

Commercial Policy

[Date]

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A Introduction

The first time a defined term is used in this Policy the term contains a link to the definition within section I [Definitions](#). These terms are [underlined in blue text](#). Clicking on the term within section I [Definitions](#) will return to the section in which the term is first used. Any other links within the document are denoted by [blue text](#).

A1 Statement of Purpose

- A1.1 The [contracting authority](#) for this Policy is Torbay Council (the [Council](#)).
- A1.2 [Procurement](#) and [contract management](#) activities are vital for enabling the Council to meet its strategic objectives and operational needs whilst gaining best value for money in delivering services for our residents and communities.
- A1.3 This Policy sets out how [Contract Procedures](#) will be implemented and is underpinned by a wider framework of guidance and training for officers.
- A1.4 The purpose of this Policy is to set out the strategic and operational responsibilities of Council officers to ensure:
- a) the approach to procurement and contract management is fair, open and transparent; and
 - b) the effectiveness and efficiency of procurement and contract management activities.

A2 Commercial Activity Definition

- A2.1 Commercial Activity is defined within this Policy as any activity undertaken as part of procurement or contract management.

Procurement

- A2.2 Procurement is the process of acquiring [goods](#), [services](#), or [works](#) from external sources through a systematic and strategic approach. It involves identifying needs, specifying requirements, assessing [suppliers](#) and negotiating [contracts](#) to ensure that the Council obtains the best value for its expenditures while maintaining compliance with legal and regulatory requirements.

Contract Management

- A2.3 Contract management is the mechanism by which the Council can ensure it is receiving the goods, services, or works that it has procured, on time, at the agreed price and at the requisite quality and enables all parties to the contract to ensure their respective obligations are being met.
- A2.4 Effective contract management involves building and maintaining strong working relationships between the Council and its suppliers. It continues throughout the life of a contract and involves proactive management to anticipate future needs as well as reacting to situations that arise.

A3 Commercial Activity Principles

- A3.1 When undertaking Commercial Activity officers must give regard to the following principles:
- a) delivering value for money;
 - b) maximising public benefit;
 - c) working transparently and sharing information where appropriate;
 - d) acting with, and being seen to act with, integrity;
 - e) treating suppliers the same unless a difference between the suppliers justifies different treatment;
 - f) giving regard to the fact that [small and medium enterprises \(SMEs\)](#) may face particular barriers to [participation](#); and
 - g) securing the needs of people who use services, improving the quality of services and improving efficiency in the provision of services.

A4 Extent and Application

- A4.1 This Policy applies to:
- a) any officer, or Agent of the Council undertaking any Commercial Activity on behalf of the Council;
 - b) all external expenditure regardless of the funding source; and
 - c) devolved expenditure.
- A4.2 Such activities may include (but are not limited to):
- a) contracts for goods, services and works, including spot purchased, ad-hoc or one-off requirements;
 - b) expenditure of third-party funding;
 - c) contracts for Services and Works [concessions](#);
 - d) disposal of assets or awarding of leases and development agreements where it becomes a procurement as defined in section 9 of the Financial Regulations or under the [Regulations](#);
 - e) collaborative contracts; and
 - f) expenditure devolved to a third party contracting in the Council's name.

A5 Governing Legislation

- A5.1 This Policy is governed by:
- a) the [World Trade Organisation Agreement on Government Procurement \(GPA\)](#), which takes precedence over national procurement regulations and legislation;
 - b) the [Procurement Act 2023](#), the [Health Care Services \(Provider Selection Regime\) Regulations 2023 \(PSR\)](#), the [Public Contract Regulations 2015](#), the [Concession Contract Regulations 2016](#) and [Utilities Contract Regulations 2016](#) (collectively the Regulations) which, where they apply, take precedence over local procurement considerations; and
 - c) [other applicable primary or secondary legislation and regulations](#).
- A5.2 In implementing this Policy the Council will give due regard to best practice and national guidance, including government [Procurement Policy Notes \(PPNs\)](#) and [Procurement Playbooks](#); the [National Procurement Policy Statement](#), [National Procurement Strategy for Local Government in England](#) and relevant case law.

Debarment and Exclusion

- A5.3 A [debarment list](#) has been introduced under the Procurement Act 2023, this is a list of suppliers the government consider should be excluded from or are excludable from being awarded [above threshold](#) public contracts. Exclusion can apply to suppliers, sub-contractors, [associated persons](#) and [connected persons](#). In the case of sub-contractor exclusion the supplier must be given reasonable opportunity to find an alternative sub-contractor.
- A5.4 The Council has a legal duty to ensure [excluded suppliers](#) are not able to participate in [procurement procedures](#) and to establish whether it is appropriate to allow [excludable suppliers](#) to participate. The Debarment List must be checked at all stages of a procurement procedure and over the term of the contract to verify the status of participating or contracted suppliers.
- A5.5 The Council must exclude suppliers who are on the debarment list where the [exclusion ground](#) is mandatory and has discretion whether to exclude if the exclusion ground is discretionary.
- A5.6 It is the responsibility of [Commercial Services](#) to undertake all required checks in relation to the debarment list and take appropriate action. For procurements not directly supported by Commercial Services it is the responsibility of the lead officer to request this check is undertaken by Commercial Services.
- A5.7 Evidence of actions and decisions must be kept in an electronically accessible format alongside details of the relevant supplier.
- A5.8 Further information on excluded and excludable suppliers and mandatory and discretionary exclusions can be found in section I Definitions.
- A5.9 The Council must notify Cabinet Office's Procurement Review Unit (PRU) where a supplier not on the Debarment List is excluded from a procurement for failing to meet a mandatory or discretionary exclusion ground.

A6 Authority to Undertake Commercial Activity

- A6.1 Officers undertaking Commercial Activity must be appropriately trained. As a minimum, they must have completed one or more of the following iLearn modules, as relevant to their role:
- a) Understanding procurement;
 - b) Advanced procurement;
 - c) Advanced contract management.

A7 Conflict of Interest, Confidentiality and Integrity

- A7.1 The Council has a legal duty to maintain the confidentiality and integrity of its procurement activity and to identify and mitigate any actual, potential or perceived conflicts of interest which could be deemed to impact on the outcome or distort competition. This obligation starts when the need for the procurement is first identified and continues until the completion or termination of the contract. Officers must abide by the confidentiality, integrity and [conflict of interest](#) requirements set out in this Policy.
- A7.2 The Council must take all reasonable steps to:
- a) identify and keep under review any conflicts or potential conflicts of interest.
 - b) ensure a conflict of interest does not put a supplier at an unfair advantage or disadvantage in relation to the procurement and [award](#) of a public contract. Where

a conflict of interest has been identified appropriate mitigations will be put in place by Commercial Services and officers must abide by those mitigations.

- A7.3 To maintain the confidentiality and integrity of the procurement, officers:
- a) must exercise impartiality and fairness at all times;
 - b) may not discuss or share any “confidential information” other than where it is essential to the discharging of their duties and the recipient(s) of the information is/are subject to the same confidentiality requirements;
- This does not prevent officers from complying with legal obligations (for example under FOI), however officers must consult with Commercial Services prior to disclosing any [tender](#) information.
- A7.4 The Council will take the following approach to managing confidentiality, integrity and conflict of interest:
- a) The Chief Executive, Directors, Divisional Directors, members of strategic boards (such as Capital and Growth Board) and Commercial Services staff are required to complete an annual declaration of interest and confidentiality statement to confirm they understand and will comply with their obligations in relation to confidentiality, integrity and conflict of interest;
 - b) officers and external stakeholders involved in procurement activity are required, on a project-by-project basis, to complete a declaration of interest and confidentiality statement to confirm they understand and will comply with their obligations in relation to confidentiality, integrity and conflict of interest throughout the procurement, including at the outset and prior to the issuing of Tender responses for assessment;
 - c) Commercial Services are responsible for issuing declaration of interest and confidentiality statements for procurements they are directly supporting and will maintain a record of the statements issued, any conflicts of interest identified and the mitigations necessary to manage the conflict;
 - d) For procurements not directly supported by Commercial Services, individual officers are responsible for identifying whether they have a conflict of interest and reporting any identified conflicts to Commercial Services. Commercial Services will undertake periodic spot checks to ensure this is being complied with.
 - e) All officers are responsible for notifying Commercial Services as soon as they become aware of an actual or potential conflict of interest or the inappropriate disclosure of confidential procurement information; and
 - f) Where a conflict of interest has been identified or confidential information has been disclosed appropriate mitigations will be put in place by Commercial Services and officers must abide by those mitigations.
- A7.5 The Council’s conflict of interest obligation also applies to suppliers. Officers must ensure when engaging with suppliers that they do not do anything which could result in a supplier gaining an unfair advantage due to them having knowledge about the procurement that other suppliers do not have, or that would allow a supplier to have undue influence on decisions made by the Council during the procurement.
- A7.6 Officers are also bound by their obligations under the Council’s Employee Code of Conduct and by the Bribery Act 2010.

