

Chapter 4 Part 7 – Contract Procedure Rules

Section 1 – Introduction and Overarching Principles

1. Interpretation

- 1.1. The Council's Contract Procedures Rules (the rules) are designed to ensure that proper transparency, equality, scrutiny and accountability is maintained when the Council procures all goods, services and works. These rules are designed to ensure compliance with the Council's Constitution, Council policies and English law.
- 1.2. The Assistant Director (Legal and Governance Services) shall be responsible for monitoring compliance with these rules.
- 1.3. The interpretation of these Contract Procedure Rules is solely a matter for the Council's Assistant Director for Legal and Governance and are not open to interpretation by any other Officer of the Council.
- 1.4. Officers who do not comply with these rules may be subject to disciplinary action and prima facie it will be viewed as gross misconduct.

2. Introduction

- 2.1. These Contract Procedure Rules are made under Section 135 of the Local Government Act 1972. They include provision for competition and regulate the way procurement and tendering takes place within the Council.
- 2.2. These rules have four primary objectives:
 1. To ensure that the Council obtains Value for Money and deploys resources to achieve its corporate objectives
 2. To ensure that the Council complies with laws relating to public procurement
 3. To safeguard Members and Officers of the Council from improper allegations of dishonesty or corruption
 4. To ensure that fairness and transparency remains at the forefront of all procurement activity undertaken by Officers and approved by Members on behalf of the Council.
- 2.3. These rules do not provide guidance on how to procure goods and/or services but set out minimum requirements that must be followed. Further guidance that supports these Rules must be obtained from the Category Management Team.

3. Scope and application

3.1. These rules apply to all procurement activity undertaken by or on behalf of the Council unless it is subject to an *Exemption* (as set out in Section 12) or otherwise approved in advance in writing by the AD for Legal and Governance.

3.2. These rules **do not** apply to:

- Employment contracts
- Contracts relating solely to the purchase or sale of interests in land
- Tenders or quotations which have been invited on behalf of any consortium, association or similar body of which the Council is a member, or on behalf of any other local authority, or public body, with whom the Council has a contract, agency agreement, partnering agreement or similar, provided that proper governance is still enforced where appropriate.
- Where properly concluded Framework Agreements or Dynamic Purchasing Systems are relied upon but only where the guidance and award criteria set out for the particular Framework Agreement or Dynamic Purchasing System is strictly adhered to in the engagement of the contractor or supplier.
- Contracts that through demonstration can only be awarded to a single supplier due to the protection of exclusive rights or artistic reasons.
- Any arrangement that otherwise would have been permissible under the Public Contracts Regulations should that regime have been required.
- The Monitoring officer for the purpose of
 - (1) External legal advisors/ legal counsel and the appointment of expertwitnesses in legal proceedings
 - (2) Emergency accommodation where existing provisions cannot meet the need.
- The Director of Children and Adults for the purpose of
 - (1) An emergency placement that is sought for an individual with a registered care provider of their choice under the National Health Service and Community Care Act 1990.
 - (2) Where the particular needs of an individual (either an adult or a child) require a particular social care package, or where an individual has special educational needs which are only available from a particular provider in the opinion as appropriate of the Director of Children and Adults.

3.3. Any third party (e.g., a consultant) who is engaged in the letting, management or supervision of a contract on behalf of the Council must comply with these rules as if they were Council officers.

4. Review and amendment

4.1. These rules shall be reviewed at least every two years by the Monitoring Officer in consultation with the Head of Category Management. The Monitoring Officer shall make changes to the Contract Procedure Rules in accordance with Article 14, Section 14.3 of the Council's Constitution. Any

amendments will be subject to approval by Full Council save for minor changes which the Monitoring Officer may make.

