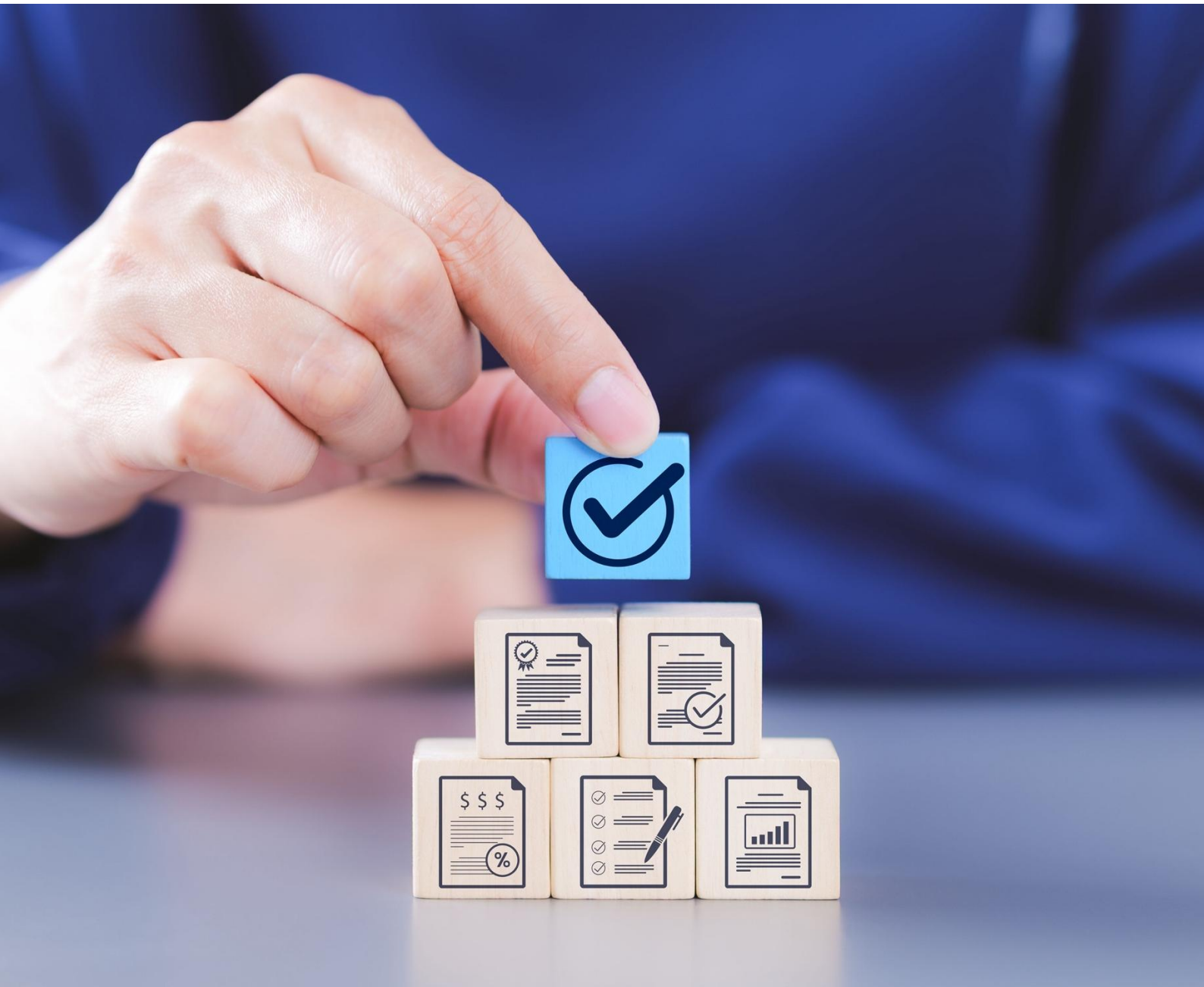


WORCESTER

Procurement Code



Worcester
CITY COUNCIL

WORCESTER CITY COUNCIL

PROCUREMENT CODE

CONTENTS

	PAGE
Introduction and Summary of Essential Requirements	3
<u>Scope of the Procurement Code</u>	
Rule 1: Principles	5
Rule 2: Authorised Officer Responsibilities	5
Rule 3: Transfer Of Undertakings (Protection of Employment) Regulations 2006 (TUPE)	7
Rule 4: Contracts	7
Rule 5: Collaborative and Partnership Arrangements	8
Rule 6: Framework Agreements and Dynamic Markets	8
Rule 7: Concessions	9
Rule 8: Works Contracts	
Rule 9: Exemptions	10
<u>Common requirements</u>	
Rule 10: Assessing the Requirements	11
Rule 11: Records	13
Rule 12: Advertising	14
Rule 13: Public Services (Social Value) Act 2012	14
Rule 14: Modern Slavery Act 2015	14
<u>Procurement Processes and Procedures</u>	
Rule 15: Competition Requirements	15
Rule 16: Pre-Tender Market Research and Consultation	18
Rule 17: Standards and Award Criteria	19
Rule 18: Invitation to Tender/Quotations	19

Rule 19:	Shortlisting	20
Rule 20:	Submission, Receipt and Opening of Tenders/Quotations	20
Rule 21:	Clarification Procedures	22
Rule 22:	Post Tender Negotiation	22
Rule 23:	Tender Evaluation	22
Rule 24:	Award of Contract and De-briefing	23
	<u>Contract and other formalities</u>	
Rule 25:	Contract Documents	24
Rule 26:	Performance Bonds and Parent Company Guarantees	26
Rule 27:	Prevention of Corruption	27
Rule 28:	Bribery Act 2010	27
Rule 29:	Compliance with Confidentiality and Conflicts of Interest	28
	<u>Contract Management</u>	
Rule 30:	Managing Contracts	28
Rule 31:	Contract Extensions	29
Rule 32:	Contract Modifications	29
Rule 33:	Risk Assessment and Contingency Planning	30
	Definitions Appendix	31
	Appendix A - See Separate Document	

Enquiries: South Worcestershire Procurement Manager Ext 565433

A number of procurement Guidance Documents are also available to assist with procurement activities please see the Procurement page on STAFFROOM for further information.

UPDATED ON 18 MARCH 2025

All Council staff must comply with this Procurement Code. This includes when purchasing on behalf of other organisations and when purchasing using external funding e.g. grants. The Procurement Code lays down the minimum requirements and more rigorous procedures may be appropriate for specific contracts. Exemptions are only to be used in exceptional circumstances as detailed in Rule 9. Failure to comply with this Procurement Code could result in disciplinary action.

INTRODUCTION AND KEY CONSIDERATIONS

A. Introduction

This Procurement Code (hereafter "**Code**") (issued in accordance with section 135 of the Local Government Act 1972) are intended to promote good purchasing practice and public accountability and deter corruption. This Code is subject to and interpreted in accordance with the Constitution.

This Code should be read in conjunction with the Financial Regulations which set out mandatory financial procedures to be followed.

This Code is designed to ensure they are legally compliant with:

- UK Procurement Legislation
- Guidance issued by the Cabinet Office
- The Public Services (Social Value) Act 2012
- English law
- The Constitution
- Council policies

This Code shall be interpreted and applied in a manner that is consistent with all applicable UK Procurement Legislation. In the event of any conflict between this Code and any relevant UK Procurement Legislation, the requirements of UK Procurement Legislation shall take precedence.