Gifts and Hospitality

- A7.7 Officers must comply with the Council’s Employee Code of Conduct and the Council’s Local Protocol on Gifts and Hospitality in their dealings with suppliers.

- A7.8 Officers must not be permitted to accept any gift (where the value is above £25.00) or hospitality, including drinks, meals, entertainment, overnight accommodation, travel and holidays. This does not include a lift in a private or company car, a taxi, or refreshments in the course of their duty.

Information Governance

- A7.9 Officers must comply with the Council's Data Protection Policy when processing personal data and / or sensitive personal data.
- A7.10 Officers must consider any requirements for disclosing information under relevant legislation including the Data Protection Act 2018, the Freedom of Information Act 2000, and the Environmental Information Regulations 2004.

A8 Breach of this Policy

- A8.1 Any non-compliance or breach of this Policy or Contract Procedures must be reported immediately on discovery to Commercial Services. Failure to report any known non-compliance or breach is deemed to be a breach of this Policy.
- A8.2 The following internal actions will be taken to deal with identified breaches of this Policy and / or Contract Procedures:
- a) Commercial Services will establish the financial, legal or other risks the breach may pose to the Council and identify any mitigating actions which the contracting department must put in place to reduce or remove the risk;
 - b) Commercial Services will establish the circumstances which led to the breach and put measures in place within the department or across the Council to prevent reoccurrence. These measures include, but are not limited to, training, communications, amendments to policies, procedures and guidance; and
 - c) where the breach is serious or persistent (i.e. is repeated despite actions taken at step b) Commercial Services will refer the matter to the [Section 151 Officer](#) and [Monitoring Officer](#) who may, in consultation with the relevant Director, recommend disciplinary action be taken in accordance with the Council's Human Resources policies.
- A8.3 In addition to internal measures, the Council will take any action required by an external body, such as the Courts or the Procurement Review Unit, where non-compliance with this policy has led to legal challenge to or external investigation of an individual procurement or the Council's commercial activity.
- A8.4 The consequences to the Council of non-compliance or breach of this Policy are wide ranging and may result in:
- a) damage to the Council's reputation;
 - b) suspension of the procurement process or requirement to retender the contract;
 - c) removal of individual bidders from the process;
 - d) prevention from implementing any decisions made in relation to the outcome of a procurement process, including termination of or a reduction to the term of the contract;
 - e) termination of a procurement process;
 - f) payment of damages or fines;
 - g) repayment of grant funding;
 - h) exclusion from bidding for grant funding;
 - i) criminal prosecution under the Bribery Act;

- j) requirement to change or improve our general commercial behaviours, policies or practices.

B Procurement Planning

B1 Decision Making

- B1.1 The primary decision for any procurement is whether it can proceed. Prior to issuing the tender, written approval to undertake the procurement must be obtained in accordance with the [Officer Scheme of Delegation](#).
- B1.2 Where the value of the contract requires approval at Tier 2 or Tier 3 officers must use the Procurement Report Template rather than the standard Cabinet / Council Report Template.
- B1.3 To enable the Council to meet its legal obligations in relation to transparency of procurement decision making, officers must maintain a written record of all decisions made in relation to external spend.
- B1.4 For contracts awarded under PSR there is a specific decision making process to establish the procurement procedure which officers must follow.

B2 Starting a Procurement

- B2.1 All potential procurements where the [contract value](#) is estimated to exceed £25,000 (excluding VAT) must be raised by an officer to Commercial Services through submission of a [start a procurement \(SAP\)](#) form at the earliest opportunity. This is to ensure there is procurement resource available to support the project and sufficient time to prepare and complete the procurement.
- B2.2 officers are not required to involve Commercial Services in the procurement of contracts with a value below £25,000 (excluding VAT), but must ensure the procurement is undertaken in accordance with Contract Procedures.

B3 Planning a Procurement

- B3.1 At the outset of the procurement, officers must establish the business need and high level requirements / specification for the contract.
- B3.2 Throughout the procurement planning and tender development stages officers must:
- consider other requirements of the contract, including climate impact, data protection and information security, equality, diversity and inclusion, health and safety, national and Council priorities, social value, sustainability, and [TUPE](#);
 - give regard to the fact that SMEs and [Voluntary and Community Sector Enterprises \(VCSEs\)](#) may face particular barriers to participation. Officers must consider whether such barriers can be removed or reduced without putting a supplier at an unfair advantage or disadvantage;
 - consider the use of [lots](#) within high value contracts;
 - identify key stakeholders required to input into the procurement process and the role they will play, such as drafting the specification, or involvement in tender assessment. Including internal stakeholders such as IT, Information Governance, Finance, Legal Service, and Planning and external stakeholders such as residents, services users, and key partners;

- e) identify any risks or barriers to the procurement and resultant contract;
- f) calculate the estimated value of the contract; and
- g) consider the timescales for the procurement to ensure there is sufficient time allowed to undertake all of the work required to put the contract in place.

Collaborative Arrangements

- B3.3 Where it is of benefit to the Council, considering any adverse effect on the local economy or voluntary sector, opportunities to collaborate with other public bodies on procurement processes should be sought.
- B3.4 In a joint procurement process, the rules and governance of the leading public organisation must be followed unless agreed otherwise. Where the Council is not the lead body, it must be ensured that the lead body's governance meets the standards of this Policy.

B4 Contract Values

Goods, Services (Excluding Relevant Health Care Services) and Works

- B4.1 Estimating the total value of the contract at the outset of the procurement is essential. This influences the internal approval route, the procurement procedure, and the extent to which the Regulations apply.
- B4.2 Contract values must be calculated excluding VAT; however the [thresholds](#) are inclusive of VAT and this must be considered when determining whether a contract is above threshold or [below threshold](#).
- B4.3 Where the value of the contract cannot be determined the procurement must be assumed to be above threshold for the type of contract being put in place.

Relevant Health Care Services

- B4.4 There are no thresholds associated with contracts put in place under PSR, however it is still essential to establish the estimated value of the contract as this will need to be considered when determining the procurement process to be carried out.
- B4.5 The value of the contract will be used when identifying the [route to market](#) in accordance with the procurement procedure thresholds and procurement options set out in Contract Procedures.

All Contracts

- B4.6 The estimated value of the contract must be the maximum amount the Council could be expected to pay over the whole life of the contract including any extension periods and, where applicable, amounts already paid. Where the contract falls under the Regulations or PSR the method of calculation must be in accordance with that set out in the applicable legislation.
- B4.7 Officers must include any additional income generated by the supplier as a result of the contract being put in place, particularly where there is no direct Council spend.
- B4.8 Officers must not artificially disaggregate (break down into smaller spend levels) spend or potential spend in order to avoid internal governance requirements, undertaking a specific procurement procedure or an above threshold procedure.

B5 Timescales

- B5.1 Officers must ensure sufficient time is allowed for:
- pre-procurement planning activities including preliminary market engagement and consultation;
 - the internal approval process;
 - document development to be completed prior to tender issue;
 - the procurement process itself;
 - tender assessment;
 - contract approval and award;
 - contract signing and implementation; and
 - unforeseen delays at any stage of the process.
- B5.2 The time limit for receipt of above threshold tenders must be set in accordance with the minimum timescales stipulated within the Regulations whilst considering the procurement procedure used, the complexity of the contract, and the length of time required by suppliers to complete their tender.
- B5.3 The time limit for receipt of below threshold tenders must be proportionate to the complexity of the contract and the time required by suppliers to complete their tender.
- B5.4 For the procurement of relevant health care services timescales must be set in accordance with the requirements of PSR.

B6 Risk

Procurement Risk

- B6.1 Submission of the SAP form will be followed by an initial meeting with Commercial Services, who will support the officer to complete a [procurement and contract risk tool](#) to calculate the overall level of risk associated with the contract. The risk score will be used to inform the procurement strategy and route to market.
- B6.2 Officers must identify any potential contractual or delivery risks that need to be addressed within the [tender documents](#) and resultant contract, this will enable the contract to be modified in the event the risk occurs.

Contract Risk Tiering

- B6.3 Any contract with a value exceeding £25,000 (excluding VAT) must be risk assessed using the procurement and contract risk tool to determine the required level of contract management.
- B6.4 Commercial Services must support the [contract manager](#) to determine the [risk tier](#) and the level of contract management and monitoring required based on the value, risk and complexity of the contract.

Risks and Issues

- B6.5 The contract manager is responsible for identifying, measuring, and monitoring risk activities in line with the Council's Risk Management Policy, including any risks identified at tender stage.
- B6.6 Risks and Issues must be accepted by the contract manager and the supplier(s) and must be clearly documented with details of mitigations and actions required by whom.

B6.7 Risks and Issues must be regularly reviewed as part of ongoing contract Review Meetings.

B7 Stakeholders

B7.1 Consideration must be given to whether any consultation is required to take place with residents, service users, partner organisations, or other Council departments who will be affected by, or use, the contract.

B7.2 Where engagement or consultation with external stakeholders, such as residents or people who will use the service, is required this must be undertaken in accordance with Council consultation and communication policies and procedures.