5. **General principles**

- 5.1. Before any contract is made, both the following must be satisfied:
 - a. The proper authority to proceed.
 - b. Adequate budgetary provision or confirmation of how any deficit will be covered.
- 5.2. As a minimum, all contracts will be entered into using the most appropriate standard form of contract with consideration given to:
 - Any Medway Council standard form of contract
 - Any recognised industry standard form of contract
 - Any terms and conditions specifically enforced using an external framework.
- 5.3. Any modifications should be made pre-tender and in consultation with legal services and via Category Management.
- 5.4. Each Assistant Director is responsible for all procurement activity within their respective Division and has the overall responsibility for ensuring Divisional compliance with these Contract Procedure Rules. This extends to any agents acting on their behalf.
- 5.5. The Officer responsible for managing any contract or procurement process must comply with the Employee Code of Conduct and Anti-Fraud and Corruption policies and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- 5.6. When any employee or contractor arrangement may be affected by any transfer arrangement, such as the Transfer of Undertaking Protection of Employment (TUPE), that advice is obtained from HR and/or Legal Services before proceeding with inviting tenders. Officers must consult Pensions and Payroll concerning all TUPE and pension issues before the advert for the contract opportunity is placed.
- 5.7. Where the Council's procurement requirement can be satisfied from an existing approved contract then any order will be considered an exception to these rules provided the call-off arrangements detailed within that contract are followed or where the original Contract is varied in writing in advance to meet the requirement. Category Management and Legal Services must be consulted before invocation of any such variation. In all instances goods, services or works should be obtained via appropriate, existing, approved arrangements. These include and are to be reviewed in the following order:
 - 1) In-house services, for example printing and design, facilities management and Local Authority Trading Company
 - a. Pre-existing teams should always have first refusal to deliver.

- 2) Established corporate contracts
- 3) Consortia of which the Council is a member (or can join)
- 4) Approved nationally negotiated contracts and Framework Arrangement such as those arranged by the Crown Commercial Services
- 5) Exhausting the above would result in the market being approached through the relevant process as outlined in Section 2 of these Rules.

6.0 Joint Procurement Arrangements

- 6.1 The Head of Category Management, on behalf of the Council's Monitoring Officer shall approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement on behalf of the Council. They shall also approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement.
- 6.2 Where procurements are being carried out jointly the relevant Assistant Director is responsible to ensure compliance with relevant regulations (currently Procurement Contract Regulations 2015 (PCR)) even if the other party are conducting the tender process on behalf of Medway Council. Clarity of each contracting authority's responsibilities is needed at the outset to ensure compliance for all elements of the tender both individually and jointly.
- 6.3 Contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council or are included in accordance with the Public Services (Social value) Act 2012 or necessary to enable or facilitate the Council's compliance with the public sector equality duty (Section 149 Equality Act 2010), or any duty imposed on it by the Equality Act 2010. In this context, "non-commercial" means requirements unrelated to the actual performance of the contract.
- 6.4 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) in addition to the winning bidder's tender response for delivery and cost.

7.0 Roles and Responsibilities in procurement activity

- 7.1 A budget must exist for the procurement to take place. This can be established and will be signed off by using the 'Category Management Engagement Form'.
- 7.2 Category Management responsibilities
 - The appointment of a responsible officer
 - Be accountable to the Cabinet for the performance of their duties in relation to purchasing

- Comply with the Council's decision-making processes including, where appropriate, implementing and operating a Scheme of Delegation
- Report any potential breach of these rules to the Councils Monitoring Officer
- Ensure that any conflicts of interest pertaining to any officer involved in the project which might be perceived to compromise their impartiality or independence is highlighted and logged on the conflict-of-interest register
- Comply with all regulatory requirements referred to above and integrity of the tender process
- Compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process
- That there is an appropriate analysis of the requirement, timescales, procedure, and documentation to be used
- The purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, equality, social value, whole life costings and cost savings
- Compliance with the Council's decision-making processes
- Ensure that all contracts are included on the Council's Contract Register
- Properly engrossed contracts, with supporting documents, are stored with Legal Services prior to the commencement of the contract
- That proper records are maintained in accordance with the Data Retention and Disposal Schedule, with separate files for each procurement of a value of £25,000 or more, which record the decisions and decision makers taken in all stages of the procurement process

7.3 When considering how best to procure works, supplies and services or the granting of service concessions, Category Management shall take into account the wider contractual delivery opportunities and purchasing methods including the use of purchasing schemes and e-procurement/purchasing methods, and the availability of local authority charging and trading powers.

7.4 Procurements over £25,000 may only be undertaken by officers of the Category Management team.

8.0 Financial Thresholds and Procedures

8.1 The table in Section 10 sets out the general rules that apply to the choice of purchasing thresholds and the associated public notice requirements. There is a general presumption in favour of competition.