The Monitoring Officer is authorised to update this Code from time to time. Such updates shall be limited to changes required due to a change in law and/or its interpretation and any non-material changes (e.g. changes to the UK Thresholds).

The Monitoring Officer may at any time issue urgent amendments to this document where compliance with these Code would place the Council in breach of its legal obligations.

Please refer to the Definitions Appendix for an explanation of words provided in this document.

This Code exists to ensure that the Council awards contracts in a fair, consistent, honest, legal, and transparent manner and promote good purchasing practice and public accountability. Compliance with this Code is also the best defence against potential allegations that a contract has been awarded incorrectly, fraudulently or otherwise unlawfully.

B. Key Considerations:

- Follow this Code if you purchase goods or services or order construction or engineering or other works of any kind.
- Always check with your line manager about your responsibilities and take all necessary legal, financial, and professional advice.
- Declare any personal interest in a contract, potential contract or any sort of procurement process and withdraw from taking part in it. Refer to the Employees' Code of Conduct for more information. Corruption and Bribery are criminal offences.
- Conduct an appraisal of the purchasing need and the requirement to obtain Best Value and Value for Money.
- Check whether there is an existing Corporate Contract or Framework Agreement that you can utilise before undergoing a competitive process
- Ensure social value is considered and included in the Tender Documents.
- Allow at least four weeks for submission of bids.
- Keep bids confidential.
- Complete a written contract or Purchase Order before the supply or works begin.
- Identify a Contract Manager (on both sides) with responsibility for ensuring the contract delivers as intended.
- Keep records of all dealings with suppliers.
- Ensure that any communication is confirmed in writing.
- Manage the contract throughout to ensure compliance.
- Assess each contract afterwards to see how well it met the purchasing need including Best Value and Value for Money requirements.

If you are unsure about the application of any of this Code, please speak to the Procurement Team.

SCOPE OF PROCUREMENT CODE

1. PRINCIPLES

The following principles must be followed.

Any procurement of goods, services or works must:

- be carried out in a fair, transparent and non-discriminatory manner, consistent with the highest standards of integrity and probity
- maximise Value for Money and the public benefit
- comply with all legal requirements including all UK Procurement Legislation
- support the Council's corporate and departmental plans and strategies, and
- comply with the Procurement Strategy and other relevant policies and Codes of Practice.

2. AUTHORISED OFFICER RESPONSIBILITIES

- 2.1 Authorised Officers must comply with this Code, the Financial Regulations, Code of Conduct and UK Procurement Legislation when procuring goods, services or works. Authorised Officers must also ensure that any agents, consultants, and contractual partners acting on their behalf also comply, as if they were an officer of the Council.
- 2.2 Where the Council is acting jointly with other organisations it shall be a condition of any financial contribution by the Council that this Code is followed.

2.3 Authorised Officers must:

- have regard to all UK Procurement Legislation and any guidance provided by the Procurement Team.
- check whether a suitable Corporate Contract exists before seeking to award another contract. Where a suitable Corporate Contract exists, this must be used unless there is an auditable reason not to.
- ensure all records required by Rule 11 are kept
- comply with the requirements of the Local Government Transparency Code 2015
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf
- take all necessary legal, financial, audit, procurement, and other professional advice.
- have regard to the fact that small and medium sized enterprises may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.
- have regard to the National Procurement Policy Statement
- in respect of any major/complex procurement contract process, obtain procurement and legal advice prior to commencing the procurement process and obtain external specialist advice as required.
- for major contracts (above highest threshold) gain agreement from the relevant Committee in respect of the timetable and specification and to any subsequent changes made to these.
- at any stage of the procurement process, where significant legal issues arise, contact the Legal Department and obtain specialist legal advice.
- effectively prevent, identify and remedy conflicts of interest arising in the conduct of any procurement exercise and in respect of any procurement over £30,000 (incl. VAT) complete a Conflicts Assessment Summary.

2.4 Authorised Officers must comply with their Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract.

2.5 Any Authorised Officer involved in any decision in respect of any contract or award of a contract in which they or any member of their family or friends has a Pecuniary Interest (whether directly or indirectly) or any other Conflict of Interest (see Rule 29) shall immediately make their line manager aware at the earliest opportunity and complete a 'Declaration of Interests' form which should be provided to the Procurement Team.

2.6 Any doubts as to the interpretation of this Code should be referred to the Procurement Team.

2.7 Failure to comply with this Code may leave the Council, or individual officers or members, open to the risk of legal challenge. Breaches will be regarded as a serious matter and may result in disciplinary action. Any officer becoming aware of any compliance failure should immediately inform their Head of Service, the South Worcestershire Procurement Manager or the Monitoring Officer. Alternatively, matters can be raised through the Council's whistleblowing policy.

3. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (TUPE)

- 3.1 TUPE should be presumed to apply in any procurement process involving the contracting out of a service area of the Council with a discrete budget and staff assigned to it. The exception to this is if there are genuine exceptional reasons for TUPE not to apply. These could be where:
- A contract is for the provision of both goods and services, but the provision of services is ancillary in purpose to the provision of the goods
 - The matter being contracted is a new or a one-off project.
 - Services or goods are essentially a commodity bought “off the shelf” and no grouping of staff is specifically and permanently assigned to a common task.
 - The features of the service or function subject to the contracting exercise are significantly different from the features of the function previously performed within the Council, or by an existing supplier such as a function to be delivered electronically and in a way that requires radically different skills, experience and equipment.
- 3.2 TUPE should also be presumed to apply to a procurement process when an external contract is to be re-let where there are staff involved. Invitations to Tender should state that staff are to transfer pursuant to TUPE and information relating to pay, bonus payments, allowances, holiday entitlement and pension details should be obtained from the incumbent supplier to enable Potential Tenderers to cost the effect of staff transferring to them.
- 3.3 All contracts to which TUPE applies must contain specific clauses relating to the application of TUPE.
- 3.4 Where TUPE applies, legal advice should always be sought from the Legal Department.

4. CONTRACTS

- 4.1 All contracts and Framework Agreements must comply with this Code, unless otherwise exempt under this Code or UK Procurement Legislation
- 4.2 This includes any arrangement made by, or on behalf of the Council for the supply of goods or the carrying out of services or works.
- 4.3 Exempt contracts are set out in Schedule 2 of the Procurement Act 2023 and are incorporated into this Code. These include:
- contracts of employment which make an individual a direct employee of the authority, or
 - agreements regarding the acquisition, disposal, or transfer of land (for which the Financial Regulations shall apply).
- 4.4 If you are unsure whether this Code applies to a contract, please contact the Procurement Team.

5. COLLABORATIVE AND PARTNERSHIP ARRANGEMENTS

- 5.1 In order to secure Value for Money, the Council may enter into collaborative procurement arrangements with other local authorities, government departments, public bodies or public service purchasing consortium and may use Framework Agreements let by other local authorities, government departments, public bodies or public service purchasing consortiums.
- 5.2 Any contract entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Procurement Code of the leading organisation, will be deemed to comply with this Code. However, advice must be sought from the Procurement Team to ensure compliance with this Code.

6. FRAMEWORK AGREEMENTS AND DYNAMIC MARKETS

- 6.1 Authorised Officers must check whether a suitable internal or external Framework Agreement or Dynamic Market exists before seeking to award a contract.
- 6.2 A Framework is a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.