B7.3 Where input into the development of the procurement documents or tender assessment involves stakeholders from external organisations or Service Users, steps must be taken to identify and address conflicts of interest and ensure the confidentiality of any information shared.

B8 Market Research and Preliminary Market Engagement

Market Research

B8.1 Market research involves collecting, analysing, and interpreting data about a product or service. It provides valuable insight into procurement needs and the market that supplies these products or services.

B8.2 Market research should be undertaken to determine the capacity and capability of the market and will inform decision making in relation to whether the requirement is capable of being delivered in house or whether the service needs to be outsourced to the market.

Preliminary Market Engagement

B8.3 The Council actively encourages preliminary market engagement for the purposes of:

- a) testing and informing the procurement strategy (including, where used, design of any competitive flexible procedure) and specification of requirements;
- b) understanding and building the capacity / capability of the market to deliver the requirements;
- c) establishing the most effective route to market;
- d) understanding the local supply market, particularly in relation to below threshold tenders;
- e) informing the [award criteria](#) and [weightings](#) necessary to enable the contract to be awarded on the basis of Most Economically Advantageous Tender;
- f) developing and creating suitable conditions for participation;
- g) establishing appropriate contract terms;
- h) understanding the barriers to participation for SMEs or VCSEs and what can be done to remove or reduce those barriers;
- i) understanding the capacity of the market to respond to the tender, taking into account other authorities tendering for the same thing at a similar time or the impact of legislative changes; and
- j) establishing whether innovation is available within the market that may enable a service or system to be delivered differently and strategically raising awareness of and encouraging participation in the procurement.

- B8.4 Officers must not engage with the market without first seeking advice from Commercial Services. This is to ensure suppliers are not put at an unfair advantage and there is no distortion of competition resulting from preliminary market engagement.
- B8.5 For above threshold tenders under the Procurement Act 2023 the Council must publish a preliminary market engagement notice on the [Central Digital Platform](#) to signal its intention to undertake preliminary market engagement. Officers are responsible for providing the information required within the [notice](#) to enable it to be published by Commercial Services.
- B8.6 Market research and engagement is particularly important for all procurements under PSR as the information gathered can be used to inform and evidence the decision making to establish the appropriate procurement procedure.

Information Sharing

- B8.7 Officers may only share information not deemed to be of a confidential or sensitive nature during preliminary market engagement and stakeholder engagement activities.
- B8.8 When undertaking preliminary market engagement, information may only be shared with the suppliers engaged in the activity where it will not result in a supplier being put at an unfair advantage or disadvantage or in a distortion of competition.

Informing the Procurement Strategy

- B8.9 The information gathered during preliminary market engagement and stakeholder engagement activities must be used to inform the procurement strategy and route to market.

B9 Use of Sub-Contractors

- B9.1 Officers must give regard to:
- the possibility that suppliers may sub-contract elements of service delivery or obtain goods and works through their supply chain;
 - whether the Council has an expectation that specific elements of the contract will be sub-contracted; and
 - consider this within any preliminary market engagement activities.
- B9.2 Officers must consider whether there is a need to restrict how much of the contract can be sub-contracted or whether there are any specific obligations on the supplier to consider local supply chains.

B10 Contracting Strategy

- B10.1 Officers, in consultation with Commercial Services and / or Legal Services, must determine the type of contract that they will use at the start of the procurement process. contract options are covered in sections [D6.1](#) to [D6.11](#) below.
- B10.2 For construction projects, officers should consider whether the use of a single stage procurement process or a 2-stage construction process would be most beneficial to the project and the Council.

B11 Awarding Funding in the Form of a Grant

- B11.1 When awarding funding in the form of a grant, officers must determine whether arrangements being put in place can legitimately be described as a grant under HMRC

rules, i.e. is the payment being made a consideration for supply for VAT purposes or not. Advice must be sought from Finance in relation to the VAT position before any award is made.

- B11.2 Further information on whether a payment is a consideration for a supply for VAT purposes can be found here: [VATSC06311 - Consideration: Payments that are not Consideration: Grants: What is a grant? - HMRC internal manual - GOV.UK \(www.gov.uk\)](#)

C Routes to Market

C1 Defining Routes to Market

- C1.1 Commercial Services are responsible for determining the most appropriate route to market / procurement procedure:
- a) in accordance with the procurement procedure thresholds set out in section 40.2 of Contract Procedures;
 - b) using a risk-based approach, taking into account information provided by the lead officer in respect of the value, risk, complexity, market and urgency of the contract.

C2 Procurement Procedures

Below Threshold Contracts

- C2.1 Commercial Services are responsible for identifying the most appropriate procurement procedure based on the following options after considering the procurement and contract Risk score and the outcome of any market research and / or any preliminary market engagement:
- a) informal or formal written quotes requested from at least three suppliers by email, wherever possible this should include two Torbay based suppliers;
 - b) informal or formal written quotes requested through the SupplyDevon hub, targeting Torbay based suppliers;
 - c) request for quote from at least three suppliers through the [e-tendering system](#), wherever possible this should include two Torbay based suppliers;
 - d) open invitation to tender through the e-tendering system;
 - e) [call-off](#) from an established [Framework](#), [Dynamic Purchasing System](#) or approved Standing List, where the Council is eligible to use it, and the stipulated call-off process is followed;
 - f) [direct award](#) to a company wholly or jointly owned by the Council where it is considered that best value can be achieved;
 - g) direct award to another contracting authority where it is considered best value can be achieved;
 - h) direct award, under any of the circumstances set out at [C2.4](#) to [C2.6 below](#), and/or;
 - i) the amendment of an existing contract.

Above Threshold Contracts

- C2.2 Commercial Services are responsible for identifying the most appropriate procedure from those permitted under the Regulations considering the procurement and contract risk score and outcome of any market research or preliminary market engagement. The

use of approved Frameworks, [Dynamic Markets](#) and Dynamic Purchasing Systems is permitted for above threshold procurements.

Contracts under the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR)

- C2.3 The award procedure will be identified from the following permitted options through completion of the PSR Decision Making template:
- a) Direct award process A – the existing contract is ending, the current supplier is capable of providing the new service and there are no realistic alternatives;
 - b) Direct award process B – the services are subject to patient choice and the number of suppliers they can choose from is not restricted;
 - c) Direct award process C - the existing contract is ending, the requirements are not changing significantly, the current supplier has delivered the contract to a satisfactory standard and is capable of satisfactorily providing the new service;
 - d) Most suitable provider process – the most suitable supplier can be identified from all likely suppliers using information available without the need to undertake a competitive process; or
 - e) Competitive process – must be used when setting up a framework or when none of the alternative processes can be used.

Direct Awards

- C2.4 In order to make a Direct award of a contract, it must be clearly established through market research and preliminary market engagement activities, that there are no other suppliers capable of meeting the need.
- C2.5 Where the contract is above threshold, one or more of the specific circumstances permitting a Direct award under the Regulations must apply.
- C2.6 Where the contract is below threshold the lead officer must be able to demonstrate there are unique circumstances leading to the need to make a Direct award, including:
- a) a Council standardisation policy is in place for the requirement and any change could result in significant change in working practices or service delivery;
 - b) What is being supplied must be identical to an existing product or service to ensure consistency in results;
 - c) what is being supplied must be compatible with an existing specific brand / mode of equipment or service delivery;
 - d) there is a genuine monopoly supplier situation where it is not possible to undertake a [competitive tender](#);
 - e) the goods or services being purchased are of such a specialist nature and no challenge from an alternative supplier could occur;
 - f) the best interests of the Council or local residents cannot be met through an alternative supplier; and/or
 - g) there is genuine emergency which could not have been foreseen by or is not in any way attributable to the Council through its actions or lack of action.
- C2.7 Where the contract falls under PSR Direct award of the contract may only be made where the decision making processes identifies one of the Direct award options.

Supplier Selection to Participate in a Quote Process

- C2.8 Where a quote process inviting pre-selected suppliers is used, suppliers may be selected on the basis of:
- a) Officers' knowledge of the market, including previously used suppliers;

- b) supplier capacity and capability to meet the needs within the timescales and the likelihood of them bidding;
- c) the outcome of an internet search or search of supplier databases such as the e-tendering system or the SupplyDevon hub; and/or
- d) the outcome of an expression of interest (EOI) process.

C2.9 Wherever possible, the suppliers invited to quote should include at least two Torbay based suppliers.

Framework Call-Offs

C2.10 Where a framework has been selected as the chosen procurement route, an expression of interest (EOI) may be carried out prior to running a further competition to establish which suppliers have the capacity to meet the timescales for delivery and are likely to bid.

C2.11 Where a Direct award route is chosen on a multi-supplier framework, the process used to identify the supplier must be in accordance with the requirements of the framework and justification for the Direct award must be recorded and signed off at the appropriate level according to the value of the contract.

C2.12 [Conditions of participation](#) may be re-assessed when running a further competition between multiple framework suppliers or when making a Direct award, providing they are appropriate and relevant to the nature, cost and level of complexity of the contract.