8.2 The PCR state that:

- Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner

- The design of the procurement shall not be made with the intention of excluding it from the scope of this Part or of artificially narrowing competition
- For that purpose, competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators

8.3 Once a contract has been published and subsequently awarded following a procurement process, Category Management will be responsible for advertising/publicising the required information in the correct journals. These will include

8.4 For anything over £25,000

8.4.1 Contracts Finder

8.5 For anything over the PCR threshold

8.5.1 The above plus find a Tender Service (FTS)

DRAFT

9.0 Financial Thresholds

Level	Value of goods or services/ £	Minimum requirements	Notes
1	£0 – less than £25,000	Service to obtain three quotations in writing	To be conducted as a “Quick Quote” procedure led by service area. Using the Quick Quote documentation, the service is to obtain formal quotations from prospective bidders. Medway Council’s ‘Quick Quote Terms and Conditions’ to be used on all subsequent orders.
2	£25,000 – Up to the legal threshold for Goods/ Services/ Light Touch Regime or less than £500k for works.	Openly advertised tender to be conducted via the Kent Business Portal and managed by the Category Management Team	Category Management team to work with the relevant service (post acceptance of the Category Management Engagement Form) to conduct a fully electronic procurement process via the e-Procurement system which includes: compiling tender documentation, advertise on Contracts Finder, facilitate evaluation and make the award prior to the service performing all necessary contract management duties.
3	Legal Threshold or above for Goods/Services/ Light Touch Regime or £500k or above for works	Public Contracts Regulations 2015 (PCR) compliant advertised tender to be conducted via the Kent Business Portal and managed by the Category Management Team. Process to be subject to internal governance including DMT, Procurement Board and Cabinet (where the project would constitute a Key Decision as per the summary within 20.1 of these Rules)	Category Management team to work with the relevant service (post acceptance of the Category Management Engagement Form) to conduct a fully electronic procurement process via the e-Procurement system which includes: navigate internal governance, compile tender documentation, advertise on the relevant forums (Contracts Finder/FTS), facilitate evaluation and make the award prior to the service performing all necessary contract management duties.
The contract value estimation should be inclusive of VAT (where applicable) and contracts must not be artificially disaggregated.			

9.1 Where contracts are of a type and value which means that they are subject to PCR, there are five main types of procedures available. These are:

- Open - one stage which will encompass selection and award criteria.
- Restricted - a 2 stage process using a Pre-Qualification (PQQ) and an Invitation to Tender (ITT) Stage).
- Competitive dialogue - the contracting authority “negotiate” with the winning tenderer to “confirm financial commitments or other terms by finalising the terms of the contract” provided this does not materially modify the essential aspects of the tender or the procurement.

- Competitive procedure with negotiation – selected operators are invited to negotiate but this procedure can be carried out in successive stages provided this is indicated to all bidders upfront
- Innovation partnership procedures which are intended for long term partnerships, which allow for both the development and subsequent purchase of new and innovative products, services or works currently not on the market).

10.0 Calculating the Contract Value

- 10.1 The contract value shall be the genuine pre- estimate of the value of the entire contract term. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period. This includes proposed extensions, options to include additional services and renewals.
- 10.2 Where the total contract value over the full duration of the contract (not just the annual value) is uncertain, calculate this by multiplying the monthly payment by 48 or annual payment by 4;
- 10.3 For Framework Agreements with no guaranteed commitment the contract value will be the estimated value of orders placed/commissions let under the Framework Agreement over the full duration of the contract term;
- 10.4 Where a partnering arrangement is to be put in place, the total value of the likely partnership;
- 10.5 If the total value of recurring transactions with a single provider exceeds £24,999, the opportunity must be tendered appropriately.
- Should the service area envisage the recurring spend exceeding the above threshold, advice from Category Management should be sought.
 - Category Management may deactivate an active provider that is in breach of the above thresholds
 - Failure to comply may result in a disciplinary action
- 10.6 The relevant Responsible Officers must engage the Category Management Team on any project, recurring or otherwise, valued at £25,000 or more.
- 10.7 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:
- Sufficient time is given to plan and run the process
 - Equal opportunity and equal treatment
 - Openness and transparency
 - Probity
 - Outcomes, which deliver sustainability, efficiency, and equality, social value, whole life costings and cost savings (where appropriate).

11.0 Evaluation of Quotes and Tenders

- 11.1 All quotes and tenders shall be evaluated in accordance with an evaluation criterion notified in advance to those submitting quotes/tenders.
- 11.2 All invitations to tender or quote must:
- Specify the goods, service or works that are required, together with the terms and conditions of the contract that will apply; and
 - State that the council is not bound to accept any quotation or tender
- 11.3 All those invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be requested on the same basis.
- 11.4 All tenders shall include:
- Clear instructions on how and where tenders are to be submitted, together with the date and time by which they are to be received
 - A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers
 - A description of the Award Procedure
 - Full details about how the bids will be assessed, including any weighting and sub-criteria that apply and any "pass mark" for any stage of the procurement
 - Information on the Council's policies as appropriate for example, Social Value, Equalities and Sustainability.
 - All invitations to tender shall state that any Tender received after the date and time stipulated in the invitation to tender may be rejected and not considered.
- 11.5 All contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council, as determined by the award criteria detailed in the tender documentation.

