



Horsham District Council

Horsham Procurement Code

Last Full Review: December 2024

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HORSHAM PROCUREMENT CODE

INTRODUCTION AND OFFICER ROLES & RESPONSIBILITIES

1. INTRODUCTION

- 1.1. The Procurement Code establishes the legal framework through which the Council must undertake its commissioning and procurement activity. The purpose of the Procurement Code is to provide additional information and clarity on the rules for procurement of all of the Council's goods, works and services as required by the Local Government Act 1972. The Procurement Code ensures a system of openness, integrity and accountability and incorporates the legal requirements of:
 - The Procurement Act 2023 and any associated secondary legislation, which will apply to procurements commenced on and after 24th February 2025;
 - The Public Contracts Regulations 2015, which will continue to apply for any procurements commenced prior to 24th February 2025; and
 - All current Procurement Policy Notes (PPNs) and the National Procurement Policy Statement (NPPS), issued by the Cabinet Office.
- 1.2. In the event of any conflict between this Procurement Code and the Procurement Act 2023, the Procurement Act 2023 takes precedence. In the event of any conflict between this Procurement Code and the Public Contracts Regulations 2015, the Public Contracts Regulations 2015 take precedence.
- 1.3. Procurement and commissioning decisions are important because the money involved is public money and the Council is concerned to ensure that high quality goods, works and services are provided. In addition, it is imperative that the Council ensures the efficient use of resources in order to ensure continuous improvement and the provision of quality and value for money services. The Council's reputation is equally important and should be safeguarded from any accusation of dishonesty or corruption.
- 1.4. The Procurement Code applies to the procurement of works, goods and services, (apart from the list contained at 1.5) undertaken by the Council. The Procurement Code applies to all Council employees and elected Members. The Director of Resources shall have responsibility for maintenance, updating and issuing the Procurement Code.
- 1.5. The Procurement Code does not apply to the following:
 - Certain types of legal advice such as relating to judicial proceedings and/or dispute resolution.
 - Certain types of financial advice such as funding or financing arrangements and investment services.
 - Employment contracts.
 - Purchases made at public auction or of goods sold due to insolvency.
 - Land contracts - (including leases, licences and transfers).
 - Grants of money since these cannot be contracts as there is no consideration and they are not services required to be delivered by the Council.
 - Vertical arrangements – (this is where the Council exercises a parent or similar control or joint control with other councils on the entity as much as it does with its own departments, and the entity carries out more than 80% of its activities for the controlling council and there is no private sector money in the entity).

- Horizontal arrangements - (this is where the arrangement comprises a council to council / public body co-operation) - to achieve objectives which the bodies have in common through an arrangement that is solely for the public interest and that the parties perform less than 20% of the services covered by the arrangement on the open market.
- Any other goods/services/works falling under the definition of an "exempted contract" in the Procurement Act 2023.

1.6. Procurement is a complex area. The Procurement Code sets out the legislation and the rules that need to be followed by the Council but not all aspects of the Procurement Code will apply to every procurement. Further information or advice on how the Procurement Code will apply to the procurement you are undertaking on behalf of the Council can be sought from the following officers:-

Dominic Bradley Director of Resources
Becca Williams Procurement Manager
Lauren Kelly Head of Legal and Democratic Services

2. ROLES AND RESPONSIBILITIES

2.1 Heads of Service:

2.1.1 Heads of Service have responsibility for all procurement activity undertaken by their departments and for ensuring such activity is undertaken in compliance with the Procurement Code. Heads of Service are accountable to the Cabinet for the performance of their duties in relation to contract letting and management. In addition, Heads of Service must:

- Comply with the rules set out in the Procurement Code, the Council's Financial Procedure Rules and Code of Conduct for Council Employees, the Procurement Act 2023 (from 24th February 2025), the Public Contracts Regulations 2015 (for all procurements commenced prior to 24th February 2025), and with all other relevant UK legislation and guidance such as the Transparency Code, Public Services (Social Value) Act 2012, any relevant guidance including the PPNs and the NPPS.
- Take immediate action in the event of a breach of the Procurement Code within their service area including informing the Director of Resources of the breach.
- Ensure that there is an adequate approved budget prior to commencement of any formal procurement procedure to cover the full cost of the goods, services or works to be procured.
- Ensure that, where required, Cabinet Member approval for specific projects is obtained prior to committing expenditure and that the Cabinet Member is kept up to date with the progress of procurement exercises.
- Ensure that agents, consultants and contractual partners acting on their behalf also fully comply with these requirements.
- (In accordance with the Code of Conduct for Council Employees) ensure they or any member of their staff (including any temporary staff or employed consultants) formally declare any personal or financial interest in a contract which may (or be perceived by another person to) inhibit their impartiality in recommending or agreeing to the contract award and keep and maintain a Conflict of Interest Assessment throughout a procurement process (see sections 11.11.1 – 11.11.3)
- Not enter into any leasing agreements or other forms of borrowing, including the set-up of store or credit cards other than those arranged or approved by the Chief Finance Officer.
- Ensure that the Council's Contract Register is updated with the details of any new, or extension to any existing, contract or agreement with a value of £5,000 or more by notifying the Procurement Department via the Contracts Register e-form available on the intranet.
- Keep records and documentation of all procurement exercises (see section 13 of the Procurement Code for details of how long records need to be kept).
- To ensure that where these responsibilities are delegated to other officers within their department that these officers are familiar with the provisions of the Procurement Code and that they have received appropriate training before undertaking any procurement activity.
- Ensure that all procurements above the value of £50,000 are conducted in consultation with the Procurement Team.

2.2 Director of Resources

2.2.1 The Director of Resources shall be responsible for:

- Ensuring the Procurement Code is kept up to date and easily accessible.

- Providing training to Officers and Members.

2.3 Head of Legal and Democratic Services

- 2.3.1 The Head of Legal and Democratic Services will ensure that the Council's Procurement Code is kept up to date of any relevant legislative changes and any changes to the Council's Constitution.

3. DETERMINING THE CONTRACT VALUE

- 3.1 Prior to commencing a procurement process, it is the responsibility of the Head of Service to estimate the *total value* of the contract or project. This will indicate which procurement route must be followed in order to comply with the Procurement Code and the applicable procurement legislation.
- 3.2 The estimated contract value means the aggregated value payable by the Council in Pounds Sterling. The contract value will need to be determined by the Head of Service both inclusive and exclusive of Value Added Tax (VAT) as both of these figures will be needed to confirm the appropriate procurement route for the contract in question. Please refer to the tables set out in section 4.12 (for goods and services) and section 22 (for works) of this Procurement Code to assess the appropriate procurement route.
- 3.3 Where the table refers to 'above threshold' procurements this means the financial threshold set by the Government ('Above Threshold'). Contracts calculated to have a value in excess of that financial threshold inclusive of VAT must follow the full procurement regime set out in the applicable procurement legislation. Further advice and guidance on assessing contract value and the appropriate procurement route can be obtained from the Procurement Team.
- 3.4 The total contract value is based on the maximum amount the Council could expect to pay under the contract. The amount the Council could expect to pay includes the following:
- (a) the value of any goods, services or works provided by the Council under the terms of the contract other than for payment;
 - (b) amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised;
 - (c) amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised; and
 - (d) amounts representing premiums, fees, commissions or interest that could be payable under the contract.
- In estimating the value of a contract, the Council must take into account all of the facts which are material to the estimate and available to the Council at the time it makes the estimate.
- 3.5 Where the Council considers that one contract may be sufficient to provide goods, services or works across more than one service area rather than enter into multiple smaller contracts for the same goods, services or works, it is the responsibility of the lead officer to check expenditure in other service areas to see if there are similar requirements.
- 3.6 Where the Council is unable to estimate the value of a contract e.g. where the contract term is unknown or recurring, the Council must proceed on the basis of an Above Threshold procurement. See sections 3.2 and 3.3 above.

- 3.7 Where the Council is collaborating or acting on behalf of other public bodies then the contract value shall be determined as the combined sum of all the individual public bodies requirements.
- 3.8 Where it is intended to package the contract into several different “lots” e.g. based on geographical area or by particular set of requirements, then the contract value shall be the total value of all the combined lots.
- 3.9 In the case of concession contracts (where the service users/customers, rather than the Council, make direct payments to the contractor/supplier for use of the service) then the amount that a supplier might expect to receive as a result of the contract must be used to determine the contract value. Procurements for concessions contracts should be undertaken in accordance with paragraph 11.3.1. Officers cannot split a requirement into separate or smaller packages to avoid an Above Threshold or local tender procurement process.