Use of Approved Standing Lists

C2.13 Officers may utilise approved standing lists such as Devon County Council's (DCC) Standing List of Approved contractors (SLoAC) or Maintenance Panel Agreement (MPA) to select suppliers to invite to quote in line with the guidance published by DCC with these lists.

C2.14 A [Confidentiality Agreement Declaration](#) must be made prior to access to the SLoAC and MPA being granted to any officer.

C3 Advertising and Marketing

C3.1 The primary method of advertising the tender opportunity will be determined by the chosen route to market.

C3.2 Under both the Regulations and PSR the Council has a duty to publish a range of [notices](#) within specific timescales in relation to planned and actual procurements. Commercial Services are responsible for publishing these notices. The lead officer is responsible for ensuring Commercial Services has the necessary information to enable the publication of the notice.

D Procurement Process and Tender Assessment

D1 Tender Packs

D1.1 The purpose of the [tender pack](#) is to provide potential suppliers with the information necessary to enable them to determine whether they have the capacity and capability to meet the Council's requirements and submit a response which is capable of being assessed to identify the [most advantageous tender](#).

- D1.2 The lead officer is responsible for ensuring the information within the pack is accurate and unambiguous. Commercial Services will be able to guide the lead officer in terms of how the tender documents should be written and presented, specific elements that should be considered and how the assessment could be conducted, should this be required.
- D1.3 To ensure consistency of the information and guidance provided to suppliers and meet regulatory requirements, the standard [tender templates](#) must be used for all above threshold tenders and below threshold tenders covered by the Regulations and competitive tenders under PSR. For all other procurements, the relevant standard templates should be used wherever possible.
- D1.4 The lead officer is responsible for compiling all information for inclusion in the tender pack relating to what we want to buy (the Specification), why we are buying it (defining business need) and how we check a supplier's ability to meet our requirements (tender assessment).
- D1.5 Commercial Services are responsible for compiling all information within the tender pack on how the procurement is conducted, unless the procurement is not being directly supported by Commercial Services and this is then the responsibility of the lead officer.

D2 Site Visits

- D2.1 Site visits may be appropriate to inform supplier's tender submissions, for example where services are being delivered from specific Council or third-party premises and suppliers require information such as the building layout / location, or for construction projects where suppliers need to view the site.
- D2.2 Commercial Services will be able to advise whether it would be appropriate to include a site visit and how this should be undertaken. Where site visits are necessary, information on the how the site visits will be managed must be included in the tender documents.

Formal Site Visits

- D2.3 Formal site visits are led by an appropriately trained officer and suppliers are required to book a specific date and time.
- D2.4 During the visit no information may be shared with suppliers which may lead to a supplier gaining an unfair advantage or distortion of competition. The responses to any questions asked, or any further information provided, must be issued to all other suppliers as soon as possible after the site visit has taken place.

Informal Site Visits

- D2.5 This is where the supplier can visit the site with no officer needing to be present. There may be a need for suppliers to arrange access to the site or for site visits only being able to be carried out at specific times.

D3 Presentations and Demonstrations

- D3.1 Presentations and/or demonstrations can be used in a procurement only where it is necessary and deemed appropriate by the lead officer and Commercial Services to do so. For example:
- a) presentations may be used where a core requirement cannot adequately be responded to in written format, such as a bite-sized version of a training programme;
 - b) demonstrations may be used where it is appropriate for a practical demonstration of the requirement, such to demonstrate functionality of an IT System being purchased.
- D3.2 The lead officer is responsible for ensuring clear and specific requirements, including the purpose and [assessment criteria](#) are stated within the tender documents.
- D3.3 Unless explicitly stated within the tender documents, all suppliers who have submitted a compliant tender and have met the conditions of participation must be invited to participate in the presentation and/or demonstration.

D4 Assessment Criteria

Conditions of Participation

- D4.1 Conditions of participation are used to establish whether the supplier has the legal and financial capacity to perform the contract and / or the technical ability to perform the contract. A supplier must satisfy all of the conditions of participation in order to be awarded the contract.
- D4.2 Conditions of participation must be proportionate to the nature, complexity and value of the contract and must not have the effect of affording an unfair advantage or disadvantage to a supplier or distorting competition.

Award Criteria

- D4.3 Award criteria are used to assess tender submissions to establish the degree to which suppliers are able to meet the requirements of the Specification and the level of additional benefit that will be achieved through the contract to identify the most advantageous tender.
- D4.4 The award criteria must comprise the optimum combination of price, quality and, where applicable, social value. Officers must ensure the award criteria used:
- a) relate to the subject matter of the contract;
 - b) are sufficiently clear, measurable and specific
 - c) do not break any rules on technical specifications
 - d) are a proportionate means of assessing tenders, considering the nature, complexity and value of the contract;
 - e) are weighted appropriately to achieve value for money from the contract.
- D4.5 Each award criteria and any [sub-criteria](#) must have an individual score or weighting attributed to them, these will be determined by the lead officer in consultation with Commercial Services. Weightings must be defined for each tender to achieve value for money over the life of the contract. Weightings must set an appropriate balance across the effectiveness, efficiency and economy of the resultant contract, considering any relevant socio-economic and environmental benefits and impacts.

D4.6 Where the inclusion of social value criteria applies to the procurement the weighting must be set in accordance with the [social value policy](#).

D5 TUPE Considerations

D5.1 Where TUPE may apply to a contract the Council must include anonymised staffing information within the tender pack which will then be issued to suppliers on submission of a confidentiality agreement. To ensure availability of this information to suppliers, the lead officer must liaise with Commercial Services to obtain staff data from the incumbent supplier in sufficient time to inform the procurement process.

D5.2 Where the procurement involves the outsourcing of Council staff, the lead officer must engage with HR at the earliest opportunity.

D6 Terms and Conditions

D6.1 The terms and conditions used will depend on the scope, nature and complexity of the requirement, the options available are set out below.

Sub-contracting Arrangements

D6.2 Where there is the potential for the supplier to use sub-contractors or a supply chain in order to deliver the requirements the supplier cannot delegate any of its [contractual obligations](#) to its sub-contractors and remains wholly accountable for delivering the contract.

D6.3 The supplier must not impose terms and conditions on its sub-contractors and supply chain that are less favourable than the terms of the contract the supplier has with the Council.

D6.4 The supplier has a legal duty, regardless of whether it is stipulated in their contracts, to pay its sub-contractors and supply chain within thirty days and the Council has a duty to investigate complaints from sub-contractors where the supplier is not fulfilling this obligation.

Council Terms and Conditions

D6.5 Commercial Services has a suite of standard terms and conditions. Commercial Services, in conjunction with the lead officer, will identify which schedules will be applicable to the contract.

National Contracts

D6.6 For construction and engineering requirements, [Joint Contracts Tribunal \(JCT\)](#) or [New Engineering Contract \(NEC\)](#) can be used.

D6.7 Both provide a suite of standard form contracts, these are structured differently in terms of roles and responsibilities and there is cost associated with using them.

D6.8 It is the responsibility of the lead officer to determine whether it would be appropriate to use either set.

Call-offs from Frameworks, Dynamic Markets, Dynamic Purchasing Systems or Approved Standing Lists

D6.9 Where using a Framework, the [call-off contract](#) as set up by the Framework provider must be used unless it explicitly states within the Framework guidance documents that an alternative contract can be used.

- D6.10 It is the responsibility of Commercial Services to ensure that the Framework is compliant and that any call-off is compliant.
- D6.11 Advice must be sought from Commercial Services prior to engaging with a Framework.

Supplier Terms

- D6.12 The use of supplier terms is not permitted unless under exceptional circumstances and only where approval has been given under the [waiver procedure](#).

Key Performance Indicators (KPIs)

- D6.13 Where relevant to the nature of the contract, the lead officer is responsible for identifying appropriate [key performance indicators \(KPIs\)](#) that the successful supplier will be performance managed against once the contract is live.
- D6.14 Contracts procured under the Procurement Act 2023 with a value of £5,000,000 or more must include a minimum of three KPIs. The supplier's performance against these KPIs will be subject to regular publication on the Central Digital Platform.

D7 Contract Changes and Permitted Modifications

Future Contract Modifications

- D7.1 All above threshold contracts, some below threshold contracts and contracts awarded under PSR may only be changed where the change is allowed for under the Regulations or PSR.
- D7.2 The lead officer is responsible for ensuring any potential changes that may happen during the life of the contract are identified and detailed in the tender documents and / or the Change Control Procedure of the contract.
- D7.3 To enable the change to be made at a future date the details of the potential change must be unambiguous and if enacted would not change the overall nature of the contract.

Modifications to Awarded Contracts

- D7.4 Approval to modify live contracts must be done so in accordance with the Officer Scheme of Delegation.
- D7.5 contracts may only be modified where the Regulations or PSR, the tender documents and / or the terms and conditions of the contract allow and must only be modified following the change control procedure as set out in the contract.
- D7.6 Any proposed changes or modifications to the contract must be discussed between the contract manager and the supplier where appropriate.
- D7.7 Advice must be sought from Commercial Services before making any changes or modifications to a live contract. Where a proposed change or modification is provisionally agreed it is the responsibility of the contract manager to inform Commercial Services of the proposed change.
- D7.8 The contract manager must formally action the change by completing a [change control notice](#) (CCN) which must be signed by the supplier(s) and an authorised signatory within the Council's Legal Services.
- D7.9 A copy of the completed change control notice must be provided to Commercial Services as soon as possible and must kept in an accessible electronic format alongside the contract.

