlement agreement.
- 43.5. Poor performance is understood as a failure of the supplier to deliver aspects of the contract to the Council's satisfaction, taking into account the frequency, duration, and impact on contract delivery. In the event of serious and persistent poor performance, after suppliers have been provided with the opportunity to improve their performance and failed to do so, Officers are required to publish the performance information.

- 43.6. The Commercial and Procurement Division will publish the Contract Performance Notices required, however, Officers in Services are responsible for assessing supplier performance in accordance with the guidance that is provided by the Division on KNet. However, Officers in Services must provide the Division with the information that is required for the Notices in a full and timely manner.
- 43.7. With regards to reporting performance against KPIs for contracts worth £5m or more, the Commercial and Procurement Division will work with Officers in Services to ensure that, as a part of finalising the KPIs with the supplier prior to contract award, there is alignment to the prescribed rating system and the supplier understands what is being measured, when, how, and against what system. The named Contract Manager is responsible for ensuring the agreed approach is adhered to in contract management.
- 43.8. With regards to breaches that are sufficiently serious that they meet the publication requirements (including performance against KPIs against of the prescribed rating system), regardless of the contract value, Officers in Services must contact the Commercial and Procurement Division as early as possible. The Division may also consult with the Council's Legal Team to consider the legal risks before advising Officers on the most appropriate course of action to take.
- 43.9. With regards to poor performance that meets the threshold of serious and persistent failures that, if not addressed, will require the publication of that information, Officers in Services should contact the Commercial and Procurement Division as soon as possible if it relates to a contract that is above the relevant Public Procurement Thresholds. Otherwise, Officers should refer to guidance issued by the Division and available on KNet. Where the Division is involved, they will advise on the course of action to take with the supplier to attempt to rectify the situation.

44. Contract Payments and Reporting on Payments

- 44.1. 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.
- 44.2. Under Section 67(2) of the Procurement Act 2023, Officers must accept and process for payment any electronic invoice issued to the Council for payment under a contract where that invoice is in the required electronic form, and it is not disputed. Officers cannot override these terms, which are implied into contracts under the Procurement Act 2023.
- 44.3. In accordance with Section 68 of the Procurement Act 2023, Officers must ensure that any sum due to be paid under a contract by the Council is paid before the end of the period of 30 days beginning with the day on which the invoice is received, or, if later, the day on which the payment falls due in accordance with the invoice. Such payment may be made by a third party to satisfy the regulatory requirement, but only with the agreement of the payee. In accordance with Section 73 of the Act, these 30 day payment terms are also implied into subcontracts. Officers cannot restrict or override these terms, which are implied into contracts under the Procurement Act 2023.
- 44.4. Officers may agree with a supplier that a sum due under a contract is to be paid earlier than the 30 days required. However, this must be applied in accordance with the Council's supplier incentive programme, the Financial Regulations and Scheme of Delegation. As part of agreeing any such payment arrangement and mechanisms with

a supplier, Officers must consult the Commercial and Procurement Division and Finance Team.

- 44.5. Under Section 69 of the Procurement Act 2023, the Council is required to publish a Payments Compliance Notice to the Central Digital Platform, providing information on the extent to which the Council is compliant with the prompt payment provisions outlined in Section 44.3 above. This Notice must be published within 30 days of the end of the reporting periods stated in the regulations, detailing payments made under contracts and sums owed by the Council that have become payable. Reporting must be completed every six months.
- 44.6. Under Section 70 of the Procurement Act, 2023, and associated regulations, Officers must also publish specific information, via Payments Compliance Notices, in relation to any payment of more than £30,000 made by the Council under contracts subject to the legislation. This information must be published before the end of the period of 30 days beginning with the last day of the quarter in which the payment was made.
- 44.7. The Commercial and Procurement Division and the Council's Finance Team will work jointly to publish the Payment Compliance Notices required under this section of SCM. However, Officers in Services must follow guidance issued by the Division and Finance Team on KNet to ensure the payment information required for these Notices is linkable to the relevant contract and available to those teams in a complete and timely manner.

