

Financial Regulations and Contracts Procedures

These Financial Regulations and Contracts Procedures should be considered in conjunction with the Officer Scheme of Delegation and Standing Orders in relation to the Budget and Policy Framework.

Financial Regulations Contents

1. Introduction
2. Legislative and Regulatory Requirements
3. The Role of Chief Finance Officer (S151)
4. Accounting Procedures
5. Financial Control
6. Audit, Anti-Fraud and Anti-Corruption
7. Banking Arrangements and Methods of Payment
8. Imprest and Petty Cash Accounts
9. Assets including Estates, Non Current Assets and intellectual property
10. Inventories (Moveable Property)
11. Stocks and Stores
12. Investments, Borrowing, Loans, Guarantees and Trust Funds
13. Income and Debtors
14. Orders for Work, Goods and Services
15. Payment of Accounts/Invoices
16. Salaries, Wages, Travels and Subsistence, and Other Expenses
17. Members' Allowances
18. Insurance
19. Risk Management
20. Security
21. Group Entities
22. Working with our Partners
23. The Council working for third parties

Contracts Procedures Contents

A Introduction

- 24. Procurement Definition
- 25 Procurement Objectives
- 26 Governing Legislation
- 27 Application of Contract Procedures
- 28 Contracting Authority
- 29 Roles and Responsibilities
- 30 Breach of Contract Procedures
- 31 Use of Consultants
- 32 Spend Category Definitions

B Procurement Planning

- 33 Authority to Undertake a Procurement and Award Contracts
- 34 Estimated Value of the Contract
- 35 Threshold Values
- 36 Procurement Timescales
- 37 Conflicts of Interest
- 38 Confidentiality
- 39 Risk Assessments

C Routes to Market

- 40 Procurement Procedures
- 41 Tender Advertising and Publication of Awarded Contracts

D Procurement Process and Tender Assessment

- 42 Communication
- 43 Reserved Contracts
- 44 Collaborative Arrangements
- 45 Tender Pack
- 46 Tender Submission, Opening and Acceptance
- 47 Tender Assessment

E Award Procedures

- 48 Contract Award
- 49 Contracts Arrangements

F Contract Management

- 50 Contract Performance Management
- 51 Contract Modification
- 52 Contract Termination

G Other Procurement Considerations

53 Gifts and Hospitality

54 Audits

55 Nomination of Sub-contractors

H Waivers

56 Waiver Procedure

57 Exemptions from Using the Applicable Procurement Procedure

58 Other Exemptions

I Definitions

Financial Regulations

1. Introduction

- 1.1 To conduct its business properly, Torbay Council needs sound financial management policies in place and controls to ensure compliance with those policies. In addition, the Council has additional responsibilities under statute. These Financial Regulations provide a framework of policies and controls for managing these responsibilities.
- 1.2 All local authorities are required to establish Financial Regulations to ensure the proper administration of financial affairs which have arisen from the legislative powers conferred upon local authorities and the consequential rights, powers and duties placed upon the Council, the Leader of the Council (where applicable), the Cabinet, Members and Officers.
- 1.3 The Financial Regulations apply to every Member and Officer/employee (including agency and seconded staff) of the Council and anyone acting on its behalf. All Officers and Members have a duty to abide by the highest standards of probity in dealing with financial issues.
- 1.4 Non compliance with these Regulations will be referred to the Chief Finance Officer (CFO) and the Head of Devon Audit Partnership, who will take appropriate action.
- 1.5 The Financial Regulations should ensure compliance with all accounting and auditing standards, and codes of practice, which are produced by the appropriate professional accountancy bodies.
- 1.6 The Financial Regulations apply to the Council and any associated companies. The CFO legislative requirements apply to all Council assets and liabilities, including those of its subsidiary companies. The CFO therefore has responsibility for the financial systems, financial procedures and financial regulations in use by those subsidiary companies.
- 1.7 These Financial Regulations are intended as an aid to good financial management and outline the necessary procedures to secure the proper administration of financial affairs. Financial regulations will also be supplemented by more detailed financial instructions issued as and when appropriate by the CFO or his/her nominated representative.
- 1.8 In these Regulations the following definitions apply:-
 - (a) Budget Holder – as identified on the Council Financial Information Management System (a Budget Holder is allocated to every cost centre).
 - (b) Chief Executive, Directors, Divisional Directors and Heads of Service – are the posts contained within the Council's Senior Management Structure.
 - (c) Head of Service – reference to Head of Service in these Regulations, includes the Chief Executive, Directors, Divisional Directors and Head of Service.
 - (d) CFO – the appointed Section 151 post and reference to it includes all nominated deputies appointed by the CFO.

2. Legislative and Regulatory Requirements

- 2.1 The Local Government Act 1972, in section 151, directs that there should be a specifically designated officer responsible for the proper administration of the Council's financial affairs and for reporting on these matters. The role of CFO has been given these responsibilities within the Council's management structure.
- 2.2 In addition, the CFO, or his/her properly appointed nominated representatives, have duties under Sections 114 and 114A of the Local Government Finance Act 1988, see paragraph 3.5.
- 2.3 The Accounts and Audit (England) Regulations 2015 also confer further responsibilities upon the CFO, or his/her nominated representatives, including determination of and responsibility for the accounting systems and supporting records and systems and internal control (including internal audit). These regulations have been produced to comply with these requirements.
- 2.4 The CFO is also responsible for the publication of financial related notices, documents and the completion of returns as required under statute.
- 2.5 Whilst these responsibilities are specifically allocated to the CFO, it is the responsibility of individuals identified in paragraph 1.3 to be aware of and operate within the Financial Regulations, Standing Orders in Part 4 and the code of conducts and local protocols in Part 5 of the Constitution.
- 2.6 For Torbay Council schools operating under the School Standards and Framework Act 1998, they have specific Financial Regulations. These are approved by the CFO in consultation with the Schools Forum.
- 2.7 Setting of annual budgets for expenditure and any carry forwards of surplus or deficit within the Dedicated Schools Grant (DSG) separate from the individual schools budgets is delegated to the CFO in consultation with the Divisional Director for Education, subject to any decisions that are required under statute to be approved by the Schools Forum.

3. Role of CFO (S151)

- 3.1 The Council supports the principles as set out in the "CIPFA (Chartered Institute of Public Finance and Accountancy) Statement on the Role of the CFO in Local Government" (2010).
- 3.2 Delegations to CFO are listed in the Officer Scheme of Delegation in Part 3 of the Constitution.
- 3.3 The CFO is responsible for advising the Council and all decision-making persons and bodies on all financial matters. Accordingly, he/she or his/her nominated representative must be consulted on all financial matters, and they should be given adequate opportunity to provide written comments on any report that may have a financial impact or commitment on the Council at some point in the future.
- 3.4 The CFO or his/her properly authorised and nominated deputies have a duty under Sections 114 and 114A of the Local Government Finance Act 1988 to report to the Leader of the Council, Councillors, and the Council's appointed External Auditor, if it appears that the Council, a Committee or Officer of the Council, or a Joint Committee on which the Council is represented, or the Leader of the Council or

individual Members of the Cabinet, or the Cabinet, or Committee of the Cabinet, have acted in the following legally defined instances:

- (a) Has made or is about to make a decision which involves or would involve the Council incurring expenditure which is unlawful; or
- (b) Has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the Council; or
- (c) Is about to enter an item of account, the entry of which is unlawful; or
- (d) If it appears that the expenditure of the Council incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet the expenditure.

3.5 The Council shall provide the CFO with such staff, accommodation and other resources as are sufficient to allow statutory duties.

3.6 The CFO must consult with other appropriate statutory officers and Directors of the Council, before submitting any report under Sections 114 or 114A.

4. Accounting Procedures

4.1 The CFO is responsible for keeping the accounting records of the Council including the Collection Fund and any third party income and expenditure. All financial systems and records maintained within any Business Unit shall be in a form approved by the CFO, kept up to date, and retained until after the formal completion of the external audit of the Council's accounts and issue of the Audit Opinion or as otherwise required by law or indicated in the Council's Retention of Documents Policy.

4.2 All financial documents to be retained as set out in the Council's document retention policy unless specific grant claims or statute require a longer period. Where possible, all financial documents should be scanned and saved to the Council's IT network and if contractually offered, to the Council's Records section for archive.

4.3 Accounting policies will be updated as necessary and reviewed by the CFO annually.

4.4 Accounting procedures will comply with proper accounting practice and follow principles determined from time to time by the CFO. No changes should be made to these practices without the prior approval of the CFO.

4.5 The CFO shall be responsible for interpreting and implementing all relevant legislation and guidance relating to the Council's finances, both revenue and capital. The CFO will also ensure that the Council's financial procedures comply with all current codes of practice and will report on relevant implications to the Leader of the Council, the Cabinet, Members, and Directors.