Frameworks help public and third sector buyers to procure goods and services from a list of pre-approved suppliers, with agreed terms and conditions and legal protections.

Frameworks are often divided into 'lots' by product or service type, and sometimes by region. This means that suppliers offering certain kinds of specialist goods or services, sometimes in a specific geographic location, can bid to join the lot that best suits their offer.

The number of suppliers differs from framework to framework, depending on what is being offered. Some frameworks have only one supplier offering complex, end to end services, while others are designed to be open to thousands of potential bidders.

Once awarded, frameworks run for a given timeframe, usually between 1 to 4 years, after which they are re-tendered, giving new suppliers the chance to bid to join them.

- 6.3 A Dynamic Market is similar to a Framework but allows suppliers to join and add new services at any point.
- 6.4 All purchases made via a local authority purchasing and distribution consortium (e.g., ESPO, YPO and CCS) are deemed to comply with this Code, and no exemption is required. However, purchases above the UK Threshold must be awarded under the UK Procedure, unless the consortium has satisfied this requirement already by letting their contract in accordance with the UK Procedure on behalf of the authority and other consortium members. Authorised Officers must check and ensure that any Frameworks or Dynamic Markets used

are compliant and can be used by the Authority. If you are unsure, please contact the Procurement Team.

- 6.5 Framework Agreements that have been established by other public sector bodies that are lawfully accessible to the Council should be used in accordance with the terms and conditions of the relevant Framework Agreement and approved by the Procurement Team.
- 6.6 Where the Council accesses an existing Framework Agreement, the Framework Agreement terms and conditions of contract must be used. Before entering into a Framework Agreement, due diligence checks must be carried out to demonstrate that the Council can lawfully access the Framework Agreement and that it is fit for purpose and provides Value for Money. Advice must be sought from the Legal Department to review the terms and conditions prior to using a Framework.
- 6.7 The Council may also establish its own Framework Agreements. Advice must be sought from the Procurement Team to ensure compliance with UK Procurement Legislation and this Code.

7. CONCESSION CONTRACTS

- 7.1 Where the value of a Concession Contract to be awarded is above the UK Threshold and is not otherwise an exempt contract (see Rule 4.3), the procedure for the award of a Concession Contract shall be governed by UK Procurement Legislation. Any other Concession Contract shall be awarded in accordance with this Code.
- 7.2 For the purposes of this Code, a Concession Contract is where a supplier utilises an asset of the Council to create an opportunity where the supplier benefits economically from users of the works or services they are providing. Under a Concession Contract, the supplier will be exposed to potential loss on their investment due to demand fluctuations. The Council would also benefit from the use of its asset by the supplier. That benefit could be a direct financial benefit or could include wider social, economic or environmental benefits.
- 7.3 Where the Council seeks to award a Concession Contract, the Authorised Officer should follow this Code as though it were a procurement, having regard to the various thresholds, need to advertise and other matters of ensuring a transparent and competitive process.
- 7.4. Where the Council is approached by an economic operator with a concession opportunity advice must be sought from the Procurement Team.

8. WORKS CONTRACTS

- 8.1 A recognised form of contract should be used e.g. JCT, NEC etc. with minimal amendments, unless expressly agreed otherwise by the Legal Department.
- 8.2 It is a requirement that all construction contracts let by the Council comply with the Construction, Design and Management (CDM) Regulations
- 8.3. Provision should be made for liquidated damages to be paid by the contractor if the contract is not completed within the time specified. This will normally be the case for contracts over £500,000 but may also be appropriate for lesser value

contracts. The amount of liquidated damages shall be determined by the appropriate Head of Service in consultation with the Head of Finance.

- 8.4. Consideration should be given to the use of Performance Bonds and Parent Company Guarantees (see Rule 26).

9. EXEMPTIONS

9.1 Exemptions

9.1.1 In exceptional circumstances, this Code permits a direct award if the relevant Head of Service, in consultation with the relevant Corporate Director or Managing Director (see Rule 9.1.3) is satisfied that one or more of the following exemptions apply ("Exemptions"):

- (i) that there is no genuine competition, for example where:
 - (a) the goods or materials are proprietary articles or are sold only at a fixed price and no satisfactory alternative is available
 - (b) where competition is absent for technical reasons and where no reasonable alternative or substitute exists,
 - (c) the procurement of a unique work of art or artistic performance, or
 - (d) where the technical characteristics of the goods are only compatible with an existing supply or installation, such that procurement of another product other than one available from the original Contractor would result in incompatibility and/or disproportionate technical difficulties

AND there is no reasonable alternative.

Where there is no genuine competition and no reasonable alternative, the Head of Service will obtain a written Quotation from the contractor and will negotiate to obtain Best Value and Value for Money for the Council prior to awarding any contract;

- (ii) the proposed contract forms part of a serial programme, the terms having been negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to provide a written Quotation or Tender;
- (iii) that to maintain service continuity and minimise disruption, considers it desirable in the best interests of the Council that a Tender be invited for the execution of work from a contractor selected by it or negotiated with a contractor already engaged by the Council where the previous award was through a competitive competition;
- (iv) the goods, materials or services are required due to an emergency involving immediate risk to persons, property, or serious disruption to Council services;
- (v) that significant financial loss may be incurred if the award of the contract is delayed;
- (vi) instances when the work to be executed is of such a specialist nature that there would be no genuine competition; or the particular

reputation or personal and professional expertise or experience of the contractor is of central importance to the contract (for example, barrister or specialist consultant or advocate). This may also apply if work previously undertaken by the provider means that they are clearly and uniquely best equipped to carry out the new work.

(vii) that external/partner funding arrangements require other procedures to be followed.

- 9.1.2 In cases (iv) and (v) above the relevant Head of Service may obtain verbal quotations and authority provided they are subsequently confirmed in writing and an exemption request form is completed as soon as practicable.
- 9.1.3 If the relevant Head of Service is of the opinion that any of these Exemptions should apply the following steps / authorisations are required:
- Up to High value threshold – consult with the Procurement Team and complete an exemption request form authorised by the relevant Corporate Director.
 - High value threshold up to UK Threshold – consult with the Procurement Team and complete an exemption request form authorised by the Managing Director.
- 9.1.4 Once an exemption request has been authorised, the relevant exemption request form shall be provided to the Procurement Team.
- 9.1.5 Where a proposed contract is likely to exceed the UK Threshold any exemption must be authorised by the P & R Committee. The Exemptions at Rule 9.1.1 shall not apply and, instead, any exemption must be compliant with UK Procurement Legislation.

In accordance with the Procurement Act 2023, a “Transparency Notice” providing details and reason why a direct award has been made, as well as a Contract Award Notice and Contract Details Notice, must also be published prior to the award of contract.

- 9.1.6 Where an exemption under Rule 9.1.5 is necessary because of an unforeseeable emergency the relevant Head of Service and Managing Director) may jointly approve the exemption, but they must prepare a report for the next P & R Committee to support the action taken.
- 9.1.7 Heads of Service shall monitor the use of all exemptions.