12. Exemptions (Contract Waiver)

- 12.1 The appropriate Assistant Director in consultation with the Head of Category Management and Assistant Director for Legal and Governance may consider that it is not reasonably practicable or in the Council's best interest to seek competitive quotes where the contract value is below national threshold values.

In such instances, the reasons must be fully documented within the Exemption Request Form and approved in writing by the Assistant Director Legal and Governance.

- 12.2 A Responsible Officer who seeks an exemption shall do so only in advance and only in exceptional circumstances.
- 12.3 All approved exemption requests will be submitted to the Cabinet for information purposes summarised within an annual report.
- 12.4 An exemption shall not be applied for reasons of poor contract planning.

- 12.5 The Assistant Director for Legal and Governance will have ultimate discretion to consider resources and time constraints in the overall context of risk of non-delivery when deciding upon whether to accept or reject an exemption request.

13 Purchasing Schemes (including Framework Agreements)

- 13.1 The Council may use purchasing schemes subject to the following conditions and must check with Category Management in advance that:-

- The Council is legally entitled to use the purchasing scheme
- The purchases to be made properly fall within the coverage of the purchasing scheme

- 13.2 The establishment and operation of each purchasing scheme is in compliance with and meets the Council's own requirements.

- 13.3 A "purchasing scheme" may include:

- Framework arrangements (including those set up by the Crown Commercial Service and any successor body)
- Purchasing arrangements set up by central purchasing bodies and commercial organisations
- Consortium purchasing
- Collaborative working arrangements

- 13.4 Where a purchasing scheme is used, officers are still required to procure in compliance with the relevant procurement Process.

14. Procurement Strategy and Planning

- 14.1 The Procurement Strategy compliments these rules. The Procurement Strategy places a strong emphasis on delivering social value, commercial activity, and sustainable initiatives, whole life costing and cost savings where appropriate. The strategy, alongside the work programme and corporate arrangements to support procurement outlines how the council can respond to the changing local government landscape. For example, legislative requirements, Framework Agreements, innovative partnerships and shared working arrangements to improve buying power.

- 14.2 The Forward Procurement Plan details each directorate's upcoming procurement activity at levels 2 and 3. It is the responsibility of each Assistant Director to ensure they liaise and finalise the following financial year's procurement activity in Quarter 4 of the previous. This will be initiated by inviting the Head of Category Management to their respective DMT meeting.

- 14.3 Projects that have not been agreed to be progressed prior to the new financial year may be delayed or not supported by Procurement Services and will not automatically be considered via the exemption process.

Section 2 – Procurement Processes and Governance

15 Processes

- 15.1 There are three procurement processes which are value bound
1. Anything less than £25,000
 2. £25,000 and up to either
 - a. The legal threshold for a Goods/Services appropriate contract
 - b. The legal threshold for a Light Touch Regime appropriate service
 - c. Less than £500,000 for works projects
 3. Any activity that is
 - a. Post threshold for a Goods/Services appropriate contract
 - b. Post threshold for a Light Touch Regime appropriate service
 - c. Any works project valued at £500k+

16 Process 1 – Projects valued less than £25,000

- 16.1 The appropriate Assistant Director and/or Head of Service must sanction the commencement of any procurement activity. These are for one off purchases that are unlikely to be required again e.g. low value and risk works projects.
- 16.2 Services should complete, share with Category Management and hold on record, a 'Quick Quote Rationale' document, duly signed by the relevant budget holder for each project subject to this process.
- 16.3 A minimum of three written compliant quotations must be obtained where possible or one written quote where the total cost is less than £5,000. If officers are unable to obtain three compliant quotes, they must liaise with the Category Management team prior to declaring single/restricted supplier restraints.
- 16.4 The quotes should be in the form of the Council's Quick Quote documentation that can be obtained from the Category Management team.
- 16.5 The Quick Quote should be completed under a Purchase Order using the Council's 'Quick Quote Terms and Conditions' without any amendments.
- 16.6 Further guidance relating to this process can be obtained from the Category Management team.

17 Process 2 - £25,000 up to the relevant legal thresholds or less than £500,000 for works

- 17.1 The appropriate Assistant Director and/or Head of Service must sanction the commencement of any procurement activity. This must be in the form of a 'Category Management Engagement Form', duly signed and returned to the Category Management team who will counter sign and allocate a procurement officer for the purpose of the activity.