4. DETERMINING THE PROCUREMENT ROUTE

- 4.1 All tender processes for any contract value of £50,000 excluding VAT and above (for goods and services) and £100,000 excluding VAT and above (for works contracts) must be notified to the Procurement Team.
- 4.2 A contract for the supply of goods covers the procurement of products e.g. stationery, vehicles, equipment etc. Services contracts are the procurement of skills and expertise provided by an individual or organisation (e.g. grounds maintenance, facilities management, training etc.). Works contracts cover the procurement of any building work, building repairs, construction and civil engineering etc.
- 4.3 The majority of the Council’s procurement activity falls within the goods and services contract categories. The table below (at section 4.12) identifies the procurement route required depending on the value of the contract. Works contracts are generally for construction related projects and therefore only used by a few departments within the Council (the works thresholds table can be found in section 22). Whether a contract is a works contract or not is determined by Common Procurement Vocabulary (CPV) codes. Guidance should be sought from the Procurement Team before defining a contract to be a works contract.
- 4.4 Where the requirement covers a combination of goods, services and/or works then the element with the greater value will determine the procurement route followed. For example, the purchase of a piece of equipment (goods) for £10,000 together with building related works to fix it in situ costing £20,000 would be a works contract. These rules also apply in circumstances where there may be a mixture of services some of which may be subject to a simplified procurement regime (Light Touch), see section 11.2.
- 4.5 In all instances, if there is a current corporate contract in place for the goods, works or services required then the corporate contract must be used, and no further quotes or tenders are required. If there is a corporate Framework Agreement or dynamic purchasing system in place, the rules associated with calling off from these must be followed. Details of corporate contracts are available on the procurement pages of the intranet.

- 4.6 The use of Framework Agreements is permitted for any value of contract. Please see section 5 for further information on what a Framework Agreement is and how to access them.
- 4.7 Any procurement exercise triggered as a result of an Expression of Interest submitted under the Community Right to Challenge shall be undertaken in accordance with the requirements detailed in this Procurement Code.
- 4.8 With the exception of any employee-led mutual organisation, tenders or quotes will not be invited or considered from individual Council employees, business partnerships in which a Council employee is a partner, companies in which a Council employee is a paid director or any business where a Council employee has an interest which exceeds a nominal value of £25,000 or one hundredth of the total issued share capital.
- 4.9 The selection and engagement of consultant architects, engineers and surveyors or other professional consultants shall be subject to this Procurement Code.
- 4.10 Certain partnership arrangements with other organisations (usually other public bodies) to provide services on behalf of the Council may fall outside of the scope of the Procurement Act 2023. Heads of Service should consult the Director of Resources or Head of Legal and Democratic Services if such a partnership is being considered.
- 4.11 The Council does not allow the use of Approved or Preferred Supplier Lists that have not been created by open competition.
- 4.12 Procurement Thresholds and Contract Award Procedure – goods and services contracts (see section 22 for works contracts thresholds):

Total Contract Value	Procurement Route	Receipt of Quotes/ Tenders	Contract Approval and Award	Method of Contract Completion	Transparency Code Obligations
Under £19,999.99 exc VAT	Evidence of value for money	N/A	Relevant Budget Holder	Signature and / or purchase order raised	Publish details of all purchases/ contracts over £5,000 in Council's Contracts Register via the e-form
£20,000 - £49,999.99 exc VAT	Three written quotes	Quotes returned electronically to the Department and opened and reviewed by at least two officers or to be electronically opened by an officer using the Councils approved e-tendering package	Relevant Budget Holder	Signature	Publish details of all contracts in Council's Contracts Register via the e-form
£50,000 exc VAT – £214,904.99 inc VAT	Local Tender - by advertisement on the SE	Tenders submitted via Council's secure e-tendering platform and electronically	Up to £100,000 Head of Service approval	Up to £100,000 Signature	Publish details of the Contract Award on SE Shared

Total Contract Value	Procurement Route	Receipt of Quotes/ Tenders	Contract Approval and Award	Method of Contract Completion	Transparency Code Obligations
	Shared Services Portal and Contracts Finder. Other media can also be used	opened by two officers once closing date and time has passed.	Over £100,000 but below £250,000 relevant Cabinet Member via Delegated Authority Report*	Over £100,000 Sealing	Services Portal and Contracts Finder Publish details of all contracts in Council's Contracts Register via e-form
Above Threshold £214,905 and above inc VAT ****	Open tender advert on the Central Digital Platform via the SE Shared Services Portal	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	Over £100,000 but below £250,000 relevant Cabinet Member via Delegated Authority Report* - £250,000** PDAG prior to issue of tenders and Cabinet approval following evaluation***	Sealing	Publish details of the Contract Award on SE Shared Services Portal and Central Digital Platform. Publish details of all contract in Council's Contracts Register via e-form

* The Delegated Authority report should be completed using the Cabinet Member Decision template. Once signed, the Cabinet Member Decision must be sent to Committee Services for publication. You must wait until the sixth working day after publication before you formally award the contract. Please note that the Cabinet Member Decision and accompanying report are published on the Council's website and therefore you need to ensure that any confidential information is contained in an exempt appendix where appropriate.

** All contracts with a value of £250,000 and over must be included on the Forward Plan for 28 days before any contract award can be made. The relevant Policy Development Advisory Group (PDAG) must be consulted prior to the issue of tenders. You do not need to go to PDAG following completion of the tender process.

*** You may wish to seek Cabinet approval prior to commencing the procurement process. This approach assists in speeding up the contract award procedure and can be useful to get buy-in up front. If this approach is taken you will need to seek Cabinet approval to delegate the award of the contract to either the relevant Cabinet Member or Director. This is particularly useful on collaborative procurement projects.

**** The contract value must be calculated inclusive of VAT for Above Threshold procurements. Please ensure that you take this into account when calculating the contract value. The Above Threshold figure is determined by procurement legislation not by the Council and will be updated periodically. Please refer to section 3 and the Procurement Team for further advice regarding the procurement thresholds and calculating the contract value, if necessary.

5. USE OF FRAMEWORK AGREEMENTS (FRAMEWORKS)

- 5.1 A Framework is a contract that has been officially tendered for by another local authority, public sector organisation, Purchasing Consortium, or central Government. The contract is awarded to one or more suppliers and has provision to allow other public sector bodies to use the contract without having to undertake their own tender process so long as these public bodies have been clearly identified in the advert which led to the creation of the Framework. Acquiring goods, works or services under a Framework can be a very efficient method of meeting the Council's requirements.
- 5.2 Frameworks may be used at any of the threshold levels as an alternative to the procurement routes identified in the tables set out in sections 4.12 and 22, subject to 5.3 below. A Framework should only be used where the benefits justify its use.

- 5.3 Caution must be taken to follow the rules for accessing a Framework as these rules can vary from one Framework to another. Failure to comply with the rules of a Framework could result in the Council being found in breach of the Procurement Act 2023 and either fined or having the contract cancelled. Guidance should be sought from the Procurement Team in order to:
- Establish if the Council can legally access the Framework;
 - Check that the advertised total contract value of the Framework has not been exceeded;
 - Determine whether the Council must enter into an agreement with the body that created the Framework prior to using it;
 - Check whether a payment will need to be made to the Framework Provider, and confirm there is budget available for the payment – there could be a payment to access the Framework, or a percentage fee attached to any payments under the framework;
 - Establish the rules of the Framework governing the selection and invitation of organisations listed on the framework. Where no guidance is provided all organisations listed on the Framework shall be invited to tender in accordance with the local tender process outlined in this Procurement Code;
 - Establish the evaluation criteria that must be used on the Framework to determine the successful tenderer;
 - Comply with any minimum requirements outlined in the Framework regarding the provision of information to the bidders;
 - Acknowledge that **only minor modifications** to the Terms and Conditions of the Framework are permissible. If more substantial contractual modifications are required, the Council must follow the appropriate procurement process depending on the contract value; and
 - Comply with any minimum timescales for bidders to respond to the Council's Invitation to Tender.
- 5.4 Heads of Service must ensure that where the value of the requirement is £50,000 and above for goods and services or £100,000 and above for works, tenders are returned in accordance with Section 11. The use of the Framework Provider's e-tendering portal is permitted.
- 5.5 Heads of Service must ensure that the provisions for the *Contract Award procedure* detailed in the Framework including any requirement to observe a "Standstill Period" are followed. In addition, the Council's procedure detailed in Section 12 on Contract Award must be followed.
- 5.6 Once use of the Framework has been concluded the Head of Service shall ensure that details of the subsequent contract are published in accordance with the requirements of the Transparency Code and the Council's Contracts Register detailed in section 18. A contract award notice must also be published on the Central Government Portal if over the value of £50,000.