COMMON REQUIREMENTS

10. ASSESSING THE REQUIREMENTS

10.1 Pre-tender assessment

- 10.1.1 Authorised Officers must carry out an assessment of the proposed purchase, in a manner appropriate to its complexity and value, taking into account any advice and guidance available within the Council. The assessment should:

- consider the need for the expenditure and its priority
- define the objectives of the purchase
- assess the risks associated with the purchase and how to manage them
- consider the procurement method most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements
- consult users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- consider the terms and conditions that are to apply to the proposed contract, and
- complete the on-line Procurement Checklist

10.1.2 The appraisal must confirm that there is approval for the expenditure (whether by way of a relevant Committee or delegated approval) as set out in the Constitution. The expenditure must be provided for in an appropriate budget and a proper financial and technical appraisal must be carried out.

11. RECORDS

11.1 Where the total contract value does not exceed the UK Threshold, the following records must be kept:

- Invitations to quote and quotations received, including details of the evaluation process and how the winning quote was determined.
- the reason if the lowest price is not accepted.
- written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.
- relevant transparency notices as set out in the Procurement Act 2023
- all material decisions and considerations in awarding the contract.

11.2 Where the Total Value exceeds the UK Threshold the Authorised Officer must record:

- the method for obtaining bids (see Rule 15).
- any Contracting Decision and the reasons for it.
- any pre-tender market research undertaken.
- the Award Criteria.
- Tender Documents sent to and received from Tenderers.
- clarification and post-tender negotiation (to include minutes of meetings)
- the contract documents.
- post-contract evaluation and monitoring.
- formal communications with Tenderers
- formal communications with the successful contractor throughout the period of the contract.
- all material decisions in accordance with section 98 of the Procurement Act 2023.
- transparency notices as set out in the Procurement Act 2023

11.3 All records must be kept in line with the Council's retention schedules.

11.4 Heads of Service will maintain adequate records in order to comply with any transparency requirements.

12. ADVERTISING

12.1 Authorised Officers shall ensure that, where proposed contracts, irrespective of their Total Value, might be of interest to Potential Tenderers, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to Potential Tenderers, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- the Council's E-Procurement Portal
- the Council's website
- portal websites specifically created for contract advertisements.
- national official journals

12.2 Where any contract with a value of over £30,000 (including VAT) is advertised, the opportunity must also be advertised on the Central Digital Platform.

13. PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

13.1. The Public Services (Social Value) Act 2012 requires contracting authorities to consider at the pre-procurement stage of any services contract and services Framework Agreement (including where goods and works are procured in combination with services) to which the UK Procurement Legislation applies:

- how the proposed procurement may improve the economic, social, and environmental well-being of their areas.
- how the contracting authority may act with a view to securing that improvement in conducting the process of procurement.
- in addition, the contracting authority is required to consider whether to undertake any community consultation on the above matters.

14. MODERN SLAVERY ACT 2015

14.1 The Modern Slavery Act 2015 is designed to combat modern slavery in the UK and consolidates previous offences relating to trafficking and slavery. The Council is committed to improving its practices to combat slavery and human trafficking.

This includes a commitment to ethical purchasing and equality and diversity in procurement.

Contracts must not be awarded where suppliers do not demonstrate their commitment to ensuring that slavery and human trafficking are not taking place in their own business or supply chains.

14.2 If you are undertaking a procurement exercise to which you think the above may apply, please consult with the Procurement Team before proceeding.

PROCUREMENT PROCESSES AND PROCEDURES

15. COMPETITION REQUIREMENTS

The Authorised Officer must calculate the Total Value of any proposed purchase or disposal (see definition of Total Value in Appendix One for more information).

Contract Value Calculation

- 15.1 Contract value means the estimated total ascertainable value payable over the entire Contract period, including any form of options or extensions of the Contract. Using the contract value will determine the governance and procurement procedure required and if the procurement is to be treated as an above or below UK Threshold procurement. Where the Council is not able to estimate the value of the contract (for example where the contract duration is not fixed), the contract is to be treated as an above UK Threshold contract.
- 15.2 Contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding the application of this Code or UK Procurement Legislation.
- 15.3 When setting up Framework Agreements or Dynamic Markets, the contract value must be calculated to include the total estimated value of all the contracts envisaged to be awarded for the total term of the Framework Agreement or the Dynamic Market.
- 15.4 Authorised Officers must consider whether a procurement opportunity should be divided into separate lots. Lots are a way to split a larger single procurement into smaller 'chunks' which are then procured under separate contracts with different suppliers (some suppliers may be successful in more than one lot and may be awarded more than one contract). There are potentially significant benefits of doing this, including risk reduction in the supply chain (for example, by having multiple suppliers for a similar service in different geographical areas or multiple sources for a particular good or service reducing the risk of supplier failure) and maintaining the long-term viability and diversity of the supply market through the award of a higher number of contracts.

Additionally, using lots might encourage small and medium-sized enterprises to bid; for example, they may find it easier to tender for or deliver smaller contracts, or smaller parts of larger contracts. This can support innovation, Value for Money, economic growth and potential expansion of the supplier base for that market.

For any advice on Lots please contact the Procurement Team.

- 15.5 Having calculated the contract value, the following procedures apply:

Total Value	Award procedure
Low Value:	• Consider using an existing Corporate Contract if there is one or use an existing Framework Agreement provided costs are competitive. • Seek at least two or more written quotes or select a supplier that offers Best Value. A Demonstration of Best Value Form MUST be completed and returned to the Procurement Team if only one quote is sought. • The supplier can be selected on price alone or quality assessment (or a combination of both). Evaluation criteria

	must be used to support the decision if the contract is awarded other than on price alone. Consider using the E Procurement Portal Quick Quote process.
Medium Value:	- Consider using an existing Corporate Contract if there is one or an existing Framework Agreement provided costs are competitive. - Must obtain written quotations from at least 3 suppliers - The supplier can be selected on price alone or quality assessment (or a combination of both). Evaluation criteria must be used to support the decision if the contract is awarded other than on price alone. - Legal requirement to advertise on Contracts Finder if the opportunity is advertised and has a value of over £30k (including VAT) - Should consider using a Tender procedure if appropriate - Good practice to use E-Procurement Portal
High Value: – UK Threshold	- Consider using an existing Corporate Contract if there is one or an existing Framework Agreement provided costs are competitive - Must advertise contract and invite expressions of interest - Must be advertised on the Central Digital Platform - Must use the Council's formal Tender Documents - The supplier would normally be selected on a combination of both price and quality. Evaluation criteria must be used to support the decision. - Consider using a SAQ (Suitability Assessment Questionnaire), or Common Assessment Standard for Works contracts. For works Contracts only - Consider a prequalification stage – for Tenders over the UK Threshold for Services - Officers must ensure that they are satisfied that there is sufficient interest from suppliers and that Value for Money has been demonstrated with/by the responses received.
Above UK Threshold	In accordance with the UK Procurement Legislation and advice from the Procurement Team and Legal Department.

See Appendix A - Procurement and Authorisation Thresholds for further information.

15.6 Providing services to external purchasers

- 15.6.1 The Corporate Director of Finance and Resources and the Monitoring Officer must be consulted where it is proposed that the Council is to provide services to external organisations.

15.7 Appointment of Consultants

- 15.7.1 Consultants will only be used if in the opinion of the relevant Head of Service, in consultation with the relevant Director, the work cannot be undertaken by Council employees (e.g., surveyors, engineers)
- 15.7.2 If the Consultant is to be appointed to support a project, a note should be placed on the project file stating:

- (i) why it was necessary to use a Consultant.
- (ii) the brief for the project.
- (iii) the brief for selecting the Consultant and how this was met.
- (iv) the names of the members and officers involved in the selection process.