45. Contract Modifications, Extensions and Novations

- 45.1. For contracts with a total aggregate value over the Public Procurement Thresholds, Officers must engage with the Commercial and Procurement Division and obtain agreement in line with the Scheme of Delegation before any Modifications are made (whether in terms of value, duration, scope, or otherwise).
- 45.2. As well as mitigating procurement and legal risks, this is due to Contract Modifications being subject to specific requirements under the Procurement Act 2023 and PCR 2015. Under Section 75 of the Procurement Act 2023, with limited exceptions, these requirements include the need for information on changes to contracts procured under that legislation to be published to the Central Digital Platform through a Contract Change Notice. The Contract Change Notice must be published before the Modification is made. Officers must engage with the Commercial and Procurement Division as to whether the Council will observe a voluntary standstill period prior to entry into the Modification and if so, the length of the standstill period (to be a minimum of 8 working days). Officers should note that if a voluntary standstill is to be observed it must be included in the Contract Change Notice and must be complied with.
- 45.3. In some circumstances, regardless of the contract value, proposed Modifications to contracts may trigger procurement or legal risks and advice must be sought from the Commercial and Procurement Division and the Council's Legal Team where Officers believe this to be the case. For example, this may include where the proposed Modification would take the total aggregate value of the contract from a total value below the applicable Public Procurement Thresholds to a contract above that the relevant threshold.
- 45.4. Contracts that have been originally advertised with extension options can be extended subject to Officers receiving the acceptance required in the summary table included within Section 10 of SCM. However, where the total aggregate contract value is above

the applicable Public Procurement Thresholds, the Commercial and Procurement Division should be engaged before any extension of the contract.

- 45.5. In accordance with the Procurement Act 2023, a redacted copy of any modified or extended contract with a value of more than £5m must be published to the Central Digital Platform before the end of 90 days beginning with the day on which the change is signed.
- 45.6. In addition to any procurement or legal requirements, Contract Modifications or extensions may only be made if the value of the Contract Modification or extension added to the value of the original contract does not exceed the authorisation threshold in the summary table in Section 10 of SCM. Where that is the case, then the appropriate level of authorisation, which would be required considering the re-calculated total aggregate value of the contract, must instead be sought.
- 45.7. All Contract Modifications and extensions must be recorded in writing, signed, or sealed appropriately, and retained alongside the original copy of the contract on the Council's contract management system.
- 45.8. Legal advice must be taken where clarity is required over the correct form of execution required for any Contract Modifications or extensions.
- 45.9. Any extension or Modification must have an approved budget allocation for it to be made.
- 45.10. There are separate requirements for health care services contracts and mixed health care services contracts regulated by the PSR, Officers must engage with the Commercial and Procurement Division prior to making any Modification as specific legal requirements will apply, including requirements for the publication of Notices.
- 45.11. 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. Officers in Services must consult with the Commercial and Procurement Division and the Legal Team to review the existing contract and the requested Novation so that the acceptability to the Council can be determined. The Council's Finance Team must also be consulted with to ensure that the proposed new organisation will be financially robust.
- 45.12. Guidance issued by the Commercial and Procurement Division and available on KNet outlines the circumstances under which Contract Modifications, extensions, and Novations are permitted and the processes to be followed and the considerations to be made to ensure these represent value for money.
- 45.13. While the Commercial and Procurement Division will process the required Notices, and publish any appropriately redacted Contract Modifications or extensions, Officers in Services must provide the information required in a full and timely manner.
- 45.14. Contracts which were procured prior to 24 February 2025 (including procurements commenced before that date and call-offs from Frameworks or DPS in place at that date) continue to be subject to the PCR 2015 (or CCR 2016 as the case may be). However, where a proposed change to a pre-24 February 2025 contract does not fall within one of the permitted grounds for modification (e.g. Regulation 72(1) of PCR 2015) the modification may be deemed to be a new contract awarded under the Procurement Act 2023.

45.15. Regardless of the contract value and the procurement regulations that apply, Officers in Services will be responsible for undertaking all other activities in this section. However, as described, they should engage with the Commercial and Procurement Division, the Legal Team and Finance Team, as necessary, who will be able to advise and support in certain circumstances, particularly if there is legal risk.

46. Contract Expiry and Terminating Contracts

46.1. Regardless of the total contract value, and the regulations which apply (the Procurement Act 2023, PCR 2015, the PSR, or other procurement regulations), where it is planned to allow contracts to expire at the end date (including extensions) or on completion of deliverables, Officers must give suppliers reasonable notice of their intentions and allow suppliers an opportunity to respond. Officers must also ensure any outstanding disputes are settled and payments made before the contract ends.

46.2. For those contracts subject to the Procurement Act 2023, with limited exceptions, Section 80 of the Act requires a Contract Termination Notice to be published where a contract expires at its planned end date or on the completion of deliverables. Officers must confirm with the supplier in writing when their contract has come to an end.