6. **EXEMPTIONS**

- 6.1 There is provision within the Procurement Code for the requirements of obtaining quotes or tenders to be waived, however the following conditions apply:
- **NO exemptions can be made if the Above Threshold procedure applies (other than in cases of force majeure); and**
 - **NO exemptions can be made retrospectively.**

- 6.2 An exemption can only be applied when it is to the clear benefit of the Council to exercise an exemption. In considering whether an exemption is appropriate, an assessment needs to be made of the costs, benefits, outcomes and risks that follow should an exemption be agreed. An exemption shall only be agreed where the risks are proportionate to the benefits. The justification for an exemption must be evidenced in writing.
- 6.3 Although it is not an exhaustive list, it is likely that the grounds for the exemption will be one of the following:
- A contract is required as a matter of genuine urgency (e.g. flood alleviation/damage) or in force majeure situations where it is not possible to complete a full tender process.
 - Unforeseen circumstances that any diligent Council could not have foreseen (e.g. national pandemic).
 - There are sound reasons why there would not be genuine competition or no reasonable alternative is available, for example IT software maintenance.
 - The specification for goods and services is of a particularly specialised nature which only a very limited number of suppliers can meet. Tenders/quotes will be invited from all suitable suppliers.
 - The contract period cannot be accurately determined as the service area is undergoing a review or restructure which may change future requirements. In these instances, an exemption may be granted for a limited period in order to ensure the correct delivery model can be agreed prior to tender or quote.
 - An additional piece of work is required that the Council could not have reasonably envisaged and can therefore only be completed by a specific supplier. For example, upgrades to existing IT systems where it is not financially feasible to use an alternative supplier or replace the whole system. NB – this may result in a contract variation being required rather than an exemption. In all instances where the original contract value is likely to be exceeded, you should seek advice from the Head of Legal and Democratic Services.
- 6.4 All exemptions and the reasons for them must be recorded using the [Procurement Exemption Form](#) on the intranet. The Head of Service seeking the exemption must provide clear and sufficient evidence why the contract matches one or more of the criteria set out above. NOTE: this evidence may need to be provided to the Cabinet Office or the Public Procurement Review Service (PPRS) to explain why a procurement process was not undertaken. If there is uncertainty whether the exemption is likely to be granted, advice should be sought from the Procurement Team.
- 6.5 All exemptions for a contract value of £99,999.99 or less must be approved by the relevant Head of Service, the Monitoring Officer (Head of Legal and Democratic Services or nominated representative) and Chief Finance Officer (Director of Resources or nominated representative). The Procurement Team should be contacted for advice prior to the exemption being formally submitted. If the exemption relates to a request by the Chief Finance Officer or Monitoring Officer, then an alternative Director should approve the exemption. A copy of the approved electronic Exemption Form shall be emailed to the relevant Head of Service, and the Procurement Team for storage.
- 6.6 All exemptions for a contract value of £100,000 and above must be approved by the relevant Head of Service, the Monitoring Officer (Head of Legal and Democratic Services or nominated representative) and the Chief Finance Officer (Director of

Resources or nominated representative) in consultation with the relevant Cabinet Member. The Procurement Team should be contacted for advice prior to the exemption being formally submitted. A copy of the approved Exemption Form shall be emailed to the relevant Head of Service, the Procurement Team and to Democratic Services for recording in the electronic database of delegated decisions managed by the Director of Resources.

- 6.7 If the value of the exemption exceeds £250,000 (allowable on works contract only where the tender threshold is higher) then the request for exemption must be treated as a key decision and taken by Cabinet. It is the responsibility of the Head of Service to seek Cabinet approval.
- 6.8 If an exemption is agreed it will still be necessary to complete the contract administration procedures such as contract formation and checking of insurances and recording in the Contracts Register (section 18) in a timely manner.

7. PRE-PROCUREMENT

- 7.1 Heads of Service should contact the Procurement Team and Legal Services Team well in advance of undertaking any procurement, including concession contracts, over the value of £50,000 in order to discuss any particular requirements which may need to be incorporated into the project specification and contract.

8. STAKEHOLDER AND EARLY MARKET ENGAGEMENT

- 8.1 Early market engagement with organisations which may be interested in supplying goods or providing services to the Council is encouraged.
- 8.2 Preliminary market engagement with suppliers and other persons (such as trade associations or consultant advisors) can be used to assist in, for example, (i) developing requirements (e.g. the specification) and approaches to market, (ii) identifying any innovative techniques or new market developments and (iii) estimating the cost of requirements.
- 8.3 Any advice obtained through market engagement may be used to assist in the creation of the procurement documentation and inform how the procurement process is conducted but the lead officer must ensure the use of this information does not distort competition by favouring any supplier or discriminate against any suppliers or organisations. If information is provided to organisations taking part in the market engagement process, the lead officer must consider how it is subsequently made available to any organisations taking part in the formal procurement process. In some cases, there may be grounds to exclude a supplier from the procurement process but advice from the Procurement Team should be sought by officers before the decision to exclude a supplier from a procurement process is taken.
- 8.4 It is strongly recommended that officers consult with the Procurement Team when considering market engagement. If the exercise of market engagement is commenced then the Procurement Team should be fully consulted regarding all processes undertaken.
- 8.5 If the Council is carrying out a market engagement event for an Above Threshold tender, a market engagement notice must be published by the Procurement Team.

9. LOCALISM ACT 2011: COMMUNITY RIGHT TO CHALLENGE AND SOCIAL VALUE ACT 2012

- 9.1 The Act gives a right for organisations such as charities, voluntary bodies, parish councils and two or more council employees to submit an expression of interest in running a council service.
- 9.2 The Council has an obligation to consider all expressions of interest and if the application is successful the Council must commence a procurement exercise in accordance with the rules laid down in the Procurement Code and, where applicable, the Procurement Act 2023.
- 9.3 The Director of Resources is responsible for receiving, validating and accepting or rejecting expressions of interest in accordance with the Community Right to Challenge.
- 9.4 The Public Services (Social Value) Act 2012 requires the Council to have regard to economic, social and environmental well-being in connection with any services contract Above Threshold where the Council commissions an individual, voluntary sector organisation, or company to provide those services on behalf of the Council. It may also be applied voluntarily on below threshold procurements.
- 9.5 Prior to undertaking a procurement process the lead officer should consider:
- How the procured service might improve the economic, social and environmental well-being of the *relevant area* (i.e. within the boundaries of the public bodies involved in the procurement exercise);
 - How the economic, social and environmental elements should be incorporated into the relevant procurement documentation such as the specification, evaluation criteria and contract conditions. Only economic, social and environmental matters which are **relevant** to what is to be procured may be incorporated. Those that are included must be **proportionate** to the requirement being procured.

Commencing a new project

- 9.6 Determining the appropriate procurement route can be extremely complex, therefore, prior to the commencement of any procurement process over £50,000, it is recommended that the lead officer notifies the Procurement Team as well as notifying the Legal Services Team.
- 9.7 The lead officer should ensure that all necessary contractual, policy and legislative requirements have been considered, such as:
- Transfer of staff for services contracts as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended)
 - Safeguarding
 - Health and safety
 - Modern slavery
 - Sustainability
 - Equalities and diversity

- Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018
- Social value
- Technology requirements
- Company finances
- Insurance
- Employment and skills
- Contract considerations
- Prevent duty – in instances where the contract could allow potential for radicalisation

9.8 For Above Threshold procurements, there is a requirement to keep records on all material decisions that led to the award of a contract and this requirement begins at project start-up. The lead officer must begin recording from project start-up and onwards how the objectives of the Procurement Act 2023 and the National Procurement Policy Statement were taken into consideration, that the Conflict of Interest Assessments (as per 11.11.1 – 11.11.3) were carried out as required and how decisions were made on the composition of the specification and the award criteria.

PROCUREMENT PROCESSES

10. QUOTE PROCESS

- 10.1 Where the estimated value or amount of a proposed contract is £19,999.99 or less and provision has been made in the Council's annual budget for such expenditure, the Head of Service or delegated officer concerned shall have the authority to enter into any such contract provided they are satisfied that the Council is receiving value for money. **A purchase order must be raised for all purchases via the Council's financial management system.**
- 10.2 Any contract valued between £20,000 and £49,999.99 for goods and services or between £20,000 and £99,999.99 for works should follow the formal quote process. If there is any doubt whether the contract may exceed £49,999.99 (goods and services) or £99,999.99 (works) then a formal tender process must be followed.
- 10.3 A request for a quotation (RFQ) shall, **where appropriate**, contain the following information (liaise with the Procurement Team for an up-to-date list of requirements and access to all the standard documents):
- Background information and instructions to bidders – concise relevant information about the Council, and details of the quote procedure. This must include the evaluation criteria. It should also include a statement that the Council is not bound to accept any quote and that all submissions are at the supplier's own cost.
 - The Specification/ Requirements document – details the goods, services or works that are required.
 - Council Contract Terms and Conditions in a form approved by the Legal Services Team.
 - Price Schedule – a form/spreadsheet for the bidder to complete enabling them to easily submit a breakdown of the price.
 - Quality Questions– a series of questions in order to help evaluate the qualitative elements. The bidders may be asked to outline how the goods or services will be

delivered and/or their capability/skills/experience of doing this (if appropriate to the contract).

- 10.4 As a minimum, three suppliers, one of whom ideally should be a local¹ supplier, must be formally requested to provide a written quote, which must be submitted electronically. Suppliers can be chosen to submit a quote by the means deemed appropriate and suitable by the Head of Service including use of the SE Shared Services Portal where suppliers that have expressed an interest in working with the Council to register their interest. Where there are less than three suppliers that can be invited to bid for the goods or service then this must be evidenced by the Head of Service by using the procurement exemption process as detailed in section 6.
- 10.5 The quote process must be transparent and all suppliers invited to submit a quote must be issued with the same information at the same time and subject to the same conditions. Should any further information be issued this must be given to all suppliers on the same basis. A reasonable timescale for response must also be given.
- 10.6 A record of all correspondence between the Council and the suppliers shall be maintained by the lead officer. Details of any additional information provided to suppliers and any clarification questions from suppliers shall also be recorded. Responses to general clarification questions received shall be issued to all suppliers except where the question is of a commercially sensitive nature unique to a particular supplier. In such cases the response shall only be communicated to that particular supplier.
- 10.7 Quotes must be submitted electronically to a frequently monitored email address or via the Council's approved e-tendering package managed by the Procurement Team.
- 10.8 After evaluating the quotes the Head of Service must notify all the suppliers of the award decision in writing as soon as practicable, including an offer to provide feedback to unsuccessful suppliers if requested.
- 10.9 The Head of Service must ensure that details of the contract award and successful organisation are published in accordance with the requirements of the Transparency Code and the Council's Contracts Register (see section 18).
- 10.10 All documentation must be kept for a minimum of 12 months. The successful quote should be kept for the duration of the contract period. (See section 13 for more information on record keeping).

11. TENDER PROCESS

11.1 Scope

11.1.1 There are four main types of tender process:

- a) "Local Tender" – defined as any procurement process where the contract value is less than the Above Threshold financial threshold. See section 3.3 and the tables set out at section 4.12 and section 22 for further information;

¹ Local is defined as located within the boundaries of Horsham District Council

- b) “Above Threshold Tender” – defined as any procurement where the contract value is equal to or exceeds the relevant Above Threshold financial threshold. See section 3.3 and the tables set out at section 4.12 and section 22 for further information;
- c) “Light Touch Regime Tender” – a tender for certain categories of services, including health, social services, sports/leisure, and certain legal services, which are outside the full regime of the Procurement Act 2023. See section 11.2.
- d) “Concessions Contract” – normally an arrangement where the Service Users as opposed to the Council make payments to the contractor for use of the service. Concession contracts normally follow a “Local Tender” process irrespective of the value.

11.1.2 The duration of a Tender process will be dependent upon the complexity of what is being procured and the type of procurement process being undertaken. Generally, a local tender process will take six months and an Above Threshold tender twelve to eighteen months to complete but this will depend on the complexity of each individual procurement.

11.1.3 Local tenders for goods and services **must** be conducted as a single stage ‘open’ tender exercise. An ‘open’ tender exercise is where the Council advertises the opportunity and all interested parties may complete and return the full tender documentation.

11.2 Contracts for Services that are subject to a simplified procurement regime (Light Touch)

11.2.1 The law acknowledges that the procurement of specific categories of services should be subject to a simplified procurement regime. For example, if the Council needs to obtain external legal advice to help it resolve a contentious legal dispute, the Council’s officers should be able to choose their legal advisors on the basis of their expertise rather than be obligated to undertake a full procurement exercise. This simplified procurement process has been referred to as the “light touch” regime. The specific services that are subject to the simpler procurement regime are determined by procurement legislation, not the Council. These services include:

- Social and health services including wellbeing contracts;
- Cultural, recreational and leisure/sports services;
- Hotel and temporary B&B accommodation;
- Catering services;
- Legal services;
- Bailiff services;
- Security services including manned guarding and patrol services; and
- Post and courier services.

11.2.2 The value of the “light-touch” services being procured will determine the procurement process that needs to be followed. Guidance regarding the light touch regime and details of the current light touch financial threshold can be obtained from the Procurement Team. For all tenders above the financial threshold set for the “light touch” regime, the lead officer must ensure:

- The requirements are advertised on the Central Digital Platform; and

- The procurement is undertaken in accordance with the provisions in the Local Tender process. See 11.1.3.

If the value of the services being procured is less than the current light touch financial threshold, a local tender process can be followed.

11.3 Concessions Contracts

11.3.1 A procurement of a concession contract (see section 3.9) should be undertaken using the same thresholds as for a standard procurement process.

11.4 Advertising of Tender Opportunities

11.4.1 **NOTE: The full set of tender documents must be ready and published on the e-tendering Portal at the time the advertisement is placed for all local tender processes.** All local tender exercises must be advertised on the SE Shared Services Portal and the Central Digital Platform as a minimum, via the Procurement Team. Other media can also be used to ensure adequate market penetration. The advertisement must remain on these sites **for at least 25 days** (although 42 days is recommended) and contain details of the tender exercise including timescales, any minimum selection criteria the suppliers will be expected to meet, details of the award criteria and evaluation process and a link to the website where the tender documents are published.

11.4.2 In addition, all Above Threshold tenders must be advertised by the Procurement Team on the Central Digital Platform website and comply with the minimum timescales and information that must be provided. The contract notice must contain the estimated contract value including V.A.T.

11.5 Invitation to Tender Pack – Local and Above Threshold Tenders

11.5.1 Tenderers must be given an adequate period in which to prepare and submit a proper tender consistent with the urgency of the contract requirement. For local tenders this should not be less than a period of 25 days with day one starting the day after the advertisement is placed, however, in order to ensure market penetration and high quality accurate bids, best practice guidance recommends a minimum of six weeks. For Above Threshold tenders it should be the minimum period stipulated for the particular procurement route.

11.5.2 Invitations to tender must be proportionate to the value and level of risk associated with the requirements but shall include the following:

- Information for Tenderers – concise information about the Council, background to the project, details of the procurement process and the timetable for completion, full details of the evaluation criteria and weighting, including any sub-criteria, details of presentations/site visits/interviews that will be used to award the contract. It should also include a Form of Tender that includes confirmation of exemption from the Freedom of Information Act 2000, confirmation of non-collusive tendering, confirmation of no canvassing, and mandatory and discretionary exclusions.
- Conditions of participation – legal and financial capacity and the technical ability of the supplier– please note this is only allowed for Above Threshold tenders.
- Specification – detailing the Council's requirements in enough detail to enable the submission of competitive offers.
- Council Contract Terms and Conditions – all contracts to be in writing in a form approved by the Legal Services Team (see 12.4).

- Price Schedule – a clearly structured form/spreadsheet enabling the bidder to easily submit the full details of the tender prices plus applicable VAT.
- Quality Questions – a series of questions in order to evaluate the qualitative elements of the tender. The bidders should be asked questions which outline how the goods, works or service will be delivered.

11.5.3 The tender documentation must be finalised and available at the time the advert is placed.

11.6 Evaluation Criteria

11.6.1 The evaluation criteria are those used to determine the award of the contract in a tender process. These criteria fall into two categories: Conditions of Participation and Award Criteria.

11.7 Conditions of Participation (Above Threshold only)

11.7.1. Conditions of participation are conditions that a supplier must meet if it is to be awarded the contract. Such criteria relate to the legal and financial capacity and the technical ability to perform the contract.

11.7.2. Suppliers must be able to meet these conditions of participation to do business with the Council so they must be proportionate to the nature, complexity and cost of the contract.

11.7.3. Conditions of participation can include, but are not limited to, insurance, turnover, accreditation / qualifications etc. Advice should be sought from the Procurement Team.

11.7.4. All conditions of participation should be applied to all associated suppliers and subcontractors.

11.7.5. The Council cannot require suppliers to submit audited accounts, have the specified level of insurance at tender stage or have particular qualifications without allowing for their equivalents.

11.7.6. Note that conditions of participation are not allowed for any contracts (goods, services or works) below the relevant Above Threshold value.

11.8 Award Criteria

11.8.1 Award criteria are used to assess the ability of suppliers to meet the Council's specification requirements and the cost of providing the service. This is often referred to as the Most Advantageous Tender (MAT) evaluation and is the split between quality and price. The Tenderer should be requested to answer quality questions to evidence that they meet the qualitative elements of the Award criteria; in addition, they should be requested to submit a Price Schedule in order to evaluate the price elements of the Award criteria. The criteria must be linked to the requirement and should be sufficiently clear, measurable and specific information should not be requested that will not be evaluated unless there are reasons for doing so, and it is explicitly mentioned in the documents that it will not be evaluated. The award criteria must be proportionate to the Council's requirements, taking the nature, complexity and cost of the contract into consideration.

11.8.2 Award criteria are split into Price and Quality criteria and given a percentage score. The criteria must be no less than 60% on price or no greater than 90% on price unless agreed in writing by the Director of Resources or their nominated deputy. An email

is an acceptable method of gaining written approval.

- 11.8.3 Award evaluation criteria may include the following:
- quality assessment of the goods, services or works to be supplied under the contract and how or when they will be supplied;
 - the qualifications, experience, ability, management or organisation of staff where those factors are likely to make a material difference to the quality of goods, services or works being supplied; and
 - the price, other costs or value for money in all circumstances.
- 11.8.4 Evaluation criteria used to determine the award of the contract MUST be clearly detailed in the tender advert / or in the tender documents which must be available at the time of placing the advert. This information must include details of the relevant weighting of each question or section and detail any sub-criteria used. It must also state the method that will be used to assess suppliers' responses. Furthermore, if there are any minimum pass-mark requirements for specific sections these must also be detailed in the documents.
- 11.8.5 The evaluation of the price element must be undertaken on the whole life cost cycle criteria. These may include, but are not limited to:
- Costs relating to acquisition (equipment purchase price, installation, training, consultancy etc);
 - Cost of use (e.g. consumption of energy);
 - Maintenance costs; and
 - End of life costs such as collection and recycling.
- 11.8.6 All relevant costs should be considered and a Price Schedule developed for inclusion in the tender pack so that all suppliers can accurately submit their price on an equal basis.

11.9 Tender Receipt and Opening

Electronic Receipt (e-tendering)

- 11.9.1 All tenders must be submitted using the Council's approved e-tendering solution; all information must be submitted via the e-tendering solution by the date and time stipulated in the *Invitation to Tender*.
- 11.9.2 All tenders will be stored electronically by the e-tendering system in a secure inbox until the closing date and time has passed. Access to the system will be password protected at individual user level. Only once the deadline for receipt has passed will the e-tendering system allow the user to login and electronically open the tenders. All tenders should be opened by at least two officers simultaneously with one member being from the Procurement Team. Once the tenders have been opened, the Tender Documentation can be downloaded and stored in a secure folder.
- 11.9.3 Use of any other electronic tendering or bid submission portal/system (e.g. G-Cloud) to receive tenders or quotes via Frameworks shall be subject to the prior approval of the Procurement Team.
- 11.9.4 E-auctions - If the Head of Service wishes to use an e-auction to fulfil the requirement, use of such system shall be subject to the prior approval of the Procurement Team.

11.9.5 By using e-auctions it is customary in the case of late bids being received that the time (but not the date) for the receipt of tenders is extended to give rival bidders an opportunity to respond. Provided that such arrangements are set out in the tender details this procedure shall not be a breach of the Procurement Code.

11.9.6 The e-tendering portal can be used for quote processes. In this instance quotes can be formally opened electronically by the lead officer or the Procurement Team on behalf of the lead officer. The lead officer should ensure that the In-tend system is set so that opening of quotes is locked until the closing date and time has passed.

11.10 General Conduct and Tender Evaluation Process

11.10.1 The Head of Service shall ensure that every tender process undertaken is transparent and that all participants are treated fairly and equally at all times throughout the process. In particular, this will include ensuring that:

- Competition is not distorted in circumstances when some participants in a procurement exercise may have previously assisted the Council in preparation of the procurement documentation (e.g. via a market engagement exercise). As a minimum, any additional background information which the Council provided to participants during a market engagement exercise should be made available to all participants of the procurement exercise;
- A record is maintained of all the correspondence between the Council and the participants including details of any additional information provided to participants and any clarification questions from participants which should be submitted in writing through the Portal or by email;
- A reply is issued to all participants answering those clarification questions of a generic nature. Clarification questions specific to a particular participant or containing information of a commercially sensitive nature should only be communicated to that particular participant; and
- If the procurement process needs to be extended, this is communicated to all participants in a timely manner.

11.10.2 When undertaking the evaluation the Head of Service must ensure that:

- Confidentiality of tenders, and the identify of tenderers, is preserved at all times;
- Information about one tenderers response is not to be given to another tenderer;
- Tenders are evaluated and awarded in accordance with the evaluation criteria outlined in the tender documentation;
- A thorough tender evaluation is undertaken by a minimum of two officers;
- Advice is sought from the relevant service on any areas of Award criteria that require specialist knowledge in order to evaluate effectively e.g. Financial Information, Equalities and Diversity, Health and Safety, Sustainability etc. This should be scheduled with the relevant officer well in advance;
- There is a formal record of how the evaluation process was conducted and the contract award recommendation has been reached. In particular details must

be kept of the discussions and outcomes of any moderation meetings where officers evaluating the tender submissions have discussed and amended or averaged tenderers scores;

- The tender evaluation process and scoring spreadsheet is independently checked before a contract award recommendation is made;
- No negotiation or entering into dialogue with the tenderer is undertaken that could be construed as renegotiating terms.
- A 'Conflict of Interest Assessment' is carried out at the beginning of the procurement process and is kept under review and revised / updated as appropriate (see section 11.11); and
- Where a conflict of interest is identified, steps are taken to mitigate against it and that the appropriate Head of Service and the Procurement Team are notified.

11.10.3 The arithmetic content in tenders must be checked. If arithmetical errors are found in the tender they should be notified to the tenderer, who should be requested to confirm or withdraw their tender, in writing.

11.10.4 Where appropriate, the Head of Service shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily, in particular:

- to be alert to the risk of collusion between tenderers and aware of indications of potentially anti-competitive behaviour and report any suspicious bidding activities to the Procurement Team; and
- to be alert to the possibility of receiving an Abnormally Low Bid from one or more tenderers. If an Abnormally Low Bid is suspected the procedure outlined in section 11.13 below shall be followed.

11.11 Conflicts of Interest

11.11.1 At the start of each procurement process, a Conflict of Interest Assessment must be undertaken. This must cover anyone who:

- acts for or on behalf of the Council;
- has the ability to influence a decision to award a contract under a procurement; and
- has a personal, professional or financial connection (either directly or indirectly) with a supplier participating in the procurement.

11.11.2 Each Conflict of Interest Assessment must be kept under review throughout the procurement process and shall be updated / revised at each stage of the process.

11.11.3 The lead officer will be expected to mitigate any potential or perceived conflicts of interest – this could be through one or more of the following: separation of duties; through the design of the procurement; sharing of information; excluding suppliers or excluding evaluators. The Procurement Team and the Head of Legal and Democratic Services should be consulted regarding the steps taken to mitigate any conflict.

11.12 Clarifications and Post-Tender Negotiation

- 11.12.1 Providing clarification on an Invitation to Tender in writing or by way of a meeting is permitted but must be done in consultation with the Legal Services Team and/or the Procurement Team to ensure compliance with the Procurement Act 2023. When clarifying information, the lead officer must ensure that all potential tenderers, not just the one requesting the information, also receive notification of the clarification unless it is deemed commercially sensitive to that tenderer. All clarifications should be communicated via the Council's e-tendering portal.
- 11.12.2 Post-Tender Negotiation means negotiations with any tenderer after submission of a tender and before the award of the contract with a view to obtaining adjustments in price, contract terms and specification. Public procurement rules only allow very limited negotiation on certain types of procurement route. It is not allowable on most Above Threshold or Local Tender procedures.
- 11.12.3 Post-Tender Negotiation must only be conducted if approved by the Director of Resources and Head of Legal and Democratic Services who must be formally consulted on:
- why negotiation is required;
 - the terms of the negotiation, and
 - about who the negotiation is to be with.
- 11.12.4 If Post-Tender Negotiations have been agreed with the Director of Resources and the Head of Legal and Democratic Services then such negotiations shall only be undertaken with the Tenderer who has previously been identified as submitting the most advantageous tender. The Head of Service shall ensure that there are recorded minutes of all Post-Tender Negotiation meetings and that both parties agree actions in writing.
- 11.12.5 Where Post-Tender Negotiations result in a fundamental change to the specification, price or contract terms the contract cannot be awarded and a new procurement process must be undertaken.

11.13 Abnormally Low Bids

- 11.13.1 A bid may be regarded as being 'abnormally low' if there is a significant difference in price between the bid and other bids received. In the event that the Head of Service believes that one or more of the bids received from Tenderers may be an *Abnormally Low Bid* they should consult with the Procurement Team and Head of Legal and Democratic Services, at the earliest opportunity, to review the bid(s) submitted and for support throughout the clarification process.
- 11.13.2 The Council may reject any tender that offers a price that the Council considers to be abnormally low for the performance of the contract. However, the process set out below must be followed:
- The tenderer must be notified in writing that the Council considers the price to be abnormally low; and
 - The tenderer must be given a reasonable opportunity to demonstrate that they would be able to perform the contract for the price tendered. Any further information or evidence provided by the tenderer must be submitted to the Council in writing.

- 11.13.3 Tenderers shall not be allowed to modify Abnormally Low Bids.
- 11.13.4 In determining whether the bid(s) is an Abnormally Low Bid, the Head of Service, Procurement Team and Head of Legal and Democratic Services should take into account the information/evidence provided by the tenderer in response to the Council's written request and verify the bid, or parts of the bid, being considered abnormally low with the tenderer.
- 11.13.5 If after reviewing the information/evidence provided by the tenderer as part of the process set out in 11.13.2, the Council believes (acting reasonably) that the tenderer has not explained, to the Council's satisfaction, the low level of price submitted by the tenderer then the Head of Service in consultation with the Head of Legal and Democratic Service may reject the bid(s) as an Abnormally Low Bid and in such case shall **immediately** notify the tenderer that the bid is being rejected. Abnormally Low Bids must be rejected before Contract Award.

12. CONTRACT AWARD PROCEDURE

12.1 Acceptance of Tenders – Approval Route

- 12.1.1 Following completion of a comprehensive evaluation process of all tenders submitted, the contract approval process is delegated to:

For tenders with a value of less than £100,000: The relevant Head of Service or Chief Officers.

For tenders over (and including) the value of £100,000 and below £250,000: The relevant Cabinet Member approval must be sought via a Delegated Authority Report produced by the Head of Service. Once approved the decision must be published by Democratic Services on the website for five clear days before the formal contract award can take place. Officers should therefore ensure that the winning supplier is not named on the front page.

For all tenders with a value of and above £250,000: Review by Policy Development Advisory Group (PDAG) prior to issue of tender documentation (unless otherwise agreed by the Head of Legal and Democratic Service or Director of Resources) and Cabinet approval following evaluation, unless specific delegated approval has already been agreed by Cabinet. The Head of Service must ensure that the intention to award a contract appears on the Forward Plan for 28 days before the contract award approval can be made. The Head of Service is responsible for preparing the necessary Cabinet reports.

- 12.1.2 In all instances the decision for contract award must be made on the basis that:
- This Procurement Code has been fully complied with;
 - The most advantageous tender is accepted based on the evaluation criteria advertised and contained in the tender documentation;
 - The evaluation process has been carried out satisfactorily;
 - The tender and all other costs associated with the procurement to which the tender relates are within the approved budget; and
 - Any necessary written approval has been obtained either by a Head of Service, Cabinet Member or Cabinet, as the case may be.

12.2 Notification to Tenderers – Above Threshold

12.2.1 Following approval of a contract award recommendation in respect of any tender Above Threshold, the lead officer, in consultation with the Head of Service, must notify all tenderers of the outcome via the e-tendering portal and commence a mandatory eight working day standstill period.

12.2.2 In notifying the tenderers of the outcome, the lead officer must provide the following:

To all tenderers:

- an assessment summary for each tenderer containing the following information:
 - the assessment methodology set out in full / details of where this is included in the associated tender documents;
 - the scores and the reason for those scores against award criteria; and
 - the reasons why they were not given the score immediately above for every award criteria.

If the tenderer is unsuccessful:

- whether they passed or failed the conditions of participation, and why;
- whether they failed any other questions; and
- the same information regarding the successful bidder's tender (including their assessment summary).

12.2.3 All notifications to tenderers sent in accordance with 12.2.2 above should be sent through the Council's e-tendering Portal by the Procurement Team or the lead officer.

12.2.4 Once the assessment summaries have been issued to all bidders, the lead officer will need to provide information to the Procurement Team to issue a Contract Award Notice which will officially commence the standstill period. The Contract Award Notice sets out the details of the supplier(s) that the Council intends to award the contract to. It sets out information relating to the standstill period including start and end dates.

12.2.5 The standstill period must run for a minimum of eight working days, commencing the day immediately after the notification is sent to the tenderer and concluding at midnight on the eighth working day. If the expiry date of the standstill period falls on a public holiday then the expiry date shall be midnight on the next working day. The standstill period does not apply to awards under a Framework or the award of a Light Touch Contract.

12.2.6 Should a tenderer request further information or a debrief during the standstill period the Head of Service should immediately consult with the Procurement Team and Head of Legal and Democratic Services for advice. The Council may extend the standstill period for a further period until the tenderer has received and considered the information.

12.2.7 If the Council receives notification from a tenderer that it intends to challenge a Contract Award Decision then the Head of Legal and Democratic Services must be notified immediately and the Council must automatically refrain from entering into the contract. Failure to comply could result in the courts cancelling the contract.

12.2.8 Upon satisfactory conclusion of the standstill period, a Contract Details Notice needs to be published on the Central Digital Platform by the Procurement Team.

12.2.9 Once the Contract Details Notice has been placed, the lead officer may advise the successful tenderer or tenderers that the standstill period has passed and instruct the Head of Legal and Democratic Services to draw up a formal contract with the successful tenderer.

12.2.10 The Head of Service must ensure that details of the contract award and successful organisation are also published in accordance with the requirements of the Transparency Code and the Council's Contracts Register (see section 18). An e-form to notify the Procurement Team is available on the intranet.

12.3 Notification to Tenderers – Local Tenders

12.3.1 Local Tenders, i.e. those below the threshold, are not covered by the full requirements of the Procurement Act 2023. However, it is considered best practice to follow the same general principles of notifying unsuccessful tenderers as detailed in section 12.2 and, if requested by the tenderer, providing feedback on the outcome of the procurement exercise.

12.3.2 Notification letters to unsuccessful bidders should include a brief assessment summary and the reasons for the unsuccessful bidders failing any element of the requirements. No other information should be given without taking the formal advice of the Head of Legal and Democratic Services.

12.3.3 Once the informal standstill period has concluded the lead officer must notify the Procurement team so that a Contract Award Notice can be placed on the Central Digital Platform within 30 days of the Contract Award. A Contract Award Notice is also required for any contract concluded via the use of a 'direct award' or 'mini competition' under a Framework.

12.3.4 The Head of Service must ensure that details of the contract award and successful organisation are published in accordance with the requirements of the Transparency Code and the Council's Contracts Register (see section 18).

12.4 Contract Drafting and Finalisation - Formalities

12.4.1 The Head of Service shall instruct the Legal Services Team to produce the draft (pre-procurement) and final contract. It should be noted that the draft contract needs to be issued with all of the tender documents and therefore adequate advance notice (along with the provision of all required supporting documentation) must be given to ensure the tender documents can be issued in accordance with the procurement timetable.

12.4.2 All Council contracts must include:

- 30-day payment terms between the Council and the supplier and an obligation upon the supplier to have the same terms in contracts they enter with approved sub-contractors;
- appropriate anti-bribery and anti-corruption clauses; and
- for Contracts with a total value above £5m, at least 3 Key Performance Indicators (KPIs). The contract manager will need to ensure that these are regularly measured and monitored and ensure that a Contract Performance Notice is placed on the Government Portal annually, reporting the supplier's performance against the KPIs.

- 12.4.3 All contracts must be concluded before the supply, service or construction work begins, except in exceptional circumstances, and then only with the prior written consent of the Head of Legal and Democratic Services and the Director of Resources. A contract award letter is insufficient.
- 12.4.4 Every contract exceeding £50,000 in value not required or intended to be made under seal, shall be signed on behalf of the Council by two officers of the Council being the Monitoring Officer or their appointed deputy and one of the following: the Chief Executive, any Director or other officers authorised by the Chief Executive or under the Scheme of Delegation to Officers.
- 12.4.5 Every contract which is a lease finance or lease purchase agreement shall be signed by either the Monitoring Officer or the Chief Finance Officer or their designated deputy.
- 12.4.6 Contracts may only be executed electronically with the prior approval of the Head of Legal and Democratic Services.

13. RECORD KEEPING

- 13.1 Heads of Service shall ensure that sufficient documentation is retained to justify decisions taken at all stages of the procurement process. There must be an audit trail to explain the material decision of awarding or entering into a public contract. As such the following documents must be retained in a secure and easily retrievable format:
- Details of all notices which have been placed throughout the procurement process, to include mandatory and voluntary notices;
 - Any and all decision making including a relevant Decision Form;
 - All information including internal communications, project meeting notes, regarding the preparation of the procurement documentation and undertaking of the process;
 - A written record of any exemptions obtained under the Procurement Code and the reasons for them;
 - Invitations to quote/tender and quotes/tenders received;
 - Any contracting decision and the reasons for it;
 - The Award Criteria;
 - All evaluation information/reports;
 - Clarification and post-tender negotiation (to include detailed minutes of meetings);
 - The contract documents;
 - The post-contract evaluation and monitoring documentation;
 - Written records of all communications with all Tenderers and with the successful Tenderer throughout the period of the contract; and
 - Completed Conflict of Interest Assessment summary.
- 13.2. These records are to be kept until a notice is published that there will be no award or three years post contract award unless otherwise agreed by the Head of Legal and Democratic Services.
- 13.3 Documentation relating to a successful quote must be retained for the duration of the contract period, or in the case of the supply of goods or provision of works a minimum of three years after supply/completion of the requirement. Documentation relating to

unsuccessful quotes must be retained for a minimum of 12 months from the award of the contract, providing there is no dispute about the award.

- 13.4 Documentation relating to a successful tender must be kept for a minimum of three years after the final settlement/end of the contract. However, documents which relate to unsuccessful Tenderers may be disposed of after 12 months from the award of the contract, provided there is no dispute about the award.

Publication of Contracts

- 13.5 The Council must publish a copy of all contracts with a contract value of more than £5m, unless the information is deemed to be commercially sensitive and there is an overriding public interest in it being withheld from publication or other disclosure. The Head of Legal and Democratic Services and the Procurement Team must be contacted for advice.

14. CONTRACT MANAGEMENT

- 14.1 No contract shall commence unless and until the procurement exercise and contract documents have been completed in accordance with the Council's Procurement Code and Financial Procedure Rules.

- 14.2 Heads of Service shall ensure that all contracts have an appropriate level of resource and skills assigned to the contract management based on an assessment of the contract value, service complexity, and level of risk or importance to the Council in accordance with the Council's Contract Management Guidance.

- 14.3 During the life of the contract the Head of Service shall:

- Assign a Contract Manager with the skills, expertise and resource to effectively manage the contract;
- Ensure that the performance of the contract is appropriately monitored to ensure compliance with the specification and contract conditions;
- Ensure that where any Statutory Duty (e.g. Safeguarding Duty, Data Protection) is transferred to the Contractor that the Contractor complies with the Duty;
- Discuss any proposed contract variations or extensions with Head of Legal and Democratic Services before they are carried out. See section 15 on contract variations;
- Ensure that a record is kept of all certificates and instructions issued under the contract;
- Agree any price fluctuation or indexation provisions, subject to appropriate supporting documentary evidence being provided by the Contractor;
- Immediately notify the Head of Legal and Democratic Services of any breach of contract;
- Undertake an annual supplier check to ensure checks are undertaken on mandatory requirements of the contract, for example, insurance levels, financial stability etc; and
- Ensure that all Key Performance Indicators (KPIs) set out in the contract are regularly monitored and ensure that a Contract Performance Notice is placed on the Government Portal annually, reporting the supplier's performance against the KPIs.

- 14.4. Further information on the importance and benefits of Contract Management can be found within the Contract Management Guidance on the intranet.

15. CONTRACT VARIATION AND MODIFICATION

- 15.1 Following consultation and agreement by the Head of Legal and Democratic Services and the Director of Resources contracts may be modified without the need for a new procurement exercise if the modification:

- is a “permitted modification” listed in the Procurement Act 2023;
- is not a substantial modification; or
- is a below-threshold modification.

15.1.1 Permitted Modifications

- a) The modification is provided for in the contract. Where the modification is unambiguously provided for in:
- i) the contract as awarded; and
 - ii) the tender or Transparency Notice for that contract; and
 - iii) the modification would not change the overall nature of that contract.
- b) Unforeseen circumstances. The circumstances giving rise to the modification could not have reasonably been foreseen by the Council before the contract award; and
- i) the modification would not change the overall nature of the Contract; and
 - ii) the modification would not increase the estimated value of the Contract by more than 50%.
- c) Materialisation of a known risk. Where the Council considers that a known risk has materialised (which is not due to the act or omission of the Council or the supplier) and, as a result, the contract cannot be performed satisfactorily and
- i) the modification goes no further than to remedy that fact and awarding a new contract through a competition would not be in the public interest; and
 - ii) the estimated contract value would not increase by more than 50%.
- In order to qualify as a ‘known risk’, such a risk must have been identified in the tender or Transparency Notice.
- d) Additional goods, services or works. Where the modification is for additional goods, services or works, but using a different supplier would result in
- i) a supply that is different from or incompatible with those under the existing contract, and
 - ii) the Council considers that the difference or incompatibility would result in disproportionate technical difficulties and a substantial duplication of costs, and
 - iii) the estimated value of the contract would not increase by more than 50%.
- e) Urgency and the protection of life. Where the modification could be achieved by the direct award of a contract by reference to:
- i) The provision for extreme and unavoidable urgency set out in the Procurement Act 2023, or
 - ii) Regulations made by a Government Minister to protect life in accordance with the Procurement Act 2023.

- f) A novation or assignment of a public contract to a supplier that is not an Excluded Supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance.

15.1.2 Substantial Modifications

The modification is a substantial modification where:

- a) the maximum term of the contract provided for at contract award would change (increase or decrease) by more than 10%;
- b) it materially changes the scope of the contract; or
- c) it materially changes the economic balance of the contract in favour of the supplier.

15.1.3 Below-threshold Modifications

The modification is a below-threshold modification where:

- a) it does not itself increase or decrease the estimated contract value by more than:
 - i) 10% for goods and services contracts; and
 - ii) 15% for works contracts.
- b) The aggregated value of the below-threshold modifications would be less than the threshold amount for this type of contract; and
- c) The modification would not materially change the scope of the contract.

If a permissible Direct Award is made then refer to the Head of Legal and Democratic Services and the Procurement Team for advice.

- 15.2 A new procurement exercise shall be required for any contract modification which:
- Materially alters the contract from the one initially awarded;
 - Introduces conditions that if they had been part of the original procurement would have allowed other suppliers to participate;
 - Changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract;
 - Extends the scope of the contract considerably;
 - Introduces a new contractor to replace the initial contractor for any reason other than those listed in 15.1.1(d) above;
 - Proposes a contract modification other than those provisions outlined in 15.1 above.

- 15.3 Once negotiations with the contractor(s) regarding the contract variation have concluded, the Head of Service must provide the Head of Legal and Democratic Services with all the appropriate documentation and instructions to issue a Contract Change Notice to be published on the Central Digital Platform in accordance with the provisions in the contract.

- 15.4 The Head of Service must forward the details of any significant contract modifications to the Director of Resources for recording on the Contracts Register in accordance with section 18.

- 15.5 For procurements with a contract value above £5m, a modified copy of the contract or the modification itself must be published on the Central Digital Platform.

16. **CONTRACT EXTENSION**

- 16.1 Any contract that expressly provides for an extension may be extended in accordance with its terms provided that the Head of Service and Head of Legal and Democratic Services are satisfied that Best Value will be achieved and the extension is reasonable in all the relevant circumstances.
- 16.2 Where the contract terms do not expressly provide for extension legal advice should be sought from the Head of Legal and Democratic Services at the earliest opportunity.
- 16.3 Approval for a contract extension is delegated as per the Contract Award procedure set out in section 12.
- 16.4 If an extension is permissible, the supplier must be notified in writing of the contract extension and the lead officer shall instruct the Head of Legal and Democratic Services to draft and issue the appropriate formal contract extension documentation.
- 16.5 A contract change notice must be published on the Central Digital Platform before any above-threshold contract is extended (including those contracts that have built-in extension options).
- 16.6 The exception to paragraph 16.5 is when the contract extension is a modification that:
- i) increases or decreases the estimated value of the contract by 10% or less for goods/services and 15% or less for works; or
 - ii) increases or decreases the term of the contract by 10% or less of the maximum term provided for on award.
- 16.7 Once concluded, the Head of Service must forward the details of the contract extension to the Director of Resources for recording on the Contracts Register in accordance with section 18.

17. CONTRACT TERMINATION

- 17.1 Contracts may be terminated by the relevant Head of Service early by agreement prior to the expiry date or in accordance with the Termination Provisions set out in the contract. **Advice must be sought from the Head of Legal and Democratic Services before terminating any contract.**
- 17.2 If an Above Threshold contract is terminated, a Contract Termination Notice must be placed on the Central Digital Platform by the Procurement Team.
- 17.3 If a contract above £5m is terminated due to failure to perform reported KPIs, a notice must be issued on the Central Digital Platform.

18. TRANSPARENCY CODE AND CONTRACTS REGISTER

- 18.1 Immediately upon the completion of every contract of £5,000 in value or more:
- 18.1.1 The relevant Head of Service shall complete and submit the Contracts Register e-form with the required details of the contract for publication in the Council's Transparency Code and inclusion in the Council's Contracts Register.
 - 18.1.2 The Director of Resources shall have responsibility through the Procurement Team for maintaining the procurement information in the Transparency Code publication and the Contracts Register.

18.1.3 Upon receipt from the successful tenderer(s) the Head of Legal and Democratic Services shall send an electronic copy of any contract which has been completed to the relevant Head(s) of Service and the Director of Resources for inclusion in the Contracts Register through the Procurement Team.

18.2 The Contracts Register shall be available on the Council's website.

19. PREVENTION OF CORRUPTION AND BRIBERY

19.1 The Head of Service must ensure that officers comply with the Code of Conduct for Council Employees and must not invite or accept any gift or reward in respect of the award or performance of any contract.

19.2 High standards of conduct and integrity are obligatory. Corrupt behaviour shall lead to dismissal and is a criminal offence under the Bribery Act 2010.

19.3 Council employees shall not use any contract or other procurement arrangement entered into by the Council for their own personal use, benefit or gain other than with the prior written approval of the Director of Resources.

19.4 The following clause must be included, in every Council contract:

“The Council may terminate this contract and recover all its losses if the Contractor, its employees or anyone acting on the Contractor’s behalf does any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- (b) commit an offence under the Bribery Act 2010 or Section 117(3) of the Local Government Act 1972; or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.”

Any clause limiting the Contractor’s liability shall not apply to this clause.”

20. DECLARATION OF INTERESTS

20.1 In accordance with the Members’ Code of Conduct and Code of Conduct of Council Employees if it comes to the knowledge of a Member or an employee of the Council that a contract in which he or she has a financial or personal interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Director of Resources. The Director of Resources shall report such declarations to the appropriate Committee.

20.2 Such written notice is required, irrespective of whether the monetary interest is direct or indirect. An indirect financial interest is distinct from a direct financial interest in as much as it is not a contract to which the Member or employee is directly a party.

20.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a financial interest for the purposes of the Procurement Code.

20.4 The Director of Resources shall maintain a record of all declarations of interests notified by Members and Officers.

20.5 The Director of Resources shall ensure that the attention of all Members is drawn to the appropriate provisions within the Members' Code of Conduct.

21. REVIEW AND AMENDMENTS OF THE HORSHAM PROCUREMENT CODE

21.1 The Procurement Code shall be reviewed and updated on an annual basis or more frequently if legislation or case law require amendments.

22. PROCUREMENT THRESHOLDS AND CONTRACT AWARD PROCEDURES - WORKS CONTRACTS

Total Contract Value	Procurement Route	Submission of Quotes/Tenders	Contract Approval/Award	Method of Contract Completion	Transparency Code Obligations
Under £19,999.99 exc VAT	Evidence of value for money	Relevant Budget Holder	Relevant Budget Holder	Signature and / or purchase order raised	Publish details of all contracts over £5,000 in Council's Contracts Register via e-form
£20,000 - £99,999.99 exc VAT	Three written quotes	Quotes returned electronically to department and opened and reviewed by at least two officers or submitted via the Council's e-tendering platform and electronically opened once closing date and time has passed.	Head of Service approval	Signature	Publish details of all contracts in Council's Contracts Register
£100,000 - £999,999.99 exc VAT	Open Invitation to tender by advertisement on the Central Digital Platform via the SE Shared Services Portal Or Closed Invitation to tender to a minimum of five suppliers using the Council's e-tendering portal. This route is subject to approval from the Director of Resources	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	Over £100,000 but below £250,000 relevant Cabinet Member approval via Delegated Authority Report* OR £250,000 and over** PDAG prior to issue of tenders and Cabinet Approval following evaluation***	Sealing	Publish details of contract awards on Central Digital Platform and SE Shared Services Portal. Publish details of all in Council's Contracts Register via e-form
£1m exc VAT – £5,372,609.99 inc VAT	Invitation to tender by advertisement on the Central Digital Platform via the SE Shared Services Portal Additional media can be used.	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	PDAG prior to issue of tenders and Cabinet Approval following evaluation***	Sealing	Publish details of contract awards on Central Digital Platform and SE Shared Services Portal. Publish details of all in Council's Contracts Register via e-form
Above Threshold £5,372,610 and above inc VAT ****	Invitation to Tender by advertisement on the Central Digital Platform via the SE Shared Services Portal. Additional media can be used.	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	PDAG prior to issue of tenders and Cabinet Approval following evaluation***	Sealing	Publish details of provisional contract award and contract award on Central Digital Platform and on SE Shared Services Portal.

Total Contract Value	Procurement Route	Submission of Quotes/Tenders	Contract Approval/Award	Method of Contract Completion	Transparency Code Obligations
					Publish details of all contracts in the Council's Contracts Register via e-form

* The Delegated Authority report should be completed using the Cabinet Member Decision template. Once signed, the Cabinet Member Decision must be sent to Committee Services for publication. You must wait until the sixth working day after publication before you formally award the contract. Please note that the Cabinet Member Decision and accompanying report are published on the Council's website and therefore you need to ensure that any confidential information is contained in an exempt appendix where appropriate.

** All contracts with a value of £250,000 and over must be included on the Forward Plan for 28 days before any contract award can be made. The relevant Policy Development Advisory Group (PDAG) must be consulted prior to the issue of tenders. You do not need to go to PDAG following completion of the tender process.

*** You may wish to seek Cabinet approval prior to commencing the procurement process. This approach assists in speeding up the contract award procedure and can be useful to get buy-in up front. If this approach is taken you will need to seek Cabinet approval to delegate the award of the contract to either the relevant Cabinet Member or Director. This is particularly useful on collaborative procurement projects.

**** The contract value must be calculated inclusive of VAT for Above Threshold procurements. Please ensure that you take this into account when calculating the contract value. The Above Threshold figure is determined by procurement legislation not by the Council and will be updated periodically. Please refer to section 3 and the Procurement Team for further advice regarding the procurement thresholds and calculating the contract value, if necessary.