4.6 The CFO shall also be responsible for the Treasury Management function as defined by the relevant codes of practice.

5. Financial Control**General**

- 5.1 Standing Orders in relation to the Budget and Policy Framework refer to the timetable and preparation of the Council's Revenue Budget for the forthcoming year along with revisions and indicative budgets for the forthcoming four year period for the Capital Plan. Once approved, it is the responsibility of the Chief Executive, Directors, Divisional Directors, Heads of Service and all Budget Holders to ensure net expenditure is contained within the totals approved by Council, subject to any variations to these totals that may be approved by the Council. This responsibility remains even when partners incur expenditure on the Council's behalf.
- 5.2 The CFO, in conjunction with Directors, Divisional Directors and Heads of Service, shall produce regular reports to the Chief Executive (and present to the Senior Leadership Team as appropriate) to the Leader of the Council for presentation at Cabinet meetings and the Overview and Scrutiny Board on the current year's budget (including comparison with actual spending and projected out-turn). The Cabinet and where required, the Overview and Scrutiny Board, will make appropriate recommendations to Council where variations to the in-year budget position require a Council decision.
- 5.3 The CFO, in consultation with the Chief Executive, may authorise the use of contingencies and expenditure from reserves and provisions approved as part of the Council's revenue and capital budget.
- 5.4 Within the context of these Financial Regulations the following definitions can be assumed to apply:
- (a) Approved Budgets – Those sums approved by the Council at its budget setting meeting and identified in the Council's Budget Digest as presented at that meeting (reflected in the Council's financial information management system) and approved Capital Plan. Budgets are set at a Business Unit level and subdivided into service areas. For the purpose of these Financial Regulations, the approved budget is at the service area level, as shown in the approved budget digest.
 - (b) An amount is shown against an individual capital scheme or service programme.
 - (c) (c) Virements – the transfer of money from one approved budget to another.
 - (d) (d) Non cash transactions, such as sponsorship, land swaps, concessionary rents and similar transactions are to be accounted for at their market value and will be within the scope of these regulations.

Revenue

- 5.5 The CFO, in consultation with the Leader of the Council, is authorised to submit bids and accept any grant offers, including terms and conditions attached to such offers subject to the grant offer and terms and conditions being in accordance with the Council's policies and objectives. The CFO, in consultation with the Leader of

the Council, to determine the allocation and expenditure of any new revenue grant monies that are received during the year.

- 5.6 After consideration by the CFO when considering the end of the financial year position, any net uncommitted under-spends within a directly controllable revenue budget may be carried forward into an earmarked reserve to be used in the following financial year.

After consideration by the CFO, in consultation with the Chief Executive, when considering the end of the financial year position the following may be approved:

- (a) Individual budget under-spends of £10,000 may be carried forward at the request of the Director, Divisional Director or Head of Service.
 - (b) Any net overspend (below £10,000) may also be carried forward to the following financial year and made good during that year.
 - (c) Any net unspent grant, third party funds or funds committed but not spent within a directly controllable revenue budget may be carried forward into an earmarked reserve to be used in the following financial year.
- 5.7 Any item in the Approved Revenue Budget saved or expected to be, and additional revenue saved above approved budget is subject to the normal virement rules. This is subject to the Council's overall financial situation where, following consultation with the CFO, the Leader of the Council (in respect of Executive functions) and Council (in respect to Council functions), a Director, Divisional Director or Head of Service may request that the budget saved is not spent or a virement is made to another Business Unit.
- 5.8 Within an approved Business Unit Budget, or between Business Units, the responsible Head of Service(s) of the Business Unit(s) may approve in-year virements provided that:
- (a) The virement does not exceed £100,000 within individual services in a Business Unit and £50,000 between Business Units;
 - (b) The virement is requested in writing by the Head of Service (and a copy kept by the CFO or his nominated representative);
 - (c) There is no significant change of policy or significant reduction in service quality (in the opinion of the relevant Director, Divisional Director or Head of Service);
 - (d) All virements above £100,000 within a Business Unit and £50,000 between Business Units must be approved by the CFO in consultation with the relevant Director, Divisional Director or Head of Service and the virement is included in the next budget monitoring report considered by the Overview and Scrutiny Board; and
 - (e) Any changes to budgets as a result of restructures, technical accounting changes including support service allocations are not subject to the virement rules.

- 5.9 Urgent decisions which are not wholly in accordance with the budget will be dealt with in accordance with the Council's Standing Orders in relation to Budget and Policy Framework and Officer Scheme of Delegation.
- 5.10 All fees and charges, including fees set by statute, are to be approved on an annual basis as part of the budget setting process. The CFO, in consultation with the Leader of the Council, the Cabinet Lead for Finance and the Chief Executive, is authorised to make adjustments to fees and charges and introduce new charges in year within the approved budget if it is in the best interest for the Council and they have no adverse impact upon the revenue or capital budgets.
- 5.11 Where a permanent change to the Revenue Base Budget is being proposed (i.e. it affects more than the current financial year) the relevant Director(s), Divisional Director(s) and the Head of Service(s) concerned and the CFO will identify the proposed change as part of the next budget process.

Reserves

- 5.12 The responsible officer, as identified in the Review of Reserves report approved by Council, for a reserve may authorise use of contributions to and from that earmarked reserve provided that:
- (a) The funds are used for the stated purpose of the reserve, as stated in the Review of Reserves report, in question;
 - (b) The level of such Earmarked Reserves is reported to the Overview and Scrutiny Board when the annual review of reserves report is considered (together with proposals for replenishment of the reserve in question where the CFO considers it appropriate);
 - (c) If the earmarked reserve is to be used for a purpose which differs from the original agreed terms of reference this must be approved by the Council; and
 - (d) The Council's finance system is to reflect the planned use of reserves in the year.
- 5.13 The CFO, in consultation with the Leader of the Council, may recommend to the Council for approval in-year virements from the Council's General Fund Reserve to any Business Unit provided that the CFO is satisfied as to the robustness and adequacy of the Council's reserves.

Capital

- 5.14 For each financial year Council will have an approved: -
- (a) Capital Strategy
 - (b) Asset Management Plan
 - (c) Capital Plan
- 5.15 Each quarter the CFO, in consultation with the Leader of the Council, may approve any variations to the approved capital plan for new or existing schemes provided that the CFO is satisfied that the proposed variations will be contained within the overall approved Capital Plan or that additional (and adequate) funding resources have been identified.

- 5.16 Any bids (or support for a partners bid) for capital grants and contributions over £100,000 to be notified to the Leader of the Council and CFO prior to submission, to ensure the scheme is in line with Council priorities and funding and resource implications have been assessed. This will include any match funding and future revenue costs.
- 5.17 Prior to the approval of any scheme, the funding for the scheme and any future revenue costs must be identified and deemed to be achievable by the CFO.
- 5.18 The CFO, in consultation with the Leader of the Council, is authorised to determine the allocation and expenditure of any new (ring fenced) capital grants or contributions that are received during the year.
- 5.19 The CFO, in consultation with the Leader of the Council, may also approve any variation to timings for projects within the 4 years of the capital plan on a quarterly basis.
- 5.20 The allocation of any un-ring fenced grants or contributions to a service will be determined by the CFO, taking into account the overall budget position of the Council and any expectations/conditions of the awarding body. Any schemes to be funded under the Prudential Code will also be a Council decision as set out in 5.26 below.
- 5.21 The Budget Holder, in consultation with the relevant Cabinet Lead, is authorised to approve allocations of generic capital funding within an allocation to a service to individual projects within the overall total funding approved.
- 5.22 If the Council receives additional income not linked to a specific project such as a capital receipt or has an under spend on a specific scheme, this will be applied in the first instance to fund the existing Capital Plan. If the funding is in excess of the resources required to fund the existing Capital Plan, it will be allocated to a general capital reserve pending further decision by the Council.
- 5.23 If an urgent and unforeseen need arises to undertake a project not included in the current approved Capital Plan, or to accelerate the preparation or commencement of an unapproved scheme the proposal shall be referred to the CFO at the earliest opportunity and before a substantial amount of preparatory work (i.e. costing more than £5,000) is undertaken and only if agreed by CFO, in consultation with the Leader of the Council, the proposed capital scheme will be submitted for approval to the Council.
- 5.24 It is expected that individual projects should include a contingency. The approved Capital Plan will also include a capital contingency, which as a target should be 1% of the Capital Plan. Use of this contingency will be determined by the CFO, in consultation with the Leader of the Council.
- 5.25 If any variation to the programme has a material impact upon the revenue budget in the current or future financial year(s), such as increased running costs or prudential borrowing, this must be approved by Council.
- 5.26 Any decision by Council to utilise prudential borrowing must be made with regard to the prudential framework, the approved prudential indicators and policies as set out within the approved Capital Strategy.

- 5.27 The Council maintains a Capital Reserve list as part of the approved Capital Plan. Any new resources received by the Council, if in excess of the resources required to fund the Capital Plan should, in the first instance, be used to fund schemes maintained on the reserve list.
- 5.28 All capital expenditure incurred must comply with the Chartered Institute of Public Finance and Accountancy (CIPFA) definition of capital as set out in the relevant accounting proper practice. The CFO will be the arbiter of disputes in relation to the eligibility of any expenditure.
- 5.29 All capital expenditure must be recorded accurately including asset reference to ensure the information on all Council assets, and their component parts, is correct within the Council's asset register.