D7.10 Commercial Services are responsible for publishing details of contract changes as required.

D8 Tender Issue

D8.1 The purpose of the tender issue is to invite suppliers to participate in the procurement process.

D8.2 All documents relating to the tender must be issued using the publication method appropriate to the procurement procedure selected and in accordance with the Regulations or PSR where applicable.

D8.3 The documents issued must include information on how the procurement procedure will be undertaken, the Council's requirements, assessment criteria, terms and conditions of Contract and any other information required by suppliers in order to enable them to complete a bid. Refer to [D1 Tender Packs](#) for further information.

D8.4 All tenders issued through the e-tendering system (above threshold tenders and any applicable below threshold tenders) will be published by Commercial Services, together with any notices required under the Regulations or PSR.

D8.5 Where publication of a notice is required for below threshold tenders that is not being issued through the e-tendering system the lead officer is responsible for providing Commercial Services with the information to enable publication of the notice.

D8.6 When seeking informal or formal quotes the opportunity is not advertised publicly and only identified suppliers will be invited. Suppliers should be identified in accordance with [C2.8](#) and [C2.9](#) above.

D9 Clarification Questions

D9.1 During the tender process suppliers must have an opportunity to raise any questions they have regarding the procurement, content of the tender documents, or the terms and conditions.

D9.2 The manner of submission and response to clarification questions must be set out in the tender documents. Where a supplier does not follow the prescribed procedure officers must not respond directly to the supplier other than to advise them of the correct method for submitting questions.

D9.3 Responses to clarification questions must be issued to all suppliers, unless the question:

- a) is directly linked to a supplier's individual response (e.g. is innovation based) where the response will only be provided to the Supplier raising the question; or
- b) relates to confidential documents, where the response will be provided only to those suppliers who have submitted a [confidentiality agreement](#).

D9.4 The timescale for responding to clarification questions is five working days from the date the question was received. Where it will take longer to provide a response the supplier must be notified of the delay as soon as it becomes evident the five day timescale will not be met.

D9.5 Where a clarification results in amendments to the tender, such as the specification, assessment criteria or terms and conditions of contract the lead officer must consider whether the submission deadline should be extended to enable suppliers to consider the new or amended information.

E Bid and Tender Assessment and Validation

E1 Tender Opening

- E1.1 The tender submission method must be as set out in the tender documents and, where the e-tendering system is used, tenders will be electronically sealed until the submission deadline has passed.
- E1.2 Tenders submitted through the e-tendering system will be unsealed at the same time by an authorised [Verifier](#), independent of the procurement.

E2 Tender Acceptance

- E2.1 Everyone participating in the assessment process must confirm compliance with the requirements of [A7 Conflict of Interest, Confidentiality and Integrity](#) and identify any conflicts in relation to the suppliers who have responded to the tender prior to their involvement in the assessment process.
- E2.2 Tenders must be assessed against the criteria published in the tender documents including the conditions of participation, any sub-criteria, weightings and scoring methodology.
- E2.3 A tender must be disregarded if:
- the conditions of participation are not satisfied;
 - the supplier is on the Debarment List as an excluded supplier.
- E2.4 A tender may be disregarded if:
- it breaches a procedural requirement set out in the tender notice or associated tender documents; and/or
 - the supplier and/or a sub-contractor they intend to sub-contract the performance of all or part of the contract to, is not a UK supplier or [treaty state supplier](#);
 - it is considered to be an abnormally low priced tender for the performance requirements of the contract; and/or
 - the supplier is on the Debarment List as an Excludable supplier; and/or
 - The supplier is a non-UK or non-treaty state supplier or the supplier is intending to sub-contract all or part of the contract to a non-treaty state supplier.
- E2.5 A record must be kept of all decisions relating to the exclusion of suppliers and the appropriate process for notifying the supplier followed.

E3 Tender Assessment

- E3.1 Quality (e.g. award questions, social value, presentations or demonstrations) and commercial (e.g. price) elements of the tender must be scored independently from one another to avoid the risk of one influencing the other.
- E3.2 For commercial elements of the tender, a quantitative assessment may be completed by one member of the assessment team and a sense check on this scoring completed by a second person.
- E3.3 An initial desktop assessment of award questions will be completed individually by each member of the assessment panel, in line with the published assessment methodology.
- E3.4 Commercial Services will oversee the moderation process bringing together assessment panel members to agree the moderated scoring including the individual

award question scores, the commercial score and those from any presentation / demonstration.

- E3.5 During the tender assessment and moderation stage any post-tender clarifications will be sent to suppliers to respond to within a reasonable timeframe. Responses to these clarifications will be considered by the assessment panel and final moderated scores agreed.

E4 Supplier Due Diligence

Exclusion Grounds and Conditions of Participation

- E4.1 Due diligence checks must be undertaken in respect of the successful supplier to evidence they meet the mandatory and discretionary exclusion grounds and conditions of participation, prior to approval to award the contract being sought. Where the supplier is unable to provide the necessary evidence they cannot be awarded the contract.
- E4.2 For procurements not directly supported by Commercial Services it is the responsibility of the lead officer to request that Commercial Services undertake required checks prior to any contract award.
- E4.3 Where the successful supplier is reliant on sub-contractors to meet any of the conditions of participation, appropriate due diligence checks must also be undertaken in respect of those sub-contractors.

Financial Standing and Performance

- E4.4 Commercial Services will undertake checks to establish the successful supplier's financial standing in accordance with the financial standing guidance. Where there are concerns in relation to the supplier's financial standing this will trigger escalation to Corporate Finance for more in-depth checks and identification of any actions or recommendations to reduce risk.
- E4.5 Where award of the contract to the supplier is deemed to pose significant risk to the Council this will be escalated to the Section 151 Officer a decision on whether the award can proceed or not.
- E4.6 Over the term of the contract the designated contract manager is responsible for:
- a) prompt processing of invoices;
 - b) monitoring the budget and financial performance of the contract;
 - c) monitoring and mitigating financial standing risk by actioning recommendations made by Corporate Finance; and
 - d) informing Commercial Services of any potential financial risks or information which may indicate risk and result in the need for a Financial Standing Check.
- E4.7 Over the term of the contract the Payments team are responsible for:
- e) ensuring payments are made to supplier(s) in accordance with the Regulations, PSR and the terms of the contract;
 - f) providing sufficient information to Commercial Services to enable publication of contract payment notices (CPN) in accordance with the Regulations.
- E4.8 Over the term of the contract Commercial Services are responsible for:
- g) completing financial standing checks on supplier(s) and monitoring ongoing financial standing on at least an annual basis;
 - h) escalating financial risks to Corporate Finance for the completion of further checks.

- E4.9 Corporate Finance are responsible for completing the relevant checks and issuing any actions or recommendations to reduce risk.

E5 Contract Award

Approval and Supplier Notification

- E5.1 Contracts must be awarded in accordance with the stated criteria. The contract award process cannot commence until written approval of the award has been given in accordance with the Officer Scheme of Delegation.
- E5.2 Where relevant to the value of the contract, the decision must be recorded using the designated approval template.
- E5.3 [Assessment summaries](#) for sharing with suppliers must be produced for all tenders to reflect the outcome of the moderation.
- E5.4 suppliers must be notified of the outcome of the procurement process via issuance of the assessment summaries and, where applicable in accordance with the Regulations or PSR, including the publication of any notices and requirement for the observance of a standstill period.

Non-Award of a Contract

- E5.5 Approval to not award a contract must be obtained in accordance with the Officer Scheme of Delegation.
- E5.6 Under certain non-award circumstances, it may be possible to switch to a Direct award process or terminate the procurement process. The decision made must be justified and recorded and, where applicable, the appropriate notice published.

Contract Finalisation, Issuing and Signing

- E5.7 Contracts over £25,000 must be made in writing and in a form in accordance with the Contract Procedures. The form of contract will be as defined in the tender process. contracts over £50,000 in value must be signed under the common seal of the Council.
- E5.8 Any changes to the contract which have arisen from the procurement process will be added to the contract at this stage, for example TUPE, conditions precedent, pre-start implementation and contract management arrangements.
- E5.9 All contracts in excess of £5,000,000 must have at least three KPIs written into them.
- E5.10 Contracts will be sent in draft to the supplier prior to finalisation by the Council. The contract must be signed by the supplier first and then, dependent on the value, counter-signed or sealed by Legal Services.
- E5.11 Contracts must be finalised in advance of any activities under the contract commencing.
- E5.12 Where required under the Regulations or PSR, notices relating to the contract award must be published via the Central Digital Platform. Commercial Services will publish any notices and the lead officer is responsible for ensuring the relevant information is provided to enable this.
- E5.13 Following publication of the relevant regulatory notices, Governance Support will publish a Record of Officer Decision using the appropriate form.
- E5.14 Details of the contract will be entered into the Council's [Contracts Register](#) within the timescales defined under the Regulations or PSR, along with redacted copies of the

contract where the contract value exceeds £5,000,000 and publication is required under the Regulations. Where Commercial Services have not directly supported the procurement the lead officer is responsible for providing Commercial Services with the information necessary for publication on the Contracts Register.