15.7.3 Consultants shall be selected in accordance with the value and thresholds shown in Appendix A - Procurement and Authorisation Thresholds of the Procurement Code.

15.7.4 Direct awards to Consultants may only be made using an appropriate Framework Agreement or in exceptional circumstances by way of an Exemption (see Rule 9).

15.7.5 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment. The relevant Head of Service will ensure that the requirements of 15.7.6 below are written into the contract and are verified.

15.7.6 The Authorised Officer shall ensure that the Consultant will:

- (i) where relevant, comply with this Code and the Financial Regulations.
- (ii) hold an adequate level of Professional Indemnity Insurance
- (iii) produce all records relating to the contract on request during the duration of the contract, and
- (iv) return all records to the Head of Service on completion of the contract, to be retained in accordance with Rule 11.

15.7.7 For all types of Consultants, the relevant Head of Service will:

- (i) ensure the Consultant is appointed by written contract with appropriate terms and conditions
- (ii) ensure that all documentation relating to the consultancy is collated by an experienced officer, and
- (iii) notify the Procurement Team following the appointment of a Consultant.

15.7.8 Before a Consultant is engaged, the Head of Service must undertake an IR35 Assessment to determine whether the Council should deduct income tax from payments during the engagement. In doing so, the Head of Service should consult the Head of Financial Services.

15.8 Information Technology

15.8.1 The procurement of information technology (hardware or software) must be in accordance with the Code. In addition, the following additional requirements apply.

15.8.2 For all information technology purchases, approval must be sought from the South Worcestershire ICT Shared Service.

- 15.8.3 Any extension or additional modules to software may be procured without a tendering process (subject to Rule 32) if:
- (i) the original system was procured through a full Tendering exercise;
 - (ii) any contracts for the system and any support and maintenance contracts are still in term;
 - (iii) the total cumulative price does not exceed the UK Threshold; and
 - (iv) the proposed purchase has been approved by the Head of the South Worcestershire ICT Shared Service and the South Worcestershire Procurement Manager.

16. PRE-TENDER MARKET RESEARCH AND CONSULTATION

16.1 The Authorised Officer:

- must contact the Procurement Team before carrying out any pre-market engagement. The UK Procurement Legislation requires that a Preliminary Market Engagement Notice should be issued where pre-market engagement takes place for above UK Threshold procurements. If preliminary market engagement has taken place without a notice, the reasons for not publishing a Preliminary Market Engagement Notice must be detailed in the tender notice.
- may consult Potential Tenderers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any Potential Tenderer, but
- must not seek or accept technical advice on the preparation of an Invitation to Tender or quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all Potential Tenderers or distort competition, and
- should seek advice, as appropriate, from the Procurement Team.

17. STANDARDS AND AWARD CRITERIA

17.1 The Authorised Officer must ascertain whether there are any relevant standards which apply to the subject matter of the contract and, if so, ensure those standards form part of the Tender.

17.2 The Authorised Officer must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the Council. The basic criteria are:

- 'lowest price' - where payment is to be made by the Council.
- 'highest price' - if payment is to be received by the Council;
- 'most advantageous' - where considerations other than price also apply.
- have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and consider whether such barriers can be removed or reduced
- have regard to the National Procurement Policy Statement.
- have regard to how the procurement might improve economic, social, and environmental well-being in the local area.

If the most advantageous criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, relevant environmental

considerations, aesthetic, and functional characteristics (including security and control features), safety, after-sales services, technical assistance, and any other relevant matters.

Supplier suitability assessment questions may also be asked by the Council provided they are relevant to the subject matter of the procurement, are proportionate and are used to assess whether bidders meet requirements or minimum standards of suitability, capability, legal status, financial standing.

17.3 Award criteria must not include:

- Non-Commercial Considerations: (fully explained in definitions appendix).
- matters which discriminate against suppliers from the European Economic Area or signatories to the GPA.

18. INVITATIONS TO TENDER/QUOTATIONS

18.1 Invitation to Tender and Request for Quote templates are available from the Procurement Team

18.2 All Invitations to Tender/Quote must state that no Tender/Quote will be considered unless it is received at the place and by the date and time stipulated.

18.3 All Invitations to Tender/Quote shall include the following:

- (i) a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- (ii) a pricing document and or Form of Tender that clearly sets out the pricing submitted.
- (iii) a timetable (allowing sufficient time for all processes and checks including validation and evaluation of tenders)
- (iv) requirement for Tenderers to complete fully and sign all Tender Documents including a Form of Tender and certificates relating to canvassing and non-collusion
- (v) requirement for Tenderers to declare that the content of their Tender, price or any other figure or particulars concerning the Tender have not been disclosed by the Tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (vi) confirmation that the Bidder is a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 or is willing to adhere to the same principles set out in the Council's Slavery and Human Trafficking Statement and that there is no modern slavery or human trafficking in any part of their business.
- (iv) notification that Tenders are submitted to the Council on the basis that they are compiled at the Tenderer's expense.
- (v) a description of the Award Procedure (see Rule 15.5) and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and if possible, in descending order of importance.
- (v) notification that no Tender will be considered unless it is returned via the Council's E-procurement System, and
- (vii) the method by which any arithmetical errors discovered in the submitted Tenders will be dealt with, in particular, whether the overall price prevails over the rates in the tender or vice versa.

18.4 All Invitations to Tender or Quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 25).

- 18.5 The Invitation to Tender or Quotation must state that the Council is not bound to accept any Tender or Quotation.
- 18.6 The Council's E-procurement Portal should be used to advertise and manage the procurement process. Please contact the Procurement Team for further information.
- 18.7 All Potential Tenderers invited to Tender, or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

19. SHORTLISTING

- 19.1 Any Shortlisting must have regard to the financial and technical standards relevant to the contract and the Award Criteria. Above Threshold Tenders must also comply with the UK Procurement Legislation.
- 19.2 Tenders which do not exceed the UK Threshold may not shortlist suppliers, with an exception for works contracts with a value higher than the UK Threshold for supplies and services.

20. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

- 20.1 A Potential Tenderer must be given an adequate period in which to prepare and submit a proper quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The UK Procurement Legislation provides specific time periods for any procurement above UK Threshold.
- 20.2. Tenders submitted via the Council's E-Procurement Portal must:
- i. include the price(s) requested for the goods, services, or works and all other information requested in the Invitation to Tender, and
 - ii. be sent to arrive via the E-Procurement Portal by the stated deadline.
- 20.3. All Tenders received via the Council's E-Procurement Portal shall be.
- 20.3.1.opened at one time after the deadline in the presence of two officers, and
 - 20.3.2.recorded in the Tender Register.
- 20.4. Should the Council's E-Procurement portal not be used, Tenders must be submitted as follows.
- 20.4.1.Tenders must be returned to the Council's Authorised Officer. The Tender envelope will be marked "Tender for..." the name of the contract to which the Tender relates.
 - 20.4.2.Authorised Officers must not disclose the names of Potential Tenderers to any staff involved in the receipt, custody or opening of Tenders.
 - 20.4.3.The Monitoring Officer shall be responsible for the safekeeping of tenders until the appointed time of opening. Each Tender must be:

- suitably recorded so as to subsequently verify the date and precise time it was received.
- adequately protected immediately on receipt to guard against amendment of its contents.
- recorded immediately on receipt in the Tender Register.