6. Audit, Anti-Fraud and Anti-Corruption

Internal Audit Function

- 6.1 The CFO shall maintain an adequate and effective system of internal audit of its accounting records and its system of internal control in accordance with proper Internal Audit practices, as governed by responsibilities under Section 151 of the Local Government Act 1972, and the Accounts and Audit Regulations 2015.
- 6.2 The internal audit service provided by the Devon Audit Partnership shall follow professional standards and guidelines in accordance with the Code of Practice for Internal Audit in Local Government in the United Kingdom issued by the (CIPFA). The Code requires that an authority should have an approved Internal Audit Strategy in place which describes how the internal audit service will be delivered, and formally defines the purpose, authority and responsibility of internal audit.
- 6.3 The main objectives of the internal control system are to:
- (a) ensure adherence to management policies and directives in order to achieve the organisation's objectives;
 - (b) safeguard assets;
 - (c) secure the integrity, relevance, reliability, confidentiality and availability of information and resources, so ensuring as far as possible the completeness and accuracy of records;
 - (d) ensure compliance with statutory requirements; and
 - (e) ensure risks are identified and appropriately managed.
- 6.4 The CFO, or authorised representative, shall have authority in connection with an audit to:
- (a) visit all establishments and premises of the Council and other partners where the Council has a legal interest or an open book agreement;
 - (b) have access to such documents which relate to the accounts of the Council, as may appear to be necessary for the purpose of the audit;
 - (c) call for the production of cash, stores or other property in the custody of any employee of the Council;

- (d) require from any employee information and explanations necessary for that purpose;
 - (e) remove and keep in safe custody any books, records, vouchers and other material that may be relevant; and
 - (f) receive access at user level and/or system level to any computing or communications device, including access to interactively monitor and log traffic on Torbay Council's networks in accordance with the Council's Information Security Policy Framework.
- 6.5 The Head of Devon Audit Partnership (on behalf of the CFO) shall produce audit reports as appropriate and when an audit report is issued, the Head of the Business Unit concerned should respond in writing with an agreed action plan on any recommendations made without delay.
- 6.6 Where it appears that there is an opportunity of increasing the financial efficiency, economy or effectiveness of any Business Unit, the Head of Devon Audit Partnership shall, in conjunction with the CFO and the relevant Director(s), Divisional Director(s), Head of Service (s) or other authorised officer, investigate any relevant aspect of the work of any Business Unit and shall be empowered to make recommendations thereon. This includes appropriate value for money exercises.
- 6.7 The Head of Devon Audit Partnership shall have the right of direct access to, and freedom to report to, all senior management including the Chief Executive and Members.
- 6.8 Devon Audit Partnership shall be responsible for supplying to, or obtaining, such information required on behalf of itself or the Audit Committee or Overview and Scrutiny Board or other nominated sub-committee or working party or carry out any investigations requested, subject to the appropriate resources being available to undertake such investigations.

External Audit Function

- 6.9 The CFO shall be responsible for:-
- (a) Ensuring an external audit function is being provided.
 - (b) Liaising with external audit in all issues relating to the Statement of Accounts, Annual Governance Statement, specific grant audits and Value for Money.
 - (c) Ensuring the above documents are available for External Auditors within agreed timescales and providing supporting documentation to enable External Auditors to provide an audit opinion.

Anti-Fraud and Anti Corruption

- 6.10 The CFO will be responsible for a Council wide anti-fraud and anti-corruption policy. All members and officers, partners and suppliers are expected to act with integrity, adhere to that policy and not tolerate fraud or corruption in the administration of its responsibilities whether inside or outside of the Council.
- 6.11 Members and officers shall comply with the Council's codes of conduct relating to the register of interest and gifts and hospitality.
- 6.12 The CFO will be responsible for ensuring whistle blowing procedures are in place.

- 6.13 The CFO and the Head of Devon Audit Partnership shall be notified forthwith by the Chief Executive, Directors, Divisional Directors, or the Heads of Service concerned, of any circumstances which suggests the possibility of irregularity in the exercise of the functions of the Council. The CFO or the Head of Devon Audit Partnership shall, on confirmation of the irregularity, be empowered to undertake any investigation considered necessary including informing the Police and shall inform the Chief Executive and Monitoring Officer of the full circumstances in accordance with the Council's Anti -Fraud and Anti-Corruption Policy and Protocol.

7. Banking Arrangements and Methods of Payment

Bank Accounts

- 7.1 The CFO is authorised to make arrangements regarding the Council's bank accounts, including the opening and closing of any account, and tendering for banking services. No charges/debits shall be set up on the bank accounts without the written consent of the CFO. All accounts must be in the name of Torbay Council.
- 7.2 The CFO must be notified of all bank accounts held. All bank accounts and balances need to follow the Council's banking procedures, including online banking.
- 7.3 All transactions in the Council's bank accounts are to be included in the Council's finance system.
- 7.4 The CFO is authorised to agree the overdraft facilities and the charges for the operation of the Council's bank accounts with the bank.
- 7.5 All charges made by the Bank must be verified as being levied in accordance with the scale of charges current at the time the charge was incurred.
- 7.6 All bank accounts shall, wherever practicable, be reconciled with cashbooks and/or other relevant records at least once each month.

Methods of Payment

- 7.7 Payments from the above-mentioned bank accounts, by cheque, Clearing House Automated Payments System (CHAPS), electronic data (BACS), direct debit, via Bankline or any other agreed format, shall only be made in accordance with procedures agreed by the CFO.
- 7.8 All cheques, or similar agreed documents authorising payment, shall be signed by, or bear the facsimile signature of the CFO or other officers authorised in writing by the CFO.
- 7.9 All cheque payments should be made on crossed cheques unless otherwise directed and authorised by the CFO.
- 7.10 Where bank accounts are used for imprest accounts then two authorised signatures shall appear on the cheque.
- 7.11 Changes to the authorised signatures or the mandate can only be made through the CFO.
- 7.12 The CFO, or authorised deputies, is responsible for the transfer of funds from one bank account to another.

- 7.13 The CFO shall be responsible for the production of the electronic data for payments due, the forwarding to the processing centre and security.
- 7.14 All cheques and procurement cards shall be ordered only on the authority of the CFO, or authorised deputies, who shall ensure that arrangements are made for their safe custody and recording. Where procurement cards are issued, a record must be kept of the issue and signed by the receiving officer confirming acceptance of the applicable conditions.
- 7.15 Only Procurement cards under the Government Approved Scheme are to be issued. No other debit or credit cards are permitted.
- 7.16 A voucher and/or receipt are required for all procurement card transactions, and where the goods include VAT, a VAT invoice/receipt must be obtained.
- 7.17 For any payment of £250,000 and over the following additional authorisations will be required:
- (a) Crossed cheques for £250,000 or over will be countersigned by a second signatory;
 - (b) CHAPS payments will require electronic authorisation by a minimum of two authorised officers; and
 - (c) A manual payment voucher for £250,000 or over will be countersigned by a bank signatory.
- 7.18 The CFO shall arrange such safeguards as are deemed necessary and practicable including ensuring that the following duties, as far as possible, are the responsibility of separate officers:
- (a) The checking of creditors invoices;
 - (b) The control of cheques and like forms;
 - (c) The preparation of cheques and electronic payment data;
 - (d) The signing of cheques and like forms;
 - (e) The despatch of cheques or electronic data;
 - (f) The entry of cash accounts; and
 - (g) The reconciliation of bank balances.

8. Imprest and Petty Cash Accounts

- 8.1 The CFO, or authorised deputies, may advance a fixed imprest to an Officer of the Council for the purpose of meeting petty cash expenses. Each imprest or Petty Cash Account shall be of such an amount as the CFO, or authorised deputies, may determine in consultation with the Head of Service or other authorised officer, but shall not exceed the sum anticipated to be sufficient to meet such expenses for a period of two months, (unless there are exceptional circumstances necessitating a higher level and this is agreed by the CFO or authorised deputies).
- 8.2 The CFO, or authorised deputies, shall prescribe such conditions in connection with petty cash disbursements as is deemed desirable.

- 8.3 Petty Cash items shall be limited to minor items of expenditure and in the case of individual items, shall not exceed £100 except by arrangement with the CFO or authorised deputies.
- 8.4 No payments should be made from Petty Cash/Imprest Accounts where there may be HMRC implications. Petty Cash/Imprest Accounts should not be used for: -
- Travel and subsistence claims;
 - Working lunches;
 - Private phones (work usage);
 - Salaries and wages;
 - Entertaining (employees and non-employees);
 - Periodic Payments;
 - Construction Industry Scheme work; or
 - Governor Expenses.
- 8.5 All Heads of Service or authorised deputies shall maintain a list of all persons authorised to sign petty cash vouchers on their behalf and a copy of this list, including specimen signatures and initials shall be supplied to the CFO and the Payments section.
- 8.6 A voucher and/or receipt are required for all petty cash and imprest account transactions and, where the goods include VAT, a VAT invoice/receipt must be obtained. Vouchers and/or receipts should be forwarded to the Payments section with the claim for reimbursement. The relevant Heads of Service shall certify these claims as correct or such person(s) nominated for that purpose.
- 8.7 No income is to be paid into a petty cash account, other than reimbursement cheques.
- 8.8 No personal cheques are to be cashed via a petty cash account.
- 8.9 Petty cash imprests must be reconciled and balanced on a regular basis and agreed to the bank statement (including un-presented cheques) where a bank account is in use. Imprests must be balanced at the 31 March each year to ensure the expenditure is charged to the correct financial year.
- 8.10 Every Officer holding a petty cash imprest shall certify to the CFO the amount of that imprest at 31 March each year.
- 8.11 The conditions for operating an imprest through a bank account must be agreed with the CFO, or authorised deputies, with the minimum of 2 signatories required.
- 8.12 Imprest accounts operated through a bank account must not go into overdraft.
- 8.13 Heads of Service shall inform the CFO in advance when employees who hold an impress account either leave the employ of the Council or otherwise cease to be responsible for the imprest. Whenever an Officer in charge of the imprest hands over, leaves or ceases to have custody of the imprest, the Head of Service, shall ensure that a prior check is made of the imprest concerned and that a handing over certificate is signed by the outgoing and incoming Officer.