E5.15 Post award, the management of the contract will transfer to the designated contract manager.

F Contract Management

F1 Managing a Contact

F1.1 The contract manager is responsible for ensuring the contractual obligations between the Council and the supplier are met during the entire lifecycle of a contract.

F1.2 The contract manager is also responsible for ensuring any sub-contracting arrangements are managed effectively by the supplier and in particular that the requirement to pay sub-contractors within thirty days is met.

F1.3 The contract manager is responsible for maintaining good working relationships with supplier(s) and must keep accurate records regarding the management of the contract in an electronically accessible format.

F2 Contract Mobilisation

F2.1 The contract manager is responsible for the Contract Mobilisation stage ensuring a smooth transition from Contract award to service delivery. The contract manager should, where relevant to the scale and complexity of the contract, develop a mobilisation plan and the relevant stakeholders must be involved where appropriate.

F3 Contract Review Meetings

F3.1 The contract manager is responsible for organising, facilitating and documenting regular contract review meetings between the Council and its supplier(s) to monitor the contract and performance throughout its lifecycle.

F3.2 The minimum frequency for Contract Review Meetings will be determined by the risk tier of the contract, although more frequent meetings can be agreed with the supplier.

F4 Contract Performance

F4.1 The contract manager is responsible for monitoring performance from the commencement of the contract, including achievement against any KPIs, service levels or targets included in the contract.

F4.2 For contracts procured under the Procurement Act 2023 with a value of £5,000,000 or more, it is the responsibility of Commercial Services to publish supplier performance notices on the Central Digital Platform in accordance with the Regulations. It is the responsibility of the contract manager to provide Commercial Services with the information required for inclusion in the notices.

F5 Contract Risks and Issues

F5.1 Refer to [B6 above](#) B6 Risk.

F6 Default, Disputes and Remedies

Default

- F6.1 Where the supplier is not meeting contractual obligations on performing the contract to the required standards, the contract manager must seek to resolve the performance issues with the supplier in a timely manner.
- F6.2 Where any agreed actions fail to resolve the poor performance, the contract manager should instigate the default process set out in the contract prior to invoking any financial or performance measures within the contract.

Disputes and Remedies

- F6.3 Should the need arise, the contract manager must seek to resolve conflict and / or disagreements between the Council and its supplier(s) by utilising the Dispute Resolution Procedure set out in the contract.

F7 Poor Performance and Breach of Contract

- F7.1 Where there is a failure of the supplier(s) to meet the terms and conditions agreed in a contract the contract manager must clearly document this and seek to address the issue in accordance with terms of the contract.
- F7.2 Commercial Services are responsible for publishing contract performance notices as required in accordance with the requirements of the Regulations. Where poor performance, breach of contract terms, or escalation of issues require the publishing of a contract performance notice it is the responsibility of the contract manager to provide Commercial Services with the necessary information and evidence as soon as possible.
- F7.3 For contracts procured under the Procurement Act 2023 with a value of £5,000,000 or more, there may be enhanced consequences for a breach of contract. The contract manager must seek advice from Commercial Services if a significant breach of a high value contract (£5m or above) has, possibly has, or is likely to occur.

F8 Contract Modification

- F8.1 Refer to [D7 Contract Changes and Permitted Modifications](#).

F9 Contract Compliance Documentation

- F9.1 The contract manager is responsible for ensuring that supplier(s) provide the required documentation specified in the contract, in accordance with the timescales and intervals as set out in the contract.
- F9.2 For contracts with a value exceeding £25,000, the mandatory documents include:
- Business Continuity Plans;
 - Exit Management Plans;
 - Insurances;
 - evidence of accreditations, certificates, registrations or memberships where these were a condition of participation and required by the supplier enable them to fulfil the requirements of the contract; and
 - any other Policies or documents specified in the contract.
- F9.3 The contract manager must be assured that the required documents are fit for purpose in accordance with the associated guidance and are relevant to the contractual

obligations and service delivery. Where appropriate the additional documents must be approved with the supplier in a timely manner so that it may form part of the contract.

G Ending a Contract

G1 Natural Termination and Transition

- G1.1 Contract managers are responsible for ensuring that the Council and the supplier are working towards the planned fulfilment and exit of the contract as set out in the Exit Management Plan.
- G1.2 A contract termination notice must be published for contracts coming to a natural end. Contract managers must provide relevant information to Commercial Services who are responsible for publishing these notices in accordance with the Regulations.

G2 Early Termination

- G2.1 Approval for the early termination of a contract must be in accordance with the Officer Scheme of Delegation and advice from Legal Services sought where the value of the contract exceeds £100,000.
- G2.2 Any early termination must only be carried out in accordance with the Regulations, Contract Procedures, and the specific termination conditions set out in the contract.

G3 Contract Termination Notices

- G3.1 It is the responsibility of Commercial Services to publish contract termination notices as required and stipulated by the Regulations. The contract manager must inform Commercial Services that a contract is due to come to an end either naturally or as an early termination as soon as possible.

H Waiver Procedure

- H1.1 Exemptions may be sought from the from the application of the specific requirements of Contract Procedures. Where an exemption is granted all other requirements of Contract Procedures continue to apply.
- H1.2 Officers may seek an exemption to:
- a) run an alternative Procedure (including making a direct award) to the one identified in accordance with [C2.1](#) (below threshold tenders) or [C2.2](#) (above threshold tenders) where:
 - for below threshold contracts there is appropriate justification and evidence for doing so; or
 - for above threshold contracts the alternative is permitted under the Regulations and there is legal justification for awarding the contract in this way;
 - b) use alternative tender pack to that applicable to the procurement procedure being undertaken;
 - c) use an alternative method for the issuing and submission of tenders to that applicable to the procurement procedure being undertaken;
 - d) use the supplier's or another authority's terms and conditions of contract;

- e) appoint agency staff through a supplier who is not on the Council's framework of approved agency staff suppliers. Officers must be able to evidence that none of the approved suppliers are able to fulfil the requirements.

- H1.3 The use of alternative procurement procedures is not permitted under PSR and exemptions must not be sought or granted in this respect.
- H1.4 Officers must follow the relevant waiver process and may not undertake any work or enter into a contract the waiver request has been approved by the [budget holder](#) or Commercial Services.
- H1.5 Where a request is approved the officer may proceed with the tender or contract award. The officer must abide any conditions attached to the approval and address any recommendations made.
- H1.6 Where a request is declined the officer must comply with the relevant requirements of Contract Procedures.

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I Definitions

Term	Definition
<u>Above threshold</u>	<p>A procurement which is above the relevant threshold for the requirement, i.e.:</p> <ul style="list-style-type: none"> • Goods and services; • Services under the light touch regime; • Services and works concessions; • Works. <p>For further information refer to: <u>Procurement Processes and Procedures</u></p>
<u>Assessment criteria</u>	<p>The criteria used to assess the supplier’s capacity and capability to perform the contract (conditions of participation) and the degree to which the supplier is able to meet the requirements of the Specification and deliver additional benefits (award criteria)</p>
<u>Assessment summary</u>	<p>A document provided to suppliers at the end of a competitive tendering process to enable them to understand why their tender was successful or unsuccessful.</p>
<u>Associated person</u>	<p>A person (including an organisation) the supplier is relying on to satisfy one or more conditions of participation for the tender, but is not a person who is acting as a guarantor.</p>
<u>Award</u>	<p>The process used by the Council to determine the successful supplier following a procurement or the process of awarding the contract, considering any specific requirements set out in the Regulations or PSR.</p>
<u>Award criteria</u>	<p>The criteria against which tenders are assessed to establish the Most Advantageous Tender and on which contract award decisions are made, including but not limited to consideration of quality, price and social value.</p>
<u>Below threshold</u>	<p>A procurement or contract which is below the relevant threshold for the requirement, i.e.:</p> <ul style="list-style-type: none"> • Goods and services; • Services under the light touch regime; • Services and works concessions; • Works. <p>For further information refer to: <u>Procurement Processes and Procedures</u></p>