- 17.2 The Category Management team will lead the procurement process and the relevant service will be responsible for subsequent Contract Management.
- 17.3 All opportunities must be openly published on the Kent Business Portal using the Invitation to Quote documentation. Except in limited circumstances where an external framework is used, and the Council must use an alternative prescribed system.
- 17.4 The Council's standard Terms and Conditions should be used unabridged unless agreed otherwise with the Legal team. Any such changes should be made pre-tender.
- 17.5 The Category Management team shall instruct Legal Services to execute a contract.
- 17.6 No contract shall start prior it being signed by all parties and received by Legal Services.

18 Process 3 – any project subject to the Public Contract Regulations 2015 (as amended) or £500,000 or above for works projects.

- 18.1 The appropriate Assistant Director and/or Head of Service must sanction the commencement of any procurement activity. This must be in the form of a 'Category Management Engagement Form', duly signed and returned to the Category Management team.
- 18.2 The Category Management team will lead the procurement process and the relevant service will be responsible for subsequent Contract Management.
- 18.3 All projects within this category will be subject to internal governance as detailed within section 19.
- 18.4 All opportunities must be openly published on the Kent Business Portal using the Invitation to Tender documentation. Except in limited circumstances where an external framework is used and the Council must use an alternative prescribed system.
- 18.5 The Council's standard Terms and Conditions should be used unabridged unless agreed otherwise with Legal Services. Any such changes should be made pre-tender.
- 18.6 These processes will be concluded by the Category Management team instructing legal to execute a contract.
- 18.7 No contract shall start prior to it being signed by all parties and received by Legal Services.

19.0 Governance

- 19.1 Whilst there is no mandatory board level governance associated to Processes 1 & 2, Officers should keep appropriate documentary audit trails that evidence

transparent, objective, best value decision making and be mindful of the benefit this may have and approach as appropriate at a Directorate level.

- 19.2 Process 3 arrangements are subject to internal governance and the appropriate reports must pass the correct gateways to proceed.
- 19.3 All Gateway templates and guidance pertaining to such can be obtained from the Category Management team and must be collaboratively completed by all relevant stakeholders. The client will have ultimate responsibility for all Gateway reports.
- 19.4 The procurement process is broadly split into 4 Gateways.
1. Gateway 1 – Project Commencement/Options Appraisal
 2. Gateway 2 – The tendering process (including document creation, advertisement, evaluation)
 3. Gateway 3 – Tender Process Review/Contract Award
 4. Gateway 4 – Contract Management review – subject to termed contracts only.
- 19.5 Gateway 1 (Project Commencement/Options Appraisal) is a formal reporting stage and reports must be presented to the relevant Directorate Management Team (DMT) for approval prior to being presented at Procurement Board (PB) and finally Cabinet unless the project is not deemed a Key Decision at Procurement Board. The report details but is not limited to: the need, perceived benefits of the project, how success will be measured as well as market capacity and how the market will be approached.
- 19.5.1 Gateway 1 (Project Commencement/Options Appraisal) reports will not be required for entirely ringfenced and grant funded projects signed by the S151 officer as their nature and budget has been pre-agreed.
- 19.6 Gateway 2 (Tendering Process) is not a formal reporting stage but instead the stage at which the procurement activity is conducted in compliance with the pre-approved Gateway 1 report. This stage has split responsibility where the Category Management team manage the overarching process, but the Service Officer is responsible for co-ordination and completion of the specification as well as technical involvement and evaluation where required. All relevant documentation pertaining to Gateway 2 can be obtained from and must be compiled in conjunction with the Category Management team.
- 19.7 Gateway 3 (Tender Process Review and Contract Award) formal reporting to DMT, PB and finally Cabinet where appropriate. The report outlines the procurement process conducted, the way in which it has been evaluated and makes a recommendation for award.
- 19.8 Gateway 4 (Contract Management Review) is an annual reporting stage for termed contracts detailing and presenting to Procurement Board only, all relevant Contract Management information and areas of improvement. The report seeks to assure Senior Officers that the originally perceived benefits are being fulfilled and to allow a level of scrutiny for any further improvements.

20 Key Decision

- 20.1 A key decision, and therefore one which would constitute high risk, is an executive decision which is likely:
- A. To result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
 - B. To be significant in terms of its effects on communities living or working in an area comprising two or more wards in Medway.
- 20.2 For the purpose of governance, any project, regardless of value, deemed to constitute a Key Decision must be presented to Cabinet at both Gateways 1 and 3 stage.