- 8.14 Heads of Service or their authorised deputies may exercise delegated power to make ex-gratia payments to Officers, recognised volunteers and customers in a sum not greater than £50 as compensation for damage to or loss of property. Such payments can only be made when the incident occurred during normal Council activities and where such payment is calculated to facilitate or is conducive or incidental to the discharge of any of the functions of the Council. All requests for payment must be authorised and be supported with full written details of the incident and resulting damage/loss, reason for payment and evidence (e.g. receipts) of the actual cost of repair or replacement.
- 8.15 Where it is considered that £50 is insufficient to compensate for any damage or loss, then the individual may submit without delay details of the incident and related damage/loss to officers in the Claims Handling Section who will determine if the Council is legally liable to pay compensation via the standard claims handling procedure. If it is determined that no legal liability exists in respect of the loss/damage, then no payment will be made.

9. Assets including Estates, Non Current Assets and intellectual property

Asset Records

- 9.1 The CFO shall commission the Asset Management Service to maintain a terrier and asset register of all assets owned or leased in by the Council in a form approved by the CFO to comply with proper accounting practice. The asset register shall record: the holding body (if applicable); purpose details; nature of Council's interest; and rents payable, with particulars and terms of tenancies granted. The terrier is to be regularly reconciled to records held in the asset register.
- 9.2 The Asset Management Service, the CFO and other appropriate officers shall co-operate in the preparation and maintenance of an asset register in suitable format and containing all the relevant information to comply with proper accounting practice. The valuation of assets, including an assessment of componentisation and asset life, shall be carried out as necessary to comply with proper accounting practice. The asset register (finance module) to contain details of accounting treatment and asset classification, including current cost and historic cost records as required. The asset register (finance module) is required to comply with proper accounting practice.
- 9.3 The ownership of the asset register and terrier remains with the Council, though the Asset Management Service will maintain the records held and ensure an annual reconciliation.
- 9.4 All non-current assets should be recorded on the asset register, but valuations are only required for those individual assets where the value is estimated to be over £25,000. Where a group of assets, e.g. computer equipment, collectively totals in excess of this amount, an entry should be made on the register to reflect this.
- 9.5 The Monitoring Officer shall have the custody of all title deeds and leases under security arrangements agreed with the CFO.
- 9.6 Intellectual property is something unique that the Council has physically created. To protect internally developed intellectual property from theft and copying, Heads of Service should consider registration ,e.g. trade marks for logos or copyright for

software created. Protecting these assets makes it easier to take legal action against anyone who steals or copies it.

- 9.7 If intellectual property is registered, the Head of Service must notify the CFO so the asset can be added to the asset register and the same safeguards that apply to the Council's other assets can be applied to these assets.

Asset Disposals and Leases

- 9.8 For approval purposes a disposal is deemed to be applicable for both a freehold disposal and any lease where the term is in excess of 40 years.
- 9.9 The Council shall commission the Asset Management Service to undertake the arrangements for the lease or disposal in line with the terms specified by the relevant budget holders and these Financial Regulations and Contracts Procedures.
- 9.10 Officers will identify surplus assets for disposal or lease in accordance with the Officer Scheme of Delegation.
- 9.11 Officers will identify operational assets for lease in accordance with the Officer Scheme of Delegation.
- 9.12 Proceeds of asset disposal will be allocated in accordance with the approved Capital Strategy. Any proposal by a service to utilise the proceeds for a specific purpose or recommend to Council the disposal of the asset at below market value will need to be agreed by CFO in light of the overall financial position of the Council and any, as yet unachieved, capital receipts target.
- 9.13 All disposals or leases shall be subject to a formal process prior to entering into a written contract. All disposal or leases above a market value of £50,000 (in the opinion of a Royal Institute of Chartered Surveyor qualified valuer) must be publicly advertised for a minimum of ten working days via the most appropriate means applicable to the disposal, as determined by Estates and Asset Management. This includes but is not limited to, public auction; property listing websites; land, estate or property agents; formal tender process. This process shall include details of the asset and any conditions and specifying a reasonable closing date by which expressions of interest must be received.
- 9.14 There are instances where a disposal is deemed to be a contract under public procurement regulations. This is usually when the disposal involves an element of land development for example where there is a legally enforceable obligation on the purchaser to develop the site, for joint venture partnership arrangements in which the Council plays an active role, the Council is taking the lead on designing and funding development, or the Council is getting an economic benefit from the asset. In these instances, advice should be sought from Commercial Services.
- 9.15 Regulation 9.13 shall not apply to any of the following types of disposals or leases: -
- (a) Grants of leases to existing tenants where security of tenure may exist and the terms of the lease not significantly changed (whether or not their existing tenancies have come to an end);
 - (b) Where the Grants of leases or licences relates to an asset where the length of the lease is less than 10 years;

- where the value of the asset is over £25,000, the disposal has been discussed with the portfolio holder; and
 - the market rent for an annual market rent does not exceed £50,000 per annum; or
 - the market value of the asset does not exceed £50,000.
- (c) Disposals of land acquired under compulsory purchase powers to the original owners of that land or their successors;
- (d) Disposals of freehold in land where the interest disposed of is estimated not to exceed £50,000 in market value in the professional opinion of a member or fellow of RICS; Note the Council does not dispose of freehold property unless under statute but will consider a long term lease or if exceptional circumstances.
- (e) Long term lease under the Councils Community Asset Transfer Policy.
- 9.16 The CFO (in consultation with the Leader of the Council and Monitoring Officer) may give written authorisation to waive the requirements of Regulation 9.13 where he/she is satisfied that the proposed disposal or lease will be in the best interest of the Council and that the proposed terms of the disposal or lease are unlikely to be bettered by complying with Regulation 9.13.
- 9.17 All disposals and leases are to be accounted for on a gross basis showing the market value of the transactions. Any form of non cash transaction such as an exchange of land, nomination rights, or a concessionary rent below market value or similar transaction forms part of a budget holders' financial control (as set out in section 5 above).
- 9.18 Where a disposal or lease of land or buildings has been expressly approved by Council or the Leader of the Council (where applicable) or the Cabinet, that decision shall be actioned by Officers.

Acquisitions

- 9.19 Where an asset has been identified for acquisition, if the market value of the asset is less than £200,000 the Officer Scheme of Delegation applies, if in excess of £200,000 the Cabinet (where the acquisition is within the budget approved by the Council) or Council (if the acquisition is outside the budget and policy framework) shall approve the acquisition of that asset. In both cases this is subject to the funding being identified for the purpose,;any ongoing revenue implications considered and will then be included in the Capital Strategy.

10. Inventories (Moveable Property)

- 10.1 Items of moveable property are defined as any equipment used by a service in their duties including office equipment, specialist equipment, IT equipment including mobile phones, laptops and iPads.

(Note: Stock items used for service delivery such as printing and highways stock, and items for sale see section 11 below.)

- 10.2 All Heads of Service shall be responsible for preparing and maintaining an inventory of moveable property, in a standard form agreed by the CFO (see 10.5 below), for

each of the establishments under their control. All inventory records should be held electronically on the Council's network.

- 10.3 The inventory will record an adequate description of all moveable items of equipment, office machinery, ICT and communication equipment and other property belonging, held on leasing agreement, donated to, or on trust to the Council, valued at over £500. Where there are vulnerable items, these should be recorded in inventories irrespective of price.
- 10.4 All Heads of Service shall be responsible for the physical security and inventory of all computer hardware and software within their business units in accordance with ICT security policy (where this has not been purchased through ICT Services as set out in 10.2 above). Where hardware and software is purchased through ICT Services or has been assigned a Torbay asset number, ICT Services will maintain an appropriate inventory record.
- 10.5 Details on the inventory should include:
- (a) The name of supplier;
 - (b) The normal location of the item;
 - (c) The original purchase price;
 - (d) Any relevant model or serial numbers, etc; and
 - (e) Lease, loan and trust agreement details.
- 10.6 All property belonging to the Council and covered by the inventory category must be recorded in inventories immediately on receipt and notified to the Council's Insurance Section where the cost is more than £500. Where practicable, inventory items should be marked in a suitable manner as being the property of the Council.
- 10.7 Inventories shall be checked and certified as correct and complete by an authorised officer on an annual basis, and copies of the inventories shall be supplied to the CFO on request. Deficiencies and/or surpluses should be reported to the CFO for action by the Devon Audit Partnership.
- 10.8 Inventory items deemed to be surplus to requirements and saleable old materials shall be disposed of only on the written authority of the Head of Service or authorised deputies. Where appropriate, items should be offered to other areas of the Council before being put up for use by other groups or offered for sale. Heads of Service shall obtain the best possible prices when disposing of redundant and obsolete items.
- 10.9 The CFO or authorised representative shall, at all reasonable times, have access to all property of the Council to audit the inventory.