Term	Definition
<u>Budget holder</u>	The individual responsible for managing and overseeing a specific budget within the Council.
<u>Call-off</u>	The process of awarding a contract under a Framework, Dynamic Market, Dynamic Purchasing System or approved standing list.
<u>Call-off contract</u>	The contract awarded following a call-off from a Framework, Dynamic Market, Dynamic Purchasing System or approved standing list.
<u>Central Digital Platform</u>	<p>A centralised digital platform managed by Cabinet Office:</p> <ul style="list-style-type: none"> • used for the publication of all procurement notices and data; • housing the supplier information system which holds commonly used supplier information that can be shared with contracting authorities.
<u>Change control notice (CCN)</u>	The document signed by the Council and the supplier setting out and confirming agreement to any changes or modifications being made to the contract.
Commercial policy	The set of rules and associated guidance which set out the Council’s procedures for meeting the requirements of these Procedures, the Regulations, PSR and other legislative or regulatory obligations in relation to procurement.
<u>Commercial Services</u>	The Council department responsible for the management and oversight of procurement activities, including the setting of policies and guidance.
<u>Competitive tender</u>	A tender where there is an element of competition, i.e. where more than one supplier is given the opportunity to participate.
<u>Concession (contract)</u>	<ol style="list-style-type: none"> 1. A contract for the supply, for pecuniary interest, of works or services to a contracting authority where: <ul style="list-style-type: none"> • at least part of the consideration for that supply is a right for the supplier to exploit the works or services; and • under the contract the supplier is exposed to a real operating risk. 2. An “operating risk” is a risk that the supplier will not be able to recover its costs in connection with the supply and operation of the works or services, where the factors giving rise to that risk: <ul style="list-style-type: none"> • are reasonably foreseeable at the time of award; and • arise from matters outside the control of the contracting authority and the supplier. 3. Services concessions: The provision and management of services (other than the execution of works) for financial interest,

Term	Definition
	<p>giving the supplier the right to exploit the services with or without payment.</p> <p>4. Works concessions: The execution of works for financial interest, giving the supplier the right to exploit the works with or without payment.</p>
<p><u>Concession Contracts Regulations 2016</u></p>	<p>The legislation incorporated into English law concerning the procurement by public authorities or utilities of public services or works concessions contracts.</p> <p><u>The Concession Contracts Regulations 2016 (legislation.gov.uk)</u></p>
<p><u>Conditions of participation</u></p>	<ol style="list-style-type: none"> 1. The criteria used to establish a supplier's legal, economic and financial standing, capacity and capability to fulfil the requirements of the contract; and / or 2. The questionnaire completed by suppliers to set out their legal, economic and financial standing, capacity and capability to fulfil the requirements of the contract.
<p><u>Confidentiality agreement</u></p>	<p>An agreement which binds one or more parties to non-disclosure of confidential or proprietary information.</p>
<p><u>Connected person</u></p>	<ol style="list-style-type: none"> 1. Persons with significant influence or control over the supplier or persons over which the supplier has significant influence or control, e.g. majority shareholders; or 2. Directors and shadow directors; or 3. Parent and subsidiary companies (sister companies of the supplier, i.e. a company with the same parent are not a connected person unless they fall within one of the other categories of connected person); or 4. Predecessor companies (companies which have become insolvent and ceased to trade and the business has effectively been transferred to the supplier); or 5. Other persons who can reasonably be considered to stand in an equivalent position to the above.
<p>Constitution</p>	<p>The document which sets out the rules governing the Council's business.</p>
<p><u>Contract management</u></p>	<p>The process and approach taken to implement, monitor and review what is being provided under the contract to ensure what has been agreed is being provided to the required standards and all parties to the contract are meeting their obligations.</p>
<p><u>Contract manager</u></p>	<p>The individual responsible for the process of contract management.</p>

Term	Definition
<u>Contract procedures</u>	The rules and procedures in place to ensure the Council is compliant with legislation, fair and accountable in its dealings with economic operators and obtains value for money.
<u>Contract value</u>	The estimated or actual price of the contract to be awarded.
<u>Contract(s)</u>	<ol style="list-style-type: none"> 1. The requirements being put in place as a result of a tender process; and / or 2. A legally binding agreement between the Council and one or more suppliers for the provision of goods, services or works, including formal terms and conditions of contract or the terms stated on a Council Purchase Order.
<u>Contracting authority</u>	<p>A public authority or body governed by public law in whose name the contract is awarded; and/or</p> <p>An authority or body governed by public law able to put public contracts in place.</p>
<u>Contracts Register</u>	The register containing the information the Council is required to publish, under the Local Government Transparency Code, for all spend and contracts entered into with a value that exceeds £5,000 (excl. VAT).
<u>Contractual obligations</u>	Legally recognised responsibilities that parties to the contract have committed to meeting.
<u>Council</u>	Torbay Council
<u>Conflict of interest</u>	<p>A conflict between the interest of an individual acting in relation to a procurement and those of the procurement itself. There are three types of conflict of interest:</p> <ul style="list-style-type: none"> • Actual – where the conflict of interest exists, e.g. a person assessing tenders in a procurement owns shares in a supplier who has submitted a bid; • Potential – where the conflict of interest will arise in future if certain circumstances occur, e.g. the spouse of someone assessing the tenders is the CEO of a business that is in the process of acquiring ownership of another company and that company has recently submitted a tender; • Perceived – where there are circumstances which are considered likely to cause a reasonable person to wrongly believe there is an actual or potential conflict of interest, e.g. there is a close personal friendship between someone assessing the tenders and an employee of a supplier who has submitted a bid.

Term	Definition
<u>Debarment List</u>	A list, managed by the Procurement Review Unit, of suppliers who are deemed by the government as being excluded or excludable from participating in a tender.
<u>Direct award</u>	An award made direct to a supplier without any form of tender or consideration of other supplier's offers.
<u>Dynamic Market</u>	A list of qualified suppliers who are eligible to participate in future procurements for the goods, services or works which are the purpose of the dynamic market.
<u>Dynamic Purchasing System</u>	Is a procedure available for contracts for goods, services, or works commonly available on the market and operated through a completely electronic system, which is open throughout its duration for the admission of economic operators.
<u>e-tendering system</u>	A web-based system used to facilitate a complete tendering process, covering advertising, issuing and receiving tender related information, assessment and contract award.
<u>Excluded supplier</u>	<p>A supplier:</p> <ul style="list-style-type: none"> • to which a mandatory exclusion ground applies and the circumstances giving rise to the exclusion ground are likely to occur again; • on the Debarment List by virtue of a mandatory exclusion ground.
<u>Excludable supplier</u>	<p>A supplier</p> <ul style="list-style-type: none"> • to which a discretionary exclusion ground applies and the circumstances giving rise to the ground are likely to occur again • on the Debarment List by virtue of a mandatory exclusion ground.
<u>Exclusion grounds</u>	<ol style="list-style-type: none"> 1. Mandatory Exclusion Grounds – the grounds set out in Schedule 6 of the Procurement Act 2023 or regulation 57(1) to 57(7) of the Public Contracts Regulations 2015. 2. Discretionary Exclusion Grounds – the grounds set out in Schedule 7 of the Procurement Act 2023 or regulation 57(3) to 57(5) and 57(8) of the Public Contracts Regulations 2015.
<u>Framework agreement(s)</u>	An agreement between one or more contracting authorities and one or more suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period.

Term	Definition
<u>Goods</u>	Tangible items which may be needed to support the Council's operations such as (but not limited to): office supplies, vehicles, machinery, and equipment needed for public works and community services.
<u>Health Care Services (Provider Selection Regime) Regulations 2023 (PSR)</u>	<p>The rules for procuring health care services in England by organisations termed relevant authorities. For the purposes PSR relevant authorities are:</p> <ul style="list-style-type: none"> • NHS England; • integrated care boards (ICBs); • NHS trusts and NHS foundation trusts; • local authorities and combined authorities. <p><u>The Health Care Services (Provider Selection Regime) Regulations 2023 (legislation.gov.uk)</u></p>
<u>Joint Contracts Tribunal (JCT)</u>	A nationally recognised suite of construction contracts developed and provided by the Joint Contracts Tribunal.
<u>Key performance indicators (KPIs)</u>	Measurable targets used to monitor and evidence how the supplier is performing the requirements of the contract.
Light touch regime	The regime under which certain above threshold social and other specific services may be procured.
Local businesses	A business, SME or VCSE that is located and operated from within the Torbay local authority boundary, i.e. postcodes TQ1 to TQ5. Or where, there is no such organisation within the Torbay local authority boundary, one that is located and operated from within Teignbridge or South Hams district councils' boundaries, i.e. postcodes TQ6 to TQ14.
<u>Lot(s)</u>	One of a number of categories of goods, services or works into which a single procurement process has been divided. The use of lots potentially allows for multiple providers to be appointed following a single procurement process.
<u>Monitoring Officer</u>	The statutory officer responsible for matters relating to the conduct of Councillors and officers, the operation of the Council's <u>Constitution</u> and reporting on matters they believe to be illegal or amount to maladministration.
<u>Most advantageous tender</u>	The tender that the Council considers to best satisfy the requirements as stipulated in the tender documents once the tender Assessment is complete.