DRAFT

Section 3 - Wider Tendering Principles

21 Social Value

- 21.1 Legislation allows the Council to take social and economic considerations into account when procuring Supplies (Goods), Services or Works.
- 21.2 The Council is required under the Public Services (Social Value) Act 2012 to consider how the services it procures, and commissions might improve the economic, social and environmental well-being of residents.
- 21.3 The Council applies on all appropriate contracts a selection of Social Value Themes Outcomes and Measures (TOMs) applicable to the delivery outcome. These deliverables are monitored and reported on by the service as part of contract management.

22. Sustainability

- 22.1 The Council declared a climate emergency and are committed to taking action to reduce its carbon emissions and be net zero by 2050.
- 22.2 The Council is committed to working towards a 'greener' future, and working with contractors to understand and measure the carbon footprint of its contracts such as:
- Taking practical action to reduce, the effect the Council's activities have on the environment
 - Improving the quality of the local environment and
 - Encouraging residents to live and work in ways that reduce the borough's effect on worldwide environmental problems, to improve the environment now and protect the future.
- 22.3 The Council's procurement rules are based on the following principles:
- Sourcing sustainable products wherever possible to minimise the damage to the environment
 - Ensuring relevant tenders over a certain threshold award include environmental impact considerations
 - Considering costs such as energy and maintenance when we consider tenders
 - Engaging with suppliers who can actively contribute to minimising their carbon footprint as part of their contract with the Council.

23. Equalities

- 23.1 Before starting any procurement, Council Officers must make sure that they consider equality issues. An Equalities Impact Assessment will inform the detail of the contract specification.
- 23.2 Contractors must adhere to current equalities legislation at all times whilst performing a contract on behalf of the Council.

24. Modern slavery

- 24.1 The Modern Slavery Act (2015) requires the Council to consider and reduce the risk of modern slavery at all stages of the procurement process.
- 24.2 Tender opportunities/contracts must include such requirements it will ensure that they are drafted in the tender documents, as part of the evaluation criteria and ultimately defined in ways that do not discriminate against any bidders across the UK.

25. Whistle Blowing

- 25.1 The Council is committed to the highest possible standards of openness, probity and accountability, consequently it encourages employees and others with serious concerns about any aspect of the Councils' work to come forward and voice those concerns.

The Council's *whistle blowing policy* Speak Up, encourages and enable staff to raise serious concerns within the council rather than overlooking a problem or blowing the whistle outside. The Councils *policy* enables our employees to raise concerns in respect of any conduct carried out on behalf of the council that:

- may be unlawful
- may be contrary to the council's policies
- falls below established standards or practice or that may amount to improper conduct

- 25.2 The policy recognises that certain cases may have to proceed on a confidential basis and concerns can be raised in good faith without fear of reprisals.
- 25.3 The council is wants to ensure that the employees of its contractors are similarly encouraged and enabled to raise such concerns and contractors are encouraged to introduce similar provisions in their organisations that are applicable to any work undertaken for the Council.
- 25.4 Any Member or Officer who believes there has been a breach of these rules should report the matter to the Monitoring Officer or use the Council's Whistle blowing Policy.

26 Criminal Records Bureau Checks (Disclosure Barring Service DBS)

- 26.1 The Council requires all people who, through the delivery of services come into contact with the elderly, disabled and children, to have an up to date and satisfactory Disclosure Barring Service (DBS) report prior to performing any obligation under contract. The Council should also require such Contractors' personnel to be registered with the Disclosure and Barring Service (DBS) if and when such registration becomes necessary.

27 Transparency

- 27.1 The Local Government Transparency Code (2015) outlines the Government's approach to place more power into the hands of local people; to allow access to information on how money is spent by the Council. The Council has decided to publish details of contracts, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000.

28. Risk Management

- 28.1 A full risk assessment should be undertaken on all procurement options available to the Council. These should be documented, and owners assigned once an option is selected.
- 28.2 A risk log should be created at the start of the procurement project and managed by the responsible Officer, in the case of High Value/Risk procurements. Risks should be reviewed regularly, and appropriate actions taken to manage them. The Director should be kept aware of all risks and provided with a regular report on their status.
- 28.3 The Risk Management section should be consulted on all high value/risk procurement projects at the commencement of the project.

29. Performance and Contract Management

- 29.1 All Procurements at levels 2 and 3 must include a set of key performance indicators or similar benchmarks of outputs, quantities and or quality that must be met throughout the contract and they must be inserted into the terms and conditions of the contract.
- 29.2 All Procurements must have a designated Contract Manager whose name should be notified to the Contractor. Likewise, the Contractor must have a designated Contract Manager whose name is notified to the Council. These resources must be identified and agreed before the contract is awarded.
- 29.3 Regular contract monitoring meetings (minimum quarterly) should be held with the Contractor and written minutes of agreed actions and performance against indicators taken. The frequency of the meetings to be dictated by the nature, value and associated risks of the contract.
- 29.4 Performance against contract standards must be monitored and recorded on a regular basis, proportionate to the nature, value and associated risks of the contract.
- 29.5 Where service improvements are enshrined in the contract these must be evidenced for the annual audit inspection and for any Gateway 4 review as prescribed by the Council's Procurement Board.