11. Stocks and Stores

- 11.1 Each Head of Service shall be responsible for the care and custody of stock including items for sale and stores for items used by the service in their business unit.
- 11.2 Stores shall not be in excess of reasonable requirements.

- 11.3 Records controlling the receipt and issue of all stores and equipment shall be kept in a form to be approved by the CFO.
- 11.4 The CFO, or authorised representative, shall be entitled to check stores and be supplied with such information relating thereto as may be required for the accounting, costing and financial records of the Council. They shall take such action as deemed necessary to deal with any discrepancies shown in any items of stock revealed at any time. In the event of the Head of Service, or authorised representative, becoming aware of any deficiency or theft, a report should be made to the CFO immediately, so appropriate action may be taken.
- 11.5 The Head of Service or other authorised officer shall certify that the quantities of stocks and stores held at 31 March each year are reasonable and necessary and, except where agreed by the CFO, that there has been adequate continuous and cyclical stocktaking carried out independently of the person in charge of the store/stock concerned.
- 11.6 The valuation method used for the year end stock valuation will be approved by the CFO.
- 11.7 Surplus and obsolete stocks, having ensured that they cannot be of use elsewhere within the Council, shall be disposed of by competitive tender or public auction unless the CFO, in consultation with the appropriate Head of Service, decides otherwise.
- 11.8 Whenever an Officer in charge of stores hands over, leaves or ceases to have custody of the stores, the Head of Service shall ensure that a prior check is made of the stores concerned and that a handing over certificate is signed by the outgoing and incoming Officer.

12. Investments, Borrowing, Loans, Guarantees and Trust Funds

- 12.1 Treasury management activities will comply with the CIPFA Code of Practice for Treasury Management in the Public Services and the Council has formally adopted the following clauses:
 - i. The Council will create and maintain, as the cornerstones for effective treasury management:
 - (a) A treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities;
 - (b) Suitable treasury management practices (TMPs), setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities;
 - (c) A Minimum Revenue Provision Policy; and
 - (d) An Investment Strategy.
 - ii. The content of the policy statement and TMPs will follow the recommendations contained in Sections 6 and 7 of the Code, subject only to amendment where necessary to reflect the particular circumstances of this

organisation. Such amendments will not result in the organisation materially deviating from the Code's key principles.

- iii. The Council will receive reports on its treasury management policies, practices and activities, including, as a minimum, an annual strategy and plan in advance of the year, a mid-year review and an annual report after its close, in the form prescribed in its TMPs.
- iv. The Council delegates responsibility for the implementation and regular monitoring of its treasury management policies and practices to the Audit Committee, and for the execution and administration of treasury management decisions to the CFO, who will act in accordance with the organisation's policy statement and TMPs.

- 12.2 All Treasury Management decisions will adhere to the annual Treasury Management Strategy and Annual Investment Strategy approved by Council.
- 12.3 Investment of Council funds shall be made by the CFO in the name of Torbay Council or nominated deputies.
- 12.4 The Treasury Management Strategy (in line with the CIPFA Code for Treasury Management in Local Authorities and any other relevant legislation in force at the time) shall be adhered to at all times. The Strategy to include Non Treasury Investments such as loans, investment properties, pension guarantees and other guarantees.
- 12.5 The CFO shall be authorised to invest temporarily or utilise such surplus monies of the Council as may seem proper and in the Council's interest.
- 12.6 Investments to any one borrower shall not exceed the limits determined by the CFO in line with the overall counter party creditworthiness policy.
- 12.7 The CFO shall be responsible for the safe custody of securities and shall maintain a record of all such borrowing.
- 12.8 The CFO will ensure that the borrowing requirements of the Council including overdrafts are in accordance with the CIPFA Prudential Code for Capital Finance and do not exceed the authorised Limit approved by Council.
- 12.9 All borrowing transactions must be approved by the CFO or his authorised deputies.
- 12.10 All Trust Funds shall be administered by the CFO acting on the behalf of the legally appointed trustees.
- 12.11 All officers acting as trustees by virtue of their official position have a legal duty to exercise due care of valuables, documents, securities etc. and shall appropriately deposit them.
- 12.12 The requirements of the Charities Acts legislation must, where appropriate, be observed.
- 12.13 The granting of a loan or a guarantee to a third party for a service purpose, which is part of the Council's policy and budget framework. The CFO has delegated powers to approve a loan or guarantee if the value is under £50,000.

13. Income and Debtors**Income**

- 13.1 Income is defined as all forms of income receipts, including internet payments, cash, bank credits, debit and credit card payments, cheques and self billing. This section also applies to partners dealing with income and cash on behalf of the Council.
- 13.2 Arrangements for the collection of all money due to the Council shall be subject to the approval and control of the CFO
- 13.3 All books of accounts, all official receipt forms or books, licences, tickets and all documents or vouchers representing receipts for cash or other forms of income, shall be in the form approved by the CFO. The Head of Service of the appropriate service or his/her nominated officer shall be responsible for the ordering, control and issue of these documents, and all receipts and issues thereof shall be properly recorded and acknowledged.
- 13.4 Receipts by credit or debit card, including internet payments, are acceptable where proper arrangements have been made for this facility. The CFO and Senior Information Risk Owner (SIRO) must approve all new card payment facilities and outlets offered by the Council and these must be subject to a Data Protection Impact Assessment which is approved by CFO, Data Protection Officer and SIRO. All new requests should initially be made to the Corporate Debt and Incomes Manager.
- 13.5 All money received on behalf of the Council shall be promptly receipted, and shall without delay be either paid to the CFO or banked in full in the Council's name as instructed. Such banking shall be made daily or at such intervals as the CFO may decide, but in any event not less frequent than once per week and in any case where the cash and cheques exceed the insurance level of the respective safe or other facility used for holding the income.
- 13.6 Heads of Service shall be responsible for the safe custody of cash and items having a cash value entrusted to the care of their Business Unit. The arrangements made for safe custody shall be subject to review and authorisation by the CFO.
- 13.7 Where a new safe is required, the Head of Service shall be responsible for notifying the Insurance Manager of the required level of cover, type of safe to be purchased and its proposed location to ensure the insurer's requirements are met. The CFO shall be consulted prior to the purchase of any safes to ensure the insurance limits are adequate for the Council's needs.
- 13.8 Maximum limits of cash holdings shall be agreed with the CFO and must not exceed the insurance limit of the safe concerned.
- 13.9 Collecting officers shall ensure that all cheques received are correctly dated, the words and figures agree and are signed. Wherever possible, cheques should be endorsed on the reverse with the cheque card details (i.e. number, valid date, and value).

- 13.10 In all cases cheques should be marked on the reverse with either the appropriate Business Unit date stamp or a source reference (i.e. account number, Business Unit, waybill number and payer's reference) before banking.
- 13.11 Postal Remittances:
- (a) All postal opening duties shall be clearly defined and supervised by the appropriate Head of Service or an authorised deputy, and two officers should empty all post boxes;
 - (b) All post shall be opened promptly in the presence of two officers, and all cheques must be marked on the reverse with the appropriate Business Unit date stamp. Cash remittances received via the post must be promptly and accurately recorded by the responsible officers and paid in as agreed in 13.5 above.
- 13.12 Transfer of monies from one member of staff to cashiers must be properly recorded and receipted.
- 13.13 Money held on the Council's behalf must at all times be kept separate from private or unofficial money and must never be used for private or unauthorised purposes.
- 13.14 All cash collection devices shall be emptied at frequent and regular intervals as laid down by the CFO in consultation with the Head of Service. This shall be done by two officers who shall agree and certify the amounts of cash collected, or such arrangements as the CFO may determine.
- 13.15 Personal cheques shall not be cashed or money loaned out of cash held on the behalf of the Council.

Debtors

- 13.16 Debtors are defined as all forms of income due including sundry debtors, car parking, libraries, s106 (and Community Interest Levy) agreements, rent, fines, benefit overpayments, council tax and National Non-Domestic Rates (NNDR).
- 13.17 All income due shall be recognised by the raising of a debtor. This includes any income raised on any service specific financial systems.
- 13.18 Heads of Service shall notify the CFO as early as possible of all money due to the Council under contracts, leases, tenancy agreements, agreements for the sale of property and any other agreements involving the receipt of money by the Council.
- 13.19 The Head of Service or other authorised officers shall provide such particulars of charges for work done, goods supplied or services rendered on behalf of the Council and of other amounts due, as the CFO may require ensuring prompt recording of all fund's receivable by the Council. Sundry Debtor invoices and credit notes should be raised promptly and shall be produced in keeping with current Financial Information Management System (FIMS) procedures, guidance, training and advice. Invoices should not normally be raised for amounts of less than £25.00. Heads of Service or other authorised officers including partners should arrange, wherever possible, for all amounts to be collected at the actual time or in advance of the supply of goods or rendering of the service and paid in by such method as agreed by the CFO.