20.5. Should the Council's E-Procurement Portal not be used the Authorised Officer must ensure that all Tenders are opened at the same designated time when the period for their submission has ended. Tenders must be opened in the presence of at least:

- the Monitoring Officer or their official representative.
- the relevant Head of Service, or their official representative, or
- (for High Value and UK Threshold contracts) the relevant Committee.

20.6 Upon opening, a summary of the main terms of each Tender (i.e., significant issues that are unique to each Tender submission and were not stated in the Tender Documents such as Tender sum, construction period, etc) must be recorded in the Tender Register. The summary must be signed by those present at the Tender opening.

20.7 Late Tenders will not be considered unless there is conclusive evidence of posting, in time for delivery by the due date/time, and the other Tenders have not been opened. Late Tenders will be opened in the presence of the Director of Legal Service's official representative, to ascertain the name of the Tenderer so that the Tender may be promptly returned.

21. CLARIFICATION PROCEDURES

21.1. Providing clarification of an Invitation to Tender to Potential Tenderers, or seeking clarification of a Tender, whether in writing or by way of a meeting is permitted.

21.2. Any clarifications given to questions raised by any Tenderer shall be shared with other Tenderers and a record kept.

21.3. Records should be kept of all clarifications including any meeting held as these will form part of the contract.

22. POST-TENDER NEGOTIATION

22.1 If post-tender negotiations are necessary, then such negotiations shall only be undertaken with the highest scoring Tenderer(s). During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender Documents.

22.2 For above UK Threshold procurements, the Council may choose to include a 'preferred supplier' stage in a competitive flexible procedure. This would be a stage involving only the supplier that has submitted the most advantageous Tender and would be carried out prior to entering into the contract. The preferred supplier stage could involve clarifying or confirming commitments made in the Tender or limited post-Tender negotiation. This can be useful particularly in complex procurements, for example to ensure that there is an agreed understanding of how the contract will operate and reduce the risk of issues arising once the contract has been entered into.

22.3 A preferred supplier stage should be conducted in a transparent and auditable manner. The intention to conduct a preferred supplier stage should be set out in the Tender notice and any associated Tender Documents, and Authorised Officers should ensure that the details of key points and agreed outcomes/changes are recorded and retained. Authorised Officers appointed to carry out post-Tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing. Use of a preferred supplier stage must not have the effect of altering the award outcome and must follow the process as set out in the Tender notice and associated Tender Documents.

22.4 Whenever it is proposed to enter into post-Tender negotiation, the Monitoring Officer must be consulted for advice. Negotiations must be conducted by a team of at least two officers.

22.5 Where post-Tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

23. TENDER EVALUATION

23.1 Notwithstanding the debriefing required by this Code, the confidentiality of Quotations, Tenders and the identity of Tenderers must be preserved at all times and information about one Tenderer's response must not be given to another Tenderer.

23.2 Tenderers must complete all Tender documentation and complete all mandatory requirements, such as site visits. Any omissions or failure to meet mandatory requirements may render a Tender non-compliant. A non-compliant Tender will not be considered further.

23.3 Tenders must be evaluated impartially in accordance with the Award Criteria. Particular attention will be given to rates and prices, percentage adjustments, balancing items, ambiguities, qualifications, and alternative offers. The following must also be included in the evaluation:

- comparison of submitted Tender prices with pre-Tender estimates, and resolution of any discrepancies.
- overall Value for Money assessment.
- quality of performance on any previous Council contracts.
- previous experience.
- views of referees.
- financial standing.
- proposals for health and safety, equality, and diversity, and dealing with complaints.
- any significant environmental features of goods and services such as life expectancy, energy efficiency, recyclability, and
- contribution to delivering the priorities and goals in our corporate strategies.

23.4 Tenders must be checked for arithmetic accuracy, including the correct extension and summation of rates tendered in any pricing document. If arithmetical errors are found they should be notified to the Tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the rates in the Tender, rather than the overall price, were stated within the Invitation to Tender as being

dominant, an amended Tender price may be requested to accord with the rates given by the Tenderer.

23.5 No amendments to Tender rates after submission of Tenders will be permitted. If a Tenderer withdraws or the revised Tender is no longer the most competitive, the next most competitive Tender will be examined and dealt with in the same way.

24. AWARD OF CONTRACT AND DE-BRIEFING

24.1 For all contracts, the Authorised Officer will:

- allow sufficient time for the legal documentation to be completed prior to the start of the contract
- ensure the contract is entered into before the supply, service or works begin, save in exceptional circumstances where it is essential that the contract starts before formal contract signing. In such cases reasons will be clearly noted on the contract file and the Legal Department will be consulted.
- appoint a Contract Manager to manage and monitor each contract.
- ensure that all documentation relating to the contract is collated by an experienced officer in consultation with the Legal Department, and
- notify the Procurement Team of all contracts awarded.

24.2 Authorised Officers must carry out the necessary due diligence checks on the preferred bidder prior to awarding any contract e.g. financial checks, valid insurance certificates, self-certified responses as part of any Tender response.

24.3 Authorised Officers may accept Quotations and Tenders received in respect of proposed contracts, provided they are within the approved estimate and have been sought and evaluated fully in accordance with this Code. In respect of High Value and above UK Threshold contracts, the approval of the relevant Committee will be obtained.

24.4 For procurements above the UK Threshold, the Authorised Officer must notify all Tenderers simultaneously and as soon as possible of the intention to award the contract to the successful Tenderer. The Authorised Officer must provide unsuccessful Tenderers with a period of at least eight working days (Standstill Period) in which to challenge the decision before awarding the contract. If the decision is challenged by an unsuccessful Tenderer, then the Authorised Officer shall not award the contract and shall immediately notify the South Worcestershire Procurement Manager and the Monitoring Officer.

24.5 Once the contract has been awarded, all unsuccessful Tenderers will be notified of the results. The letter of acceptance will not seek to qualify the terms and amounts previously tendered by the contractor.

24.6 If a Tenderer requests in writing the reasons for a Contracting Decision, the Authorised Officer must give the reasons in writing within a reasonable time frame of the request.

CONTRACT AND OTHER FORMALITIES

25. CONTRACT DOCUMENTS

25.1. Contracts

25.1.1. All contracts shall be discussed with the Legal Department prior to undertaking a procurement and must be in writing. Where the Council carries out work using a recognised standard form of contract from a professional institution such as a JCT work contract, procedural requirements may differ slightly to those laid down in this Code.

25.1.2. When preparing a contract, irrespective of value, the following must be considered:

- what is to be supplied (i.e. the work, goods, materials, or services to be delivered or undertaken).
- any professional, quality or standards that must be met.
- a defined quality of provision.
- the provisions for payment (i.e., the price to be paid and when, including details of any discounts or deductions, and where appropriate a means of defining price adjustments for any subsequent amendment of requirements).
- the time, or times, within which the contract is to be performed, and any other conditions and terms as may be agreed between the parties.
- any relevant insurance requirements.
- performance monitoring requirements
- health and safety requirements.
- any Council expectations regarding environmentally sustainable working practices.
- equalities and diversity requirements.
- Freedom of Information requirements.
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes.
- that the contractor may not assign or sub-contract without prior written consent of the Council
- where relevant, a requirement to supply relevant TUPE information.
- that the supplier will comply with the provisions of the Data Protection Act 2018, and the UK General Data Protection Regulation or any other re-enactment insofar as any personal data supplied by the Council or obtained on behalf of the Council is kept secure and is not disclosed to any other party except in accordance with the contract.
- that the Council will comply with the debarment regulations set out in the Procurement Act 2023 and associated regulations.