Section 4 - Contracting

30 Contract documents

- 30.1 All Contracts must be in writing using forms of contract approved by Medway Councils legal services team.
- 30.2 Where the procurement is for a Total Value of up to £100K the use of a Purchase Order is an acceptable form of contract, which must make reference to the successful quotation and the Council's Terms & Conditions of Purchase.
- 30.3 Where the procurement is for a Total Value over £100K, a Formal Contract is to be drawn up by Legal Services, which can only be initiated by a Contract Approval Signing Form issued by the Category Management Team. The Contract will incorporate the Conditions of Contract included in the Invitation To Tender documentation and any subsequent variations to these made and agreed during the Invitation to Tender procurement process.
- 30.4 Category Management will record and retain all decisions, correspondence and documentation for audit purposes.

31 Contract formalities

- 31.1 Contracts must be completed as follows:

TOTAL VALUE	METHOD OF COMPLETION	BY
Up to £100K	Signature Purchase Order/ITQ Document	Officer with appropriate authority to enter into a contract
£100K+	Signature on Standard Contract & sealed (where appropriate)	Legal Services

- 31.2 All contracts for the Supplies (Goods), Services and Works must be concluded in writing using the appropriate Standard Contract before the contract commences.

32 Letters of intent

- 32.1 Letters of intent can only be issued with prior approval of the Assistant Director of Legal and Governance or Head of Legal Services.
- 32.2 The letter must set out the key contract terms - price, duration, etc, and authorises the Contractor to carry out work up to a specified value before the formal agreement is signed.
- 32.3 The wording of the letter of intent shall be reviewed by and issued by Legal Services.

32.4 A letter of intent is not a substitute for a formal agreement but can be used as an interim measure until the formal agreement has been signed. The tendering procedure set out in **Section 2** of these Contract Procedure Rules shall apply.

33 Signature

33.1 Contracts may be signed by Assistant Directors (in accordance with the Employee Delegation Scheme), the Assistant Director for Legal and Governance, Head of Legal Services or his/her representative within legal services once the provisions in the Financial Rules and Contract Procedure Rules have been met in each case.

33.2 In the case of contracts for commissioning of care services, including educational placements and emergency accommodation for the homeless where the Total Value of the contract is not known, the Solicitor responsible for signing must have been granted authority to enter into commissioning contracts by the Assistant Director for legal and Governance.

34 Sealing of contracts

34.1 A contract must be sealed where:

- (a) the Council wishes to enforce the contract for more than six years after its end (e.g. for land or construction works); or
- (b) the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
- (c) a Performance Bond is established on behalf of the Contractor(s) or their guarantors; or
- (d) it is required by parties to the contract; or
- (e) the total value of the Supplies (Goods), Services and Works exceeds £250K.

34.2 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of Legal Services. Legal Services are responsible for the process of sealing contracts on behalf of the Assistant Director for Legal and Governance.

35 Bonds, parent company guarantees and insurance

35.1 For all Supplies (Goods), Services and Works contracts, subject to process 3 (paragraph 16) may be required to seek a Parent Company Guarantee or Performance Bond should the procuring officer deem it necessary as part of the governance process.

GLOSSARY OF TERMS

Approved Standard Terms	Includes industry standard terms
Best Value	Under Best Value, each local authority has a duty to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness' as set out in the Local Government Act 1999. This takes into consideration the 4Cs of Challenge, Compare, Consult and Compete.
Category Management	means the business improvement process that brings together people from different parts of a business. The aim is to analyse and review discrete parts of the overall spend (called "Categories"), with suppliers, and identify the most appropriate and effective approach to sourcing for each Category. The intention should always be to increase the value provided by the supply chain. A Category can be defined as a discrete area of spend with boundaries determined by the market facing nature of the function or attributes of the Goods, Services or execution of Works being purchased.
Category Management Team –	Strategic Procurement team responsible for providing strategic support, expert advice and quality assurance to the Council's Directorates as well as representing and acting on behalf of the Chief Legal Officer in all procurement and contract related activities, matters and issues.
Directorate Management Team –	Led by each respective Director, with operational procurement and contract management responsibility delegated to Assistant Directors and / or Heads of Service in accordance with these Contract Procedure Rules.
Code of Conduct	The code regulating conduct of Officers contained within the Council's Constitution
Competitive Dialogue	A procedure leading to the award of a contract whereby the Council produces a shortlist through a dialogue with those tenderers who are considered to have appropriate capability and capacity. Based on the solutions discussed, final tenders are sought from the short listed contractors This procedure is most appropriate for complex procurements where significant input is

required from the market to inform the drafting of the specification.