- 13.20 A credit note should only be raised where the invoice was incorrectly raised. In all other cases the write off procedure should be followed.
- 13.21 The CFO, in consultation with Heads of Service, will review all outstanding debt at year end and will estimate the value of debt that is likely to be uncollectible.
- 13.22 Debtor Account Write-Offs and any debt on any service specific financial systems, excluding Council Tax, NNDR and Housing Benefit Overpayments will be dealt with as follows:
- (a) The Debtor Administrator for the specific finance system, within the Accounts Receivable (AR) module, known as FIMS, will recommend debts for write off to Heads of Service, Director/Divisional Director and the CFO;
 - (b) (Heads of Service or Director/Divisional Director raising the charge shall be empowered, after giving due consideration to all the circumstances involved, to write off individual's or businesses' debts up to £1,000 in total and shall inform the CFO of the action taken and state their reasoning;
 - (c) For all other individual's or businesses' debts of £1,000 or above in total, the Heads of Service or Director of Divisional Director shall request that the CFO approves the write off of the debt, in consultation with the Cabinet Lead for Finance;
 - (d) The CFO will maintain a written record of any amounts written off per individual or business over £1,000 in total. A quarterly report shall be made to the Overview and Scrutiny Board of the total amounts written off per individual or business which exceed £5,000, by category and stating the reason for write-off.
 - (e) The Debtor Administrator shall be empowered to write off 'de minimis' individual or business debts of upto £100.00.
 - (f) Provided that the Debtor Administrator has recommended debts for write off to Heads of Service and Director/Divisional Director, the CFO has the authority to write off debt of any amount.
- 13.23 For Debtor write offs for Council Tax, NNDR and Housing Benefit Overpayments, the following will apply:
- There will be statutory debts raised under the above debt types, which after due consideration of the circumstances relating to an account, it may be considered as un-collectable and it is appropriate to write off the outstanding balance. The outstanding balances for write off's will be identified, written off and reported on a quarterly basis each financial year as follows:
- (a) The Corporate Debt and Incomes Manager will consider a sample of debts (e.g. five for each debt type) and will sign that that they are appropriate accounts to be written off;
 - (b) The Corporate Debt and Incomes Manager will sign the Write Off Report, that all of the accounts will have been subject to a checking process by two relevant members of staff, before the debt is recommended for write off on the system; and
 - (c) For debts over £5,000, the CFO will sign off the Write Off Report.

Debts which are written off in the quarterly process which exceed £5000 will be reported to Overview and Scrutiny Board and Council, by debt type and stating the reason why the debt has been written off.

14. Orders for Work, Goods and Services

- 14.1 Orders must be issued for all work, goods and services supplied to the Council (including those supplied under a call off contract or where supplier pro-forma orders are used) and must be produced via the Council's FIMS except in the following circumstances:

Invoice payments relating to: -

- Rent
- Taxes e.g. NNDR and Council Tax
- Utility Bills e.g. Electric, Gas, Water, Telephones, TV Licences and Internet Charges
- Other Electronic Ordering Systems
- Programmed Contract Work where an official Contract Payment Certificate has been used.
- Supporting People Contracts – interface and periodic payments should be used where possible
- Temporary creditor, for 'one off' supplier payments

Or payments where it is inappropriate to obtain an invoice including: -

- Grants
- Refunds/overpayments
- Other - in agreement and format with the Payments Manager.

Any further exceptions must be agreed by the Payment Manager with the Heads of Service concerned and with the CFO.

- 14.2 A list of all persons approved to authorise orders within Business Units will be maintained by the FIMS Team and displayed on the Council's intranet site. Heads of Service are responsible for ensuring that these lists are complete and accurate.
- 14.3 Authorisation controls shall be maintained within the FIMS system. Each Head of Service shall review authorisation permissions regularly and ensure that the FIMS Team is notified of any changes to the authorisation structure immediately.
- 14.4 The CFO may allow orders to be auto 'Goods Receipted' in the FIMS system where it has been proven that authorisation has occurred in a system prior to the order being raised (i.e. Mayrise).
- 14.5 The CFO has the discretion to change the authorisation / Goods Receipting tolerance levels (either in totality or for individual contracts) if he is satisfied that it is in the best interest of the Council and that any associated risks have been minimised.
- 14.6 Orders shall be produced in keeping with current FIMS guidance, training and advice (including Purchase Order Processing FAQs).

- 14.7 Orders shall comply with current contracts and framework agreements where they exist.
- 14.8 Suppliers should be aware of contractual conditions and liabilities imposed by the Council.
- 14.9 No order shall be issued for goods, work or services unless the cost is covered by the approved annual budgets, a supplementary estimate or by virement approved by paragraph 5.8 above or delegated powers and the goods, services or works have been procured in accordance with Contract Procedures.
- 14.10 Every officer issuing an official order (or ordering via any other approved medium) shall ensure, and be able to show that, as far as is reasonable and practicable and with regard to the sums of money involved, that best value obtained in respect of each transaction (as per Contracts Procedures).
- 14.11 The CFO may approve alternative arrangements for the ordering of goods etc., where circumstances or trading necessity make this desirable. Such approval must be given in writing.
- 14.12 Verbal orders must only be given in cases of urgency and must only be given by officers who have the appropriate budgetary responsibility. Where a verbal order is made, it must be confirmed no later than the next working day by the issue of an official order, endorsed 'confirmation order'. With regard to major emergencies, reference should be made to paragraphs 14.16 and 14.17 below.
- 14.13 The CFO shall assist Heads of Service to ensure that they are able to obtain best value in line with any appropriate corporate purchasing policy. Devon Audit Partnership will assist Heads of Service by carrying out relevant Value for Money exercises where resources allow.
- 14.14 Each Head of Service or other authorised officer is authorised, in accordance with this Constitution and powers delegated by the Council or the Leader of the Council, to incur normal recurring and non-recurring expenditure, subject to the following conditions:
- (a) Budgetary provision has been made for the expenditure by way of revenue or supplementary estimate or compensating income is recoverable from a third party; and
 - (b) The procurement procedures described by the Contracts Procedures and these Financial Regulations have been observed and it has been demonstrated that best value has been obtained, unless minuted authority has been given by the Council or CFO for their waiving.
- 14.15 In cases where orders have been lost by suppliers, confirmation of the order shall be given by sending a 'copy' of the order. This copy needs to be endorsed as being a copy as opposed to resending the original.
- 14.16 In the case of a major emergency (as declared by the Chief Executive or his/her authorised deputy), the ordering of goods, works or services may be undertaken by 'non-authorised' officers (i.e. no budgetary responsibility) as part of the Emergency Team. This may constitute the issue of verbal order. However, evidence of such orders must be appropriately documented with the senior officer responsible for

dealing with the emergency informing of any costs likely to lead to significant expenditure by the Council.

- 14.17 In the case of an emergency and where officers identify a need for expenditure of a strategic nature, then the requirements of this Constitution should prevail.

15. Payment of Accounts/Invoices

- 15.1 The payment of all money due from the Council shall be made by the CFO or authorised deputies, with the exception of payments made from imprest accounts and petty cash in line with section 8 above. (Note: Special arrangements have been made for some schools.)
- 15.2 Each Head of Service shall arrange for invoices to be sent in the first instance to the Payments Section, and any exceptions to this must be previously agreed with the Payments Manager or deputy. In accordance with directions to be specified on the orders, the supplier shall be asked to quote the name of the Business Unit, the number of the order, details of the goods or service supplied, and the place where the work was done or goods delivered.
- 15.3 Where purchases have been made using an approved Purchase Card scheme where one exists, it is the responsibility of each Head of Service to ensure that all card statements are checked, reconciled and authorised and that the goods/services are for business use and comply with all the current guidelines issued for Purchase Cards.
- 15.4 Invoices shall not be made out by officers of the Council except in any case or category of cases agreed by the CFO. Paper invoices shall only be accepted on which details are written in ink, typewritten, printed, or computer generated. All invoices from Value Added Tax (VAT) registered suppliers are required to be a valid VAT invoice in accordance with His Majesty Revenue and Customs requirement. Emailed invoices can only be accepted if they are sent directly to the Payment Section by the supplier and where appropriate should quote a (FIMS) order number. Electronic invoices may be accepted from suppliers if they meet the Council's prescribed conditions in line with Statutory Legislation.
- 15.5 No amendments shall be made to an invoice. Incorrect invoices should be returned to the supplier for replacement. At the discretion of the Payments Manager or deputy, invoices which do not include a valid FIMS order number may be returned to the supplier requesting further information before payment is made.
- 15.6 The authorisation of an invoice implies that the responsible officer(s) has examined, verified and certified that:
- (a) The goods/services have been received, examined and approved as to quality and quantity, or that services rendered or work done have been performed satisfactorily;
 - (b) They conform to the order;
 - (c) The price is in accordance with the quotation, contract or current market rate, whichever is applicable or is otherwise reasonable;

- (d) The arithmetic accuracy of the invoice is correct and that all trade and cash discounts, other proper allowances and other credits due have been deducted;
- (e) The expenditure has been properly incurred, has been duly authorised and is within the financial provisions;
- (f) The cost allocations are correct;
- (g) The invoice has not previously been passed for payment and is a proper liability of the Council;
- (h) Where items of moveable property are purchased costing more than £500, an entry has been made in the appropriate Inventory;
- (i) Where the purchase is over £25,000 for a single item, an appropriate entry has been made in the Council's Asset Register maintained by the CFO
- (j) Where the value exceeds £5,000 Officers must ensure that the Contracts Register, available via the Commercial Services Team, is completed.
- (k) The duties of “ordering; receiving goods, works and services” and then “certifying the relative invoices for payment” has not be performed by the same officer, subject to the CFO being informed if such a separation of duties in any individual instance is impracticable.