25.1.3. The Council's ordering procedures, contained in the Financial Regulations, must be used wherever possible.

25.1.4. The formal advice of the Legal Department must be sought in the following instances:

- where the total contract value exceeds £50,000 (exc. VAT).
- those involving leasing arrangements.
- where it is proposed to use a supplier's own terms and conditions.
- those that are complex in any way.

Contract formalities

25.2. Agreements shall be completed by the following as a minimum:

Total Value (Rule 12)	Method of Completion	By
Low value	Signature	Authorised Officer
Medium value	Signature	Head of Service
High value and above UK Threshold	Signature/Sealing*	Director <i>Where sealing, see Rule 25.3</i>
All Works Contracts (regardless of value)	Sealing	See Rule 25.3

* Consult the Legal Department to determine whether a contract should be completed by Signature or Sealing.

25.2.1. The Authorised Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

25.3 Sealing

25.3.1 Where contract documents are to be sealed by the Council, this shall be in accordance with the Constitution.

25.3.2 Details of all sealed contracts shall be maintained by the Legal Department.

25.4 Copies of Contracts

25.4.1 Copies of all contracts entered should be stored by the Legal Department and electronic copies provided to the Procurement Team.

25.4.2 Copies of contracts should also be stored on the E-procurement Portal where appropriate, to aid with auditing.

26. PERFORMANCE BONDS AND PARENT COMPANY GUARANTEES

26.1 Authorised Officers must consult the Head of Finance regarding whether a Parent Company Guarantee is required when it is proposed to appoint a contractor who is a subsidiary of a parent company and:

- the Total Value of the proposed contract exceeds £1 million; or
- award is based on evaluation of the parent company; or
- there is concern about the stability of the contractor.

26.2 Authorised Officers must consult the Head of Finance regarding whether a Performance Bond is needed:

- where the Total Value of the proposed contract exceeds £1 million; or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the contractor.

- 26.3 If a Performance Bond is considered necessary, the value of the bond must be at least 10% of the contract value (or its annual value where the contract relates to continuing service).
- 26.4 In certain circumstances, both a Parent Company Guarantee and a Performance Bond may be required.

27. PREVENTION OF CORRUPTION

27.1 Officers and members must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal in the case of officers and a reference to the Member Conduct Committee in the case of members. Where appropriate a matter may be referred to the Police.

27.2 The following clause must be put in every written Council contract:

"The Council may terminate this contract and recover all its loss if the Contractor, its employees, or anyone acting on the Contractor's behalf do any of the following things:

- (i) offers, gives, or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- (ii) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- (iii) commits any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors, or employees.

Any clause limiting the Contractor's liability shall not apply to this clause."

28. BRIBERY ACT 2010

28.1. All officers and any persons or organisations engaged in procurement or contracting on behalf of the Council must comply with the provisions of the Bribery Act 2010 and ensure that their actions do not give rise to any offence under the Act.

28.2. The Council strictly prohibits:

- offering, promising, or giving a financial or other advantage to induce or reward improper performance of a relevant function or activity;
- requesting, agreeing to receive, or accepting a financial or other advantage which constitutes or rewards improper performance;
- any acts of bribery, whether directly or through a third party, including suppliers, contractors, or agents

28.3 All contracts entered into by the Council must contain provisions requiring contractors, suppliers, and service providers to comply with the Bribery Act 2010 and to implement adequate procedures to prevent bribery. The Council reserves the right to terminate contracts, impose sanctions, or take legal action if a contractor or supplier is found to have engaged in bribery or corrupt practices.

28.4 Any officer who suspects or becomes aware of bribery or corrupt activity in connection with any Council contract must report it immediately to the South Worcestershire Procurement Manager and the Director of Legal and Governance.

29. COMPLIANCE WITH CONFIDENTIALITY AND CONFLICTS OF INTERESTS

29.1 Officers and members must have regard to their relevant Code of Conduct.

29.2 All officers must take appropriate measures to protect confidentiality and effectively prevent, identify and remedy conflicts of interest arising in the conduct of a procurement exercise to avoid any distortion of competition and to ensure equal treatment of all suppliers.

29.3 If any potential conflict of interest is suspected or identified, such conflict should be immediately notified to the Procurement Team and Monitoring Officer.

29.4 Should an officer identify any actual or potential breach of the requirements of the Code of Conduct in connection with the formulation, procurement or administration of a contract (whether in relation to that of their own role or that of any other officer) the officer shall immediately notify the Procurement Team and Monitoring Officer in writing. The Procurement Team and Monitoring Officer will investigate the matter and recommend what action should be taken in consequence in connection with the contract concerned.

29.5 Where a Supplier or an undertaking related to a Supplier, has advised the Council, or has otherwise been involved in the preparation of the procurement process, the Council must take appropriate measures to ensure that competition is not distorted by the participation of that Supplier in the procurement.

29.6 A Conflicts Assessment must be completed in accordance with the UK Procurement Legislation for all above UK Threshold Tenders.

CONTRACT MANAGEMENT

30. MANAGING CONTRACTS

30.1 All contracts must have a named Contract Manager for the entirety of the contract. This will normally be the relevant Head of Service or a named deputy.

30.2 During the life of a contract, the Contract Manager must actively manage the contract and monitor the contract in respect of:

- performance / KPIs
- risk management
- compliance with specification and contract
- cost
- any Value for Money requirements
- compliance with offers made in the Tender Documents in respect of any economic, social and environmental benefits
- user satisfaction.

30.3 Contract Managers will need to liaise closely with the Procurement Team to ensure all the relevant notices required under the UK Procurement Legislation are published within the relevant timescales.

- 30.4 Contract Managers should ensure that any contract modifications or contract extensions are compliant with UK Procurement Legislation.
- 30.5 Contract Managers must notify the Procurement Team of any issues of poor performance by a supplier or possible contract termination by the Council to ensure the relevant notices required under the UK Procurement Legislation are published within the relevant timescales.
- 30.6 In the case of High Value and above UK Threshold contracts, the Corporate Director of Finance and Resources will be responsible for budget monitoring and reporting any areas of concern to the Corporate Leadership Team and the appropriate Committee.
- 30.7 The principles around conflicts of interest and confidentiality set out in the section above, apply equally to contract management arrangements and cover any person involved in the direct management or indirect administration of a contract.

31 CONTRACT EXTENSIONS

- 31.1 Where a contract was initially procured with extension options and the contract itself provides clear, precise and unequivocal provisions to extend the term of the contract, the Authorised Officer in consultation with the relevant Corporate Director and Legal Department, shall be permitted to extend the term of the contract provided that the Authorised Officer is otherwise happy with the supplier's performance under the contract and sufficient budget provision is in place.
- 31.2 Where a contract was not procured with extension options and the contract itself does not provide clear, precise and unequivocal provisions to extend the term of the contract, any extension must be treated as either:
- a contract modification in accordance with this Code; or
 - a new procurement exercise.
- 31.3 Where applicable, the Authorised Officer must ensure that any contract extension is compliant with any relevant UK Procurement Legislation.