46.3. Regardless of the total contract value, and the regulations that apply, where Officers believe that there may be grounds for early termination for breach of contract, poor performance, or, as the supplier, their Associated Persons or subcontractors have become excludable suppliers on Mandatory or Discretionary Exclusion Grounds, Officers must contact the Commercial and Procurement Division at the earliest possible opportunity. Officers must not proceed with any early termination until they have consulted with the Division, who may also consult with the Council's Legal Team.

46.4. For those contracts subject to the Procurement Act 2023, with limited exceptions, where any early termination takes place, Section 80 of the Act requires Officers to publish a Contract Termination Notice. Officers must also confirm with the supplier in writing when the early termination of the contract has been completed.

46.5. There are different Notice requirements for the expiry and termination for health care services contracts and mixed health care services contracts regulated by the PSR. Consequently, Officers must engage with the Division prior to the end of such contracts..

46.6. The named Contract Manager is responsible for planning appropriately for the end of contracts and ensuring the smooth conclusion and transition away from contracts. However, the Commercial and Procurement Division, in consultation with the Council's Legal Team, as necessary, will be able to advise Contract Managers with this process, particularly for contracts identified as high risk through contract tiering..

46.7. The Commercial and Procurement Division will publish the Contract Termination Notices required, and any final Contract Performance Notices, but Officers in Services must provide the Division with the information required in a full and timely manner.

47. Disposing of Surplus Goods, Materials or Assets

47.1. 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 KNet. This is to ensure that the Council receives proper reimbursement, where appropriate, and that disposal is cost effective.

47.2. However, advice must always be sought from the Council's Finance Team when making valuations for such surplus goods, materials, or assets, and determining the correct process to follow. The Council's Infrastructure Team should also be consulted in the case of the disposal of buildings or land.

48. Emergency Purchases

48.1. An emergency purchase that contravenes SCM is only allowed where there is an imminent risk to life or property, where there is a need to secure Council property or assets (e.g., where there has been a break-in or equipment failure, such as a flood), or there is an otherwise lawful ground provided for in the applicable regulations outlined in Section 4.6 of SCM.

48.2. For contracts subject to the Procurement Act 2023 with an estimated total aggregate value above the Public Procurement Thresholds, emergency purchases must be compliant with the relevant legal provisions (i.e., Chapter 3 and Schedule 5 of the Procurement Act 2023 or another exemption set out in the regulations). For health care services contracts and mixed health care services contracts regulated by the PSR, Officers should refer to Regulation 14 of the PSR in the first instance to justify any urgent contract awards or Modifications.

48.3. For the avoidance of doubt, the above Sections 48.1 and 48.2 do not apply to those purchases made outside of the hours of 09:00 to 17:00 by the Council's emergency duty and social care teams.

48.4. 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.

48.5. Any emergency purchases made must be reported to the relevant Head of Service and Service Director who will be responsible for reporting this to the Council's Head of Commercial and Procurement and Section 151 Officer.

49. Subsidies

49.1. 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. These notices will be published by the Legal Team and Officers must ensure they provide all necessary data.

50. Waivers

50.1. 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 it relates to what would be a Waiver to internal Council made rules.

50.2. 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 Procurement Act 2023, PCR 2015, the PSR, or any other applicable legislation outlined in Section 4.6 of SCM.

50.3. Officers must obtain approval for a Waiver from the Commercial and Procurement Division, including the Head of Commercial and Procurement, as necessary, using the pro-forma and guidance available on KNet. The request should identify the

requirement that is subject to the request and the reason for which the Waiver is sought, including the proposed justification and associated risks.

50.4. For Waivers of SCM in relation to contracts with a value of £1m (excluding VAT) or more, the Head of Commercial and Procurement will also seek approval from the Council's Section 151 Officer and/or Monitoring Officer.

50.5. A Waiver can be requested retrospectively. However, 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.

50.6. The Commercial and Procurement Division will maintain a log of all Waivers that have been sought, rejected, and authorised.

51. Procurement Oversight and Investigation

51.1. Under the Procurement Act 2023, the compliance of contracting authorities with the Act may be investigated by a central government Procurement Review Unit (PRU). Where investigations are undertaken, the PRU will issue recommendations for improvement to the contracting authority and monitor the delivery of action plans. These investigations and the findings of the PRU may be published.