The above checks should be undertaken irrespective of the order or payment mechanism used.

- 15.7 A list of officers authorised to certify invoices/vouchers shall be sent by each Head of Service to the FIMS Systems Team, including specimen signatures and initials. All amendments to the list shall be notified to the CFO in writing.
- 15.8 Invoices not received centrally (by prior agreement) shall be date stamped, examined by the Business Unit promptly and submitted within 3 working days to the Payments Section for payment. Care should be taken to ensure that ‘prompt payment’ discounts are not lost or any penalties incurred (i.e. late payment fees).
- 15.9 There are certain circumstances when it may be necessary to make a ‘Manual’ Payment:
- (a) Invoices received (where a POP order was not required, as per 15.1);
 - (b) Payment required, but no invoice received and POP order not required as per 15.1; or
 - (c) Special arrangements, due to the nature of the service (i.e. Occupational Health); or one-off payments at the discretion of the Payments Manager.

Although these types of payments are classified as ‘Manual’, the method by which they are actually paid could vary, i.e. via a paper voucher or an electronic process. Authorisation for such payments (where appropriate) are in line with the Council’s main Financial system, and a list of the types of payments falling into the above categories is held within the Payments Section ‘Processes & Procedures’ document (subject to change).

- 15.10 The Payments Section shall examine, in so far as is considered necessary, all invoices passed for payment and shall be entitled to make all such enquiries and to receive such information and explanations as are necessary to ensure that the invoices are in order.
- 15.11 Subject to the foregoing regulations being complied with, the Payments Section shall pay all invoices passed for payment.
- 15.12 All paid invoices and certificates shall be retained by the CFO, or authorised officer, in line with the Council's Retention of Documents Policy.
- 15.13 Each Head of Service, or authorised deputy, shall be responsible for prompt processing of invoices. This includes both FIMS and manually processed invoices and shall imply the following:
- (a) Prompt despatch of manually certified invoices to the Payments Section;
 - (b) Prompt receipt goods/services (also known as GRN) on the FIMS system;
 - (c) Prompt response to system generated Business Event Manager messages with regard to mismatched (held) invoices on the FIMS system; and
 - (d) Prompt response to emails from the Payment Section with regards to logged invoices.
 - (e) Compliance with the duty under the Procurement Act 2023 to make payment within 30 days of receipt of the invoice.

16. Salaries, Wages, Travelling, Subsistence and Other Expenses

- 16.1 All staff must comply with the current version of the Council's Human Resources Policies in respect of salaries, wages, travelling subsistence and other expenses.

17. Members' Allowances

- 17.1 Allowances for the Leader of the Council and Councillors shall be paid in accordance with the Council's approved Members' Allowance Scheme as set in the Council's Constitution.

18. Insurance

- 18.1 The Insurance Manager, in consultation with the Head of Legal Services and CFO, shall affect all approved insurance cover and negotiate all claims and maintain necessary records.
- 18.2 Each Head of Service shall give prompt notification to the Insurance Manager of all new risks to be insured, any existing risks for which cover is no longer required and any changes to existing policies.
- 18.3 If there has been a failure by a Head of Service (or equivalent) to take reasonable precautions to prevent or minimise accidental injury, loss or damage or a disregard to Health and Safety requirements or the Council's Risk Management policy, an uninsured loss (excess) may be charged to the client department concerned.
- 18.4 Each Head of Service must notify the Insurance Manager as soon as is practically possible and then confirm in writing details of any loss, liability or damage or any event likely to lead to a claim against the Council.

- 18.5 Heads of Service must assist the Insurance Manager by supplying all information required promptly in order that the Insurance Manager may comply with current legislation and enable claims to be settled as quickly as possible.
- 18.6 The Insurance Manager shall, at regular intervals, provide other Heads of Service with details as to the progress and eventual settlement of all claims made on their behalf.
- 18.7 The Heads of Service shall maintain a continuous review of insurance cover held, which must include a regular review of valuations and the types of risks covered by existing policies.
- 18.8 All appropriate Council employees shall be insured by fidelity guarantee insurance.
- 18.9 No indemnities shall be given without the written authority of the Head of Legal Services, who will inform the Council's insurers when appropriate.
- 18.10 The Head of Legal Services and the CFO in consultation with the Insurance Manager shall administer the Council's Insurance Fund and take appropriate decisions regarding all insurance strategies. This will include financing expenditure from the fund to mitigate future risks in line with the protocol for managing the Insurance Fund.
- 18.11 The Insurance Manager will determine whether leased out property is insured by the Council or tenant. Where the tenant does not insure, the Asset Management Service will recover the insurance charge on behalf of the Council, through the lease.
- 18.12 All external contracts with a value exceeding £25,000 must include a requirement for the supplier to hold appropriate levels of insurance for the goods, services or works supplied. These must be checked at the point the contract is awarded and on at least an annual basis during the term of the contract.

19. Risk Management

- 19.1 Directors, Divisional Directors and Heads of Service shall ensure that risk is managed effectively in each service area within the agreed Performance and Risk Framework by ensuring all staff are aware of the Strategy and the processes detailed within it.
- 19.2 Heads of Service and Service Managers will identify and manage risks within their area of responsibility and these shall be communicated directly to the Head of Policy, Performance and Community Engagement for inclusion on the appropriate Risk Registers.

20. Security

- 20.1 Each Head of Service is responsible for maintaining proper security of assets used by their service such as cash, keys and equipment at all times and shall consult the CFO where security is thought to be defective or where it is considered that special security arrangements may be needed.
- 20.2 The loss of any assets must be reported to the Head of Devon Audit Partnership and the CFO.

- 20.3 Each Head of Service is responsible for maintaining proper security of all buildings, furniture and equipment under their control. They shall ensure that all members of their staff are aware of the Corporate Security Policy, of their responsibility for the security of offices, the possession of keys, and other means of access.

21. Group Entities

- 21.1 Council associates and subsidiary companies shall comply with accounting treatments and reporting as required by CFO to meet Council reporting requirements.

22. Working with our Partners

- 22.1 All Council arrangements with partners, in whatever legal form, that involves the Council's expenditure, income, service provision, assets, liabilities or data will apply the Financial Regulations and comply with the Council's information governance, system access and user requirements as if they were staff employed by Council. Where appropriate, they will also comply with the Council's Code of Corporate Governance.
- 22.2 Financial Regulations apply to individuals and companies acting as staff although not employed as such e.g. agency staff, seconded staff and other contractual arrangements.
- 22.3 The Financial Regulations apply to the Council and any associated companies. The CFO legislative requirements apply to all Council assets and liabilities, including subsidiary companies. The CFO therefore has responsibility for the financial systems, financial procedures and financial regulations in use by the subsidiary companies.
- 22.4 Working arrangements with partners to include, but not exclusively, companies the Council has a shareholding in, joint committees, pooled budgets, specific client/contractor relationships, Health Act joint working and shared services. Heads of Service are to inform the CFO of any working arrangement entered into to ensure all parties are aware of their responsibilities in relation to Financial Regulations.
- 22.5 The CFO:-
- (a) Must ensure that the accounting arrangements to be adopted when working with our partners are satisfactory;
 - (b) Consider overall corporate governance arrangements and legal issues, in consultation with the Monitoring Officer, when arranging contracts with external bodies;
 - (c) Ensure risks have been fully appraised before agreements are entered into with external bodies; and
 - (d) Must protect Council data.
- 22.6 The CFO must ensure, where appropriate, partners: -
- (a) Are aware of their responsibilities under the Council's Financial Regulations and Contracts Procedures in particular Council procurement and contract guidance, and Information Governance standards;
 - (b) Permit an "open book" access to information as required by the CFO;

- (c) Provide information the Council relies on in a form and to a timetable as defined by the CFO or relevant contract;
- (d) Must not incur expenditure which will be funded by the Council without establishing that an approved budget exists and the approval of Council's Budget Holder;
- (e) Can not authorise a payment from the Council to themselves;
- (f) Access to the Council's finance and other systems is to be approved by the CFO or Head of Service. Access to be reviewed on an annual basis; and
- (g) Have agreed and formally accepted the roles and responsibilities of each of the partners involved in the project before the project commences.

22.7 Where partner uses the Council's FIMS on behalf of the Council. The Head of Service in consultation with the CFO is to ensure that the partner fulfils the Council's requirements in relation to its statutory duties and the Constitution, including these Financial Regulations.

22.8 For the avoidance of doubt, partners must adhere to the Council's Financial Regulations and guidance on income, rental agreements, write offs, and credit notes.

22.9 Partners must also adhere the Council's Financial Regulations and Information Governance in relation to information held by or accessed by partners on other Council's systems e.g. Asset Register and Paris.

22.10 The CFO is to approve access to Council systems for internal (Devon Audit Partnership) and the Council's appointed External Auditors.

23. The Council working for third parties

23.1 All proposals for working with third parties are to be fully costed. Where these costings exceed £25,000, approval from the CFO is required before contracts are drawn up or when applying for a contract opportunity through a tender process.

23.2 Advice should be sought from Commercial Services when applying for a contract opportunity through a tender process.

23.3 The CFO, in consultation with Heads of Service, must ensure:-

- (a) That the Council is not put at risk from bad debts wherever possible;
- (b) The contract is not subsidised by the Council;
- (c) That wherever possible, payment is received in advance of delivery of the service;
- (d) That such contracts do not impact adversely upon the services provided by the Council; and
- (e) Insurance arrangements are in place.

23.4 Heads of Service will provide any documentation or information the CFO requires for financial reporting.

Contracts Procedures

A. Introduction

24. Procurement Definition

24.1 Procurement is the award, entry into and management of a contract.

24.2 In the context of these Procedures reference to Procurement includes:

- (a) any step taken for the purpose of awarding, entering into or managing the contract;
 - (b) all or part of the procurement; and
 - (c) termination of the procurement before award of the contract;
- regardless of whether the procurement is covered under public procurement legislation.

25. Procurement Objectives

25.1 When putting external contracts in place the Council will give regard to the importance of:

- (a) delivering value for money;
- (b) maximising public benefit;
- (c) sharing information for the purposes of allowing Suppliers and others to understand the Council's procurement policies and decisions;
- (d) acting, and being seen to act, with integrity (acting transparently, fairly and proportionately); and
- (e) supporting achievement of the strategic priorities set out in the Torbay Community and Corporate Plan.

25.2 During a Procurement, the Council will treat Suppliers the same unless a difference between the Suppliers justifies different treatments. Where different treatment is justified, the Council will take all reasonable steps to ensure it does not put a Supplier at an unfair advantage or disadvantage.

25.3 The Council will give regard to the fact that small and medium-sized enterprises may face particular barriers to participation and will consider whether such barriers can be removed or reduced without putting a Supplier at an unfair advantage or disadvantage.

25.4 The Council will give regard to the strategic priorities set out in the National Procurement Policy Statement.

25.5 Where the Procurement falls under the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) the Council will act with a view to:

- (a) securing the needs of people who use the services;
- (b) improving the quality of the services; and
- (c) improving efficiency in the provision of services.

26. Governing Legislation

- 26.1 These Contract Procedures are made under Section 135 of the Local Government Act 1972 and take into consideration the requirements of Sections 1 to 29 of the Local Government Act 1999.
- 26.2 These Procedures are 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 (for goods, services and works procurements commenced on or after 24 February 2025) which, where they apply, take precedence over local procurement considerations;
 - (c) the Health Care Services (Provider Selection Regime) Regulations 2023 (for relevant health care services procurements commenced on or after 1 January 2024) which, where they apply, take precedence over the Regulations and local considerations;
 - (d) the Public Contract Regulations 2015, the Concession Contract Regulations 2016 and Utilities Contract Regulations 2016 (collectively the Regulations) (for goods, services and works procurements commenced before 24 February 2025 ,call-offs from valid Frameworks and Dynamic Purchasing Systems set up under the Public Contracts Regulations 2015 and relevant health care services procurements commenced before 1 January 2024) which, where they apply, take precedence over local procurement considerations;
 - (e) other applicable primary or secondary legislation and regulations (refer to definitions for further details), including, but not limited to the Procurement Regulations 2024 effective from 24 February 2025; and
 - (f) the Council's Constitution, specifically Financial Regulations and the Officer Scheme of Delegation.
- 26.3 In implementing these Procedures. 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.

27. Application of Contract Procedures

- 27.1 These Procedures constitute the Council's Procurement governance framework how the Council will implement these Procedures is set out in the Commercial Policy.
- 27.2 These Procedures will be fully applied by any Officer or agent of the Council for:
- (a) all Contracts for goods, services and works, including spot purchased, ad-hoc or one-off requirements;
 - (b) the expenditure of third-party funding;
 - (c) all Contracts for services and works concessions;

- (d) the disposal of assets or awarding of leases and development agreements where it becomes a procurement as defined in section 9 of the Financial Regulations, the Procurement Act 2023 or the Public Contracts Regulations 2015; and
- (e) applicable collaborative Contracts or expenditure devolved to a third party Contracting in the Council's name.

27.3 These procedures will be applied in part as applicable by any Officer or agent of the Council for:

- (a) the expenditure of third-party funding, where the funder has specified a procurement method which differs from that set out in these Procedures; or
- (b) the award of grants (refer to the Commercial Policy for further information on the award of grants); or
- (c) direct awards to Council wholly owned companies, companies where the Council has joint ownership with other contracting authorities or between the Council and one or more other contracting authorities, or
- (d) permitted direct awards for the provision of specific services to individual children and young people; or
- (e) The following contracts exempted under Part 1 of Schedule 2 of the Procurement Act 2023:
 - i. vertical arrangements
 - ii. horizontal arrangements
 - iii. defence and security contracts
 - iv. utilities contracts
- (f) The following subject-matter exempted contracts under Part 2 of Schedule 2 of the Procurement Act 2023, with the exception of the subject-matter exempted contracts identified at 27.4a. below.
 - i. Broadcasting
 - ii. Electronic communications services
 - iii. alternative dispute resolution services
 - iv. legal services
 - v. research and development services
 - vi. utilities contracts
 - vii. concessions contracts
- (g) permitted direct awards under the Health Care Services (Provider Selection Regime) Regulations 2023; or
- (h) where the requirements of regulation 12 of the Public Contracts Regulations 2015 or regulation 17 of the Concession Contracts Regulations 2016 are

met¹; or

- (i) works contracts where a Utility has a non-contestable right to undertake the work; or
- (j) contracts covered under regulation 9, 10(c), 10 (d), 10(h), 10(i), 10(j), 11 and 17 of the Public Contracts Regulations 2015²; or
- (k) contracts covered under regulation 10, 11, 12, 13, 14 and 16 of the Concessions Contracts Regulations 2016³.

27.4 These procedures will not apply to:

- (a) the following subject-matter contracts specifically exempted under Schedule 2 of the Procurement Act 2023:
 - i. land and buildings
 - ii. financial services
 - iii. employment
 - iv. emergency services
 - v. public passenger services
 - vi. international agreements and organisations
 - vii. national security
 - viii. intelligence activities
 - ix. defence and security
 - x. commercial contracts of the City of London
- (b) contracts excluded under regulations 8, 10(a), 10(b), 10(e), 10(f) and 10(g) of the Public Contracts Regulations 2015⁴, or
- (c) the disposal of assets (such as land) and the awarding of leases, except where it becomes a procurement as defined in section 9 of the Financial Regulations or the Public Contracts Regulations 2015; or
- (d) sponsorships.

27.5 These Procedures, supported by relevant policies, procedures and guidance, set out the minimum standards necessary to:

- (a) deliver best value, economy, efficiency and effectiveness within external Contracts;
- (b) meet legislative requirements;
- (c) avoid practices which may distort, restrict or prevent competition; and
- (d) meet transparency obligations in relation to the spending of public funds;

27.6 The only exemptions to these Procedures are those set out in Section H (Waivers).

¹ refer to definitions for further details

² refer to definitions for further details

³ refer to definitions for further details

⁴ refer to definitions for further details

28. Contracting Authority

- 28.1 Torbay Council is the Contracting Authority; this means all Contracts will be executed in the Council's name and not in the name of individual directorates or services.
- 28.2 Where a company wholly owned by the Council is putting a Contract in place this will also be in the Council's name unless the wholly owned company is the Contracting Authority.
- 28.3 Where the Council is entering into a collaborative Contract with other public sector organisations the Council may not be Contracting Authority but will remain accountable for ensuring the Contract is put in place in a compliant manner and for meeting its obligations under the Contract.

29. Roles and Responsibilities

Table 1: RACI Matrix

Task	Monitoring Officer / section 151 Officer	Directors / Divisional Directors	Commercial Services Team	Officers / Agents ⁵ of the Council	Members	Internal Audit
Administration and monitoring of these Procedures	A / R	C	C	I	I	I
Ensuring understanding of and compliance with these Procedures	A	A	C	R	R	I
Advising on the Application of these Procedures	A	C	R	C	I	C
Developing the policy, guidance and training materials which sit below these Procedures	I	