Term	Definition
<u>National procurement policy statement (NPPS)</u>	<p>Guidance from Cabinet Office setting out the strategic priorities for public procurement and how contracting authorities can support their delivery.</p> <p><u>National Procurement Policy Statement.pdf (publishing.service.gov.uk)</u></p>
<u>National procurement strategy (NPS) for local government in England</u>	<p>Sets out the ambition of the sector, including guidance and a roadmap to improvement and innovation.</p> <p>This strategy promotes:</p> <ul style="list-style-type: none"> • adding value; • fulfilling our social value priorities through procurement; • building even greater connections and partnerships locally, across the public sector, with suppliers and the voluntary sector; • attracting, developing and retaining talent; • exploiting data and technology; • effective contract, supplier relationship and supply chain management; and • embracing public procurement transformation and innovation including making procurement easier for bidders.
<u>New Engineering Contract (NEC)</u>	<p>A nationally recognised suite of engineering and construction contracts created by the UK Institution of Civil Engineers.</p>
<u>Notice(s)</u>	<p>Notices which the Council is legally required to publish at various stages of the procurement process. Full details of the required notices are set out in procurement and contract management guidance.</p>
<u>Officer scheme of delegation</u>	<p>A framework that confers powers to conduct an authority's executive functions on chief officers and certain other designated officers, setting out the arrangements for the delegation of authority to officers to carry out the Council's various functions.</p>
<u>Other applicable primary or secondary legislation and regulations</u>	<p>Primary and secondary legislation and regulations relevant to public procurement, this includes but is not limited to:</p> <ul style="list-style-type: none"> • Bribery Act 2010; • Children Act 2014; • Contract (Rights of Third Parties) Act 1999 • Data Protection Act 2018 and UK General Data Protection Regulation; • Fraud Act 2006; • Freedom of Information Act 2000;

Term	Definition
	<ul style="list-style-type: none"> • Health and Safety at Work etc. Act 1974; • Health and Care Act 2022; • Human Rights Act 1998; • Insolvency Act 1986; • Intermediaries Legislation (IR 35); • Local Government Transparency Code 2015; • Modern Slavery Act 2015; • Prevent Duty; • Prevention of Corruption Act 1906; • Procurement Regulations 2024; • Public Bodies Corrupt Practices Act 1889; • Public Sector Equality Duty; • Public Services (Social Value) Act 2012; and • Transfer of Undertakings (Protection of Employment) Regulations 2006.
<u>Participation</u>	The process by which suppliers are selected to move forward to the next stage of the procurement, in accordance with the criteria listed in the Regulations or PSR.
<u>Procurement Act 2023</u>	The legislation which, when incorporated into English law, will govern how the procurement of public goods, services (excluding relevant health care services) and works contracts must be undertaken, as amended from time to time.
<u>Procurement and contract risk tool</u>	A tool developed and utilised by Commercial Services to assist in calculate a risk tier for individual projects using predetermined weightings to assess multiple choice inputs. This informs the type of procurement, the route to market, and supports officers to determine to required level of contract management on a project-by-project basis.
<u>Procurement playbooks</u>	<p>Guidance which sets out how government departments should approach outsourcing projects and outlines the government’s expectations on how contracting authorities and suppliers engage with each other. The playbooks encompass the following:</p> <ul style="list-style-type: none"> • sourcing; • construction; • consultancy; • digital, data and technology.
<u>Procurement policy note (PPN)</u>	A document that sets out information and guidance for public bodies on the Regulations and policies issued by the UK and devolved governments.

Term	Definition
<u>Procurement(s)</u>	<ol style="list-style-type: none"> 1. The award, entry into and management of a contract, including: <ul style="list-style-type: none"> • any step taken for the purpose of awarding, entering into or managing the contract; • all or part of the procurement; and • termination of the procurement before award of the contract, <p>regardless of whether the procurement is covered under the Regulations or PSR or not. and / or</p> 2. Steps taken for the purpose of awarding, entering into or managing a contract include, but are not limited to: <ul style="list-style-type: none"> • pre-tender planning and decision making; • market engagement; • the procurement procedure itself; • contract issuing and signing; • mobilisation/implementation; • contract and performance management; • exit management; and • de-commissioning.
<u>Procurement procedure</u>	The process undertaken to tender a contract.
<u>Public Contracts Regulations 2015</u>	<p>The legislation incorporated into English law concerning the procurement by public authorities of public services, goods and works contracts, as amended from time to time.</p> <p>The Public Contracts Regulations 2015 (legislation.gov.uk)</p>
<u>Regulations</u>	The Procurement Act 2023 and its associated secondary legislation (such as the Procurement Regulations 2024), the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and/or Utilities Contract Regulations 2016.
<u>Route to market</u>	The approach used to reach the identified market to maximise the number and quality of the responses to the tender.
<u>Risk tier</u>	A tier that defines the minimum requirements in the management of the contract.
<u>Section 151 Officer</u>	The statutory officer responsible for the arrangements for the proper administration of the Council's financial affairs.
<u>Services</u>	The provision of any type of service other than those which fall within the definition of a works contract or a social and other specific services contract.

Term	Definition
	The provision and management of services (other than the execution of works) for financial interest, giving the supplier the right to exploit the services with or without payment.
<u>Small and medium enterprises (SMEs)</u>	Small and medium enterprise.
<u>Social value policy</u>	The policy which sets out how the Council will meet its legal obligations to consider and achieve wider social, economic and environmental benefits through external contracts.
<u>Start a procurement form (SAP)</u>	The form to be completed by Officers and sent to Commercial Services as soon as an officer becomes aware that there may be a need to put an external contract in place.
<u>Sub-criteria</u>	The criteria which sit below the main criteria, against which the supplier's tender will be assessed.
<u>Supplier</u>	<ol style="list-style-type: none"> 1. The generic term to cover a contractor, provider, supplier, service provider, applicant, bidder, candidate, tenderer, company, organisation or any other legal entity who may or does tender for or is awarded a contract. 2. Under the Procurement Act 2023 supplier may also mean a supplier associated with another supplier where: <ul style="list-style-type: none"> • the suppliers are submitting a tender together; or • the successful supplier will be entering into a legally binding agreement to the effect that: <ol style="list-style-type: none"> i the supplier will sub-contract the performance of all or part of the contract to the other supplier; or ii the other supplier will guarantee the performance of all or part of the contract by the supplier.
<u>Tender</u>	The invitation to bid for a contract; and / or The bid submitted by a supplier in response to a tender opportunity.
<u>Tender document(s)</u>	The documents issued by the Council setting out its requirements and the rules for the procurement, together with the documents submitted by suppliers containing their tender response. Which may be in the form of an official tender pack or written instructions within an email or letter to suppliers.
<u>Tender pack</u>	The full set of documents or other form of written instructions and information issued to suppliers as part of any tender process.
<u>Tender template(s)</u>	The proforma tender document(s) for completion by the contracting department and procurement lead officer.

Term	Definition
<u>Threshold(s)</u>	<p>The contract value thresholds (inclusive of VAT) set by the UK government above which the full requirements of the Procurement Act 2023, Public Contracts Regulations 2015 and Concession Contracts Regulations 2016 apply, as amended every two years, covering:</p> <ul style="list-style-type: none"> • light touch regime services • services • services and works concessions supplies • works <p>For further information refer to: Procurement Processes and Procedures</p>
<u>Treaty state supplier</u>	<p>A supplier that is entitled to the benefits of any of the international agreements set out in Schedule 9 of the Procurement Act 2023.</p>
<u>TUPE</u>	<p>Transfer of Undertaking (Protection of Employment) Regulations 2006: the regulations which govern how employers must deal with transfer of staff when a service or business changes hands from one employer to another in order to ensure the principal terms of employees' rights are protected, including where Council staff are outsourced.</p>
<u>Utilities Contract Regulations 2016</u>	<p>The legislation incorporated into English law concerning the procurement by utilities of public services, goods and works contracts, as amended from time to time.</p> <p>The Utilities Contracts Regulations 2016 (legislation.gov.uk)</p>
Utilities	<p>An entity which pursues one of the following activities and is a contracting authority or public undertaking or is not a contracting authority or public undertaking but whose activities include and operate on the basis of special or exclusive rights:</p> <ul style="list-style-type: none"> • gas and heat; • electricity; • water; • transport services; • ports and airports; • postal services; and • extraction of gas, oil, coal or other solid fuels.
<u>Voluntary and community sector enterprises (VCSEs)</u>	<p>Organisations that operate with the primary aim of addressing social, economic, or environmental issues within communities. They can include charities, community groups, and social enterprises that work to deliver public services and improve community well-being.</p>

Term	Definition
<u>Verifier</u>	The officer(s) authorised to unseal electronic tenders.
<u>Waiver procedure</u>	The procedure set out in this policy governing the exemption of the application of the Finance and Contract Procedures.
<u>Weighting</u>	A score which may be allocated to individual criteria and/or sub-criteria to denote their level of importance in comparison to other criteria.
<u>Works</u>	The execution or design and execution of construction, civil engineering, demolition, building installation and building completion works.
<u>World Trade Agreement on Government Procurement (GPA)</u>	<p>A plurilateral agreement under the auspices of the World Trade Organization (WTO) which regulates the procurement of goods and services by the public authorities of the parties to the agreement, based on the principles of openness, transparency and non-discrimination.</p> <p>Government Procurement Agreement [WP for Windows Docs] (wto.org)</p>