32 CONTRACT MODIFICATIONS

- 32.1 Prior to undertaking any modification to a contract, an Authorised Officer must consider the impact of the modification on the contract, the scope of any authority or delegated authority and whether any further authority or delegated authority will be required.

Up to UK Threshold contracts

- 32.2 Subject to Rule 32.3, a contract may be modified where:
- the contract itself provides clear, precise and unequivocal provisions to the relevant modification and the modification would not change the overall nature of the contract; or
 - the value of the modification is less than 10% of the initial contract value for goods or services contracts or less than 15% of the initial contract value for works contracts.

32.3 Where Rule 32.2 above does not apply, a modification to the contract shall only be permitted where such modification would be considered a permitted modification pursuant to one of the circumstances contained in Schedule 8 of the Procurement Act 2023.

Above UK Threshold contracts

32.4. Where a contract is above the UK Threshold contract (or, as a result of the modification, will become an above UK Threshold contract), any modification must be undertaken in accordance with the relevant UK Procurement Legislation.

33. RISK ASSESSMENT AND CONTINGENCY PLANNING

33.1 A business case must be prepared for all procurements with a potential value above the UK Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

33.2 For all High Value and above UK Threshold contracts, contract managers must:

- maintain a risk register during the contract period
- undertake appropriate risk assessments
- for identified risks, ensure contingency measures are in place
- undertake and record such checks as are necessary to ensure that the contractor's insurance policies remain in force for the duration of the contract.
- build into the business continuity plans how the service would be maintained in cases of service/ delivery failure

DEFINITIONS APPENDIX

Authorised Officer

The officer authorised to deal with the contract in question and "officer" shall mean an officer of the Council (whether or not an Authorised Officer).

Award Criteria

The criteria by which the successful Quotation or Tender is to be selected.

Award Procedure

The procedure for awarding a contract.

Best Value

The duty to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. See Part 1 Local Government Act 1999.

Central Digital Platform

The central digital platform (CDP) will be where all UK contracting authorities publish information relating to procurement. It is also the place where identifiers are recorded

and/or issued and for suppliers to input their commonly used information. It will be a fully integrated digital platform where noticing, sign-in and registration, supplier information all work together to support public sector procurement.

Code

This Procurement Code (as amended from time to time)

Code of Conduct

The code of conduct regulating conduct of officers and members respectively. Copies may be found on the Staff Intranet.

Committee

A committee which has power to make decisions for the Council in accordance with the Constitution but not a scrutiny committee.

Constitution

The constitutional document approved by the Council which:

- allocates powers and responsibility within the Council and between it and others.
- delegates authority to the Committees and officers.
- regulates the behaviour of individuals and groups through rules of procedure, codes, and protocols.

Consultant

Someone engaged by the Council (but not employed) for a specific length of time to work to a defined brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role.

Contract Manager

The officer, usually a Head of Service, who is responsible for managing a contract from inception to completion and ensuring compliance.

Contracting Decision

Any of the following decisions:

- composition of approved lists.
- withdrawal of an Invitation to Tender.
- whom to invite to submit a Quotation or Tender.
- Shortlisting.
- award of contract.

Corporate Contract

A contract let to benefit all sections of the Council, to support the Council's aim of achieving Best Value.

Corporate Director

A Corporate Director who reports directly to the Managing Director

Corporate Director of Finance and Resources/s151 Officer

As defined in the Constitution and legislation.

Corporate Leadership Team

The collective name for Managing Director and the Corporate Directors of Services

Financial Regulations

The financial regulations outlining officer responsibilities for financial matters issued by the Corporate Director of Finance and Resources and adopted by the Council in accordance with the Constitution.

Framework Agreement

An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular regarding price and, where appropriate, the quantity envisaged.

Freedom of Information Legislation

The Freedom of Information Act 2000 and the and the Environmental Information Regulations 2004.

GPA

The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein, and Singapore. The UK is now an independent member since leaving the EU.

Head of Service

A manager who reports to a Corporate Director and has direct responsibility for a service.

High Value

As defined in the Summary of Values and Thresholds determining Competition Requirements at Appendix One to this Code.

Invitation to Tender

An invitation by the Council to suppliers to submit a Tender, in the form required by this Code.

IR35 Assessment

An assessment to determine the tax status of a consultant. IR35 is tax legislation that is designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used. Such workers are called 'disguised employees' by Her Majesty's Revenue and Customs (HMRC).

Low Value

As defined in the Summary of Values and Thresholds determining Competition Requirements at Appendix One to this Code.

Managing Director/Head of Paid Service

The Council's Managing Director, as defined in the Constitution.

Medium Value

As defined in the Summary of Values and Thresholds determining Competition Requirements at Appendix One to this Code.

Monitoring Officer

As defined in the Constitution and legislation.

Non-Commercial Considerations

- (a) The terms and conditions of employment by contractors of their workers or the composition of the arrangements for the promotion, transfer, or training of or the other opportunities afforded to, their workforces ("**Workforce Matters**").
- (b) Whether the terms on which contractors' contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
- (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
- (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ("**Industrial Disputes**").
- (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- (f) Any political, industrial, or sectarian affiliations or interests of contractors or their directors, partners, or employees.
- (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984.

Workforce Matters and Industrial Disputes cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which TUPE may apply.

P & R Committee

The Council's P & R Committee as defined in the Constitution

Parent Company Guarantee

A guarantee provided by a contractor's parent company in connection with the contractor's obligations under a contract.

Pecuniary Interest

A direct or indirect financial interest in a matter, typically one that could result in personal monetary gain or loss. The interest may arise from ownership, investments, employment, contractual relationships, or other financial ties. A direct pecuniary interest occurs when an individual has an immediate and personal financial stake in a decision, contract, or transaction. An indirect pecuniary interest arises when a person's financial interest is connected through a third party, such as a family member, business associate, or an entity in which they hold a stake. This type of interest may not provide an immediate financial benefit but still creates a potential for influence or gain.

Performance Bond

An obligation to pay a party (the beneficiary of the performance bond) an amount stipulated in the performance bond if and when another party (the applicant of the performance bond) fails to perform (or delays in its performance of) its obligations under a contract.

Potential Tenderer(s)

Any person who asks or is invited to submit a Quotation or Tender.

Procurement Strategy

The document setting out the Council's approach to procurement and key priorities.

Quotation

A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).

Shortlisting

The process of selecting Potential Tenderers who are to be invited to quote or bid or to proceed to final evaluation.

Tender

A formal proposal submitted in response to an Invitation to Tender and “**Tender Documents**” shall mean those documents contained within the Tender.

Tenderer

Any person who submits a Tender.

Tender Register

The register kept by the Corporate Director for Planning & Governance to record details of Tenders.

Total Value

The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period.
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months.
- (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48.
- (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result.
- (e) for nominated suppliers and sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.

TUPE**Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)**

Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g., private contractor, local authority in-house team) to another (e.g. following a contracting-out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

UK Procedure

The procedure required by the UK where the Total Value exceeds the UK Threshold.

UK Procurement Legislation

Public Contracts Regulations 2015 (insofar as it relates to existing contracts which were procured under those Regulations) the Procurement Act 2023, its associated regulations and any other secondary legislation (as amended from time to time)

UK Threshold(s)

The contract value at which the UK Procedure applies as set out in the Procurement Act 2023

Value for Money

Value for money is not just the lowest possible price: it combines goods or services that fully meet your needs, with the level of quality required, delivery at the required time, and at an appropriate price.