51.2. Under the PSR, where providers have raised a Representation to a contracting authority and remain unsatisfied with the response and are of the view that the PSR has not been applied correctly, they may submit a representation to an independent PSR Review Panel that sits outside of the Council. Where the Panel agrees to review the Representation, it will consider it and share advice with the provider and the authority, and this information may also be published, at least in summary form.

51.3. Should there be any investigation by the PRU or the PSR Review Panel into the Council's procurement practice, the Council's response will be jointly led by the Commercial and Procurement Division and the Legal Team. Officers must fully cooperate with those leading the Council's response, providing any required information in a full and timely manner and making themselves available to support the lead Officers and the PRU or PSR Review Panel to understand the cause of the compliance issues.

Appendix 1: Definitions

Associated Person/s – A person that the supplier is relying on in order to satisfy the Conditions of Participation under the Procurement Act 2023, but not a person who is to act as guarantor.

Challenge/s – a Challenge can be understood as when an organisation sets out its intention to bring a claim against the contracting authority in relation to its decision to award a contract. This may include when a bidder has been informed, they were unsuccessful in their bid and are challenging the decision of the Council or may include other third parties where they have standing under the relevant legislation to bring a legal challenge.

Condition/s of Participation – As defined under Section 22 of the Procurement Act 2023, condition that a supplier must satisfy if the supplier is to be awarded the contract.

Contract extension – extending the duration of a contract as allowed and defined under the terms of that contract and relevant procurement regulations.

Contract Modification – making an amendment to a contract as defined in the relevant procurement regulations.

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

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.

Debarment List – A list, which is maintained by central government and is permitted for and detailed under Section 62 of the Procurement Act 2023, containing those suppliers who may be debarred from bidding for public contracts for a specific period.

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

Discretionary Exclusion Ground/s – One of a number of grounds for potentially excluding a supplier as defined under Schedule 7 of the Procurement Act 2023.

Dynamic Market/s – a purchasing tool established pursuant to sections 34 to 40 of the Procurement Act 2023, comprising a list of suppliers who have met any applicable conditions for membership of the Dynamic Market and who are eligible to participate in future procurements. Membership of a Dynamic Market is not closed and new suppliers may join during its life.

Dynamic Purchasing System (DPS) – 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 (for DPS’).

Framework or 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.

Integrity – having strong moral principles, honesty, and decency.

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 through supplier segmentation, by contract tiering, or any Council strategy.

Mandatory Exclusion Ground/s – One of a number of grounds for potentially excluding a supplier as defined under Schedule 6 of the Procurement Act 2023.

National Procurement Policy Statement (NPPS) – The NPPS sets out the strategic priorities for public procurement, which contracting authorities must have regard to, with information and guidance on how contracting authorities can support their delivery.

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

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

Notices – A Notice (sometimes referred to as a ‘transparency notice’) of procurement or contracting activity that the Council is required to publish to Central Digital Platform (or such other digital platform that as required by law) according to the Procurement Act 2023, PCR 2015, the PSR, or other applicable procurement regulations.

Open Framework – A scheme of Frameworks that provides for the award of successive Frameworks on substantially the same terms, as defined and permitted under Section 49 of the Procurement Act 2023.

Public Procurement Threshold for goods and services contracts – As of 1 January 2024, this value is £179,087 (exclusive of VAT) and £214,904 (inclusive of VAT).

Public Procurement Threshold for works contracts – As of 1 January 2024, this value is £4,477,174 (exclusive of VAT) and £5,372,609 (inclusive of VAT).

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.

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

Representation/s – a Representation, a term more associated with procurements and contracting subject to the PSR, can be understood as being when a provider requests the contracting authority reviews their decision. This may include a decision to award or to modify a contract.

Small and Medium Sized Enterprise (SME) – Suppliers that have fewer than 250 staff and have a turnover of an amount less than or equal to £44m, or a balance sheet total of an amount less than or equal to £38m.

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

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

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

Subsidy/ies - 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.

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

Total aggregate contract value - the estimated total aggregate value payable in pounds sterling inclusive of Value Added Tax (VAT) over the entire contract period, including any extensions of the contract and including any sums paid by third parties.

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

Voluntary, Community and Social Enterprise (VCSE) – An incorporated voluntary, community, or social enterprise organisation which serves communities, and which is either a charity, Community Interested Company, or Community Benefit Society.

Waiver - a request to deviate from the rules of SCM.