Competitive Procedure with Negotiation

A procedure leading to the award of a contract whereby the Council negotiates the terms of the contract with one or more persons selected by it. The procedure is subject to a complex set of rules.

Contract

A contract that has been created in accordance with the Contract Procedure Rules for call off or use by the Council.

Contract Register

A register held by Category Management containing details of all contracts entered into by the Council.

Contractor

Any person or body of persons providing, or seeking to provide, Supplies (Goods), Services or Works to the Council.

Council's Procurement Strategy

Defines the overall approach to procurement related activity for the Council.

Exemption

A formal request in writing made by the relevant Director to exempt the proposed requirement from the Contract Procedure Rules in exceptional circumstances.

Financial Reference

A financial risk assessment of the finances of a company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required.

Financial Regulations/Finance Procedure Rules

The Financial Regulations contained within the Constitution.

Find a Tender Service (FTS)

A web based platform upon which procurement opportunities and procurement notices need to be published, replacing the Official Journal of the European Union (OJEU) or Tenders Electronic Daily (TED).

Framework Agreement

An agreement with suppliers which establishes the terms governing contracts to be awarded during a given period. It allows the Council to

	make specific purchases (call-offs) in accordance with the terms of that agreement.
Invitation To Quote (ITQ)	A formal written invitation to a minimum number of suppliers to provide written quotations for goods, services or works on the Council's standard terms for requirements between £25K and the relevant Threshold or less than £500k for works.
Invitation to Tender (ITT)	A formal written invitation to all suppliers to provide sealed bid offers for goods, services or works on the Council's standard terms, or those otherwise agreed with legal services, for requirements over the relevant threshold or £500k for works.
Kent Business Portal (KBP)	Kent Business Portal – Advertising of contracts and awards shared with other Kent authorities.
LATCo	Local Authority Trading Company
Officer	Council employee/ worker as defined in the Constitution
Officer/ Authorised Officer	A person with appropriate delegated authority to act on the Council's behalf within their respective Directorate.
Official Purchase Order	An order placed through the corporate finance management system.
Open Procedure	A procedure leading to the award of a contract whereby all interested persons may tender for the contract, duly advertised by notice, i.e., there is no limit on the number of tenders received nor may the Council consider the suitability of interested tenderers prior to submission of Tenders.
Parent Company Guarantee	A contract, which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead or for the parent of the subsidiary company to pay the Council's reasonable costs/losses (including damages) for the Council having to procure a third party to meet the promises under the Contract with the Council.
Performance Bond	An insurance guarantee policy: If the Contractor does not do what it has promised under a contract

with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the supplier's failure.

PCR 2015

Public Contract Regulations 2015.

Pre-qualification
Questionnaire (PQQ)

A document that covers economic standing, past experience and technical suitability to determine a shortlist of potential suppliers to invite to ITT. It does not cover delivery questions that will be asked at the ITT stage.

Procurement Board

A Cabinet Advisory Group chaired by the Deputy Leader of the Council or Member as appointed by the Leader of the Council, with representation from across the Council charged with the duty of developing and reviewing procurement and contractual issues. For the avoidance of doubt, the Procurement Board is a Cabinet Advisory Group and has no formal decision-making powers.

Quick Quotation

A formal written invitation to a minimum number of suppliers to provide written quotations for goods, services or works using the Council's Purchase Order Terms and Conditions (or those approved by the Council's legal team) for requirements between £0 and less than £25,000.

Restricted Procedure

This is a 2-stage process which uses a Pre-Qualification Questionnaire (PQQ) and an Invitation to Tender (ITT) Stage.

Thresholds

The financial threshold at which public procurement laws must be applied.

The council

Medway Council

Tenderers

Suppliers/contractors who have been invited to submit a tender to the Council.

Total Value

The whole of the value or estimated value (in money or equivalent value) over the contract term.

Value for Money

The optimum combination of through life cycle cost and quality (or fitness for purpose) to meet the user's requirement.

Written Quotation

Quotation provided by a supplier/contractor (bespoke or web based) to the Council containing pricing information and delivery details for requirements

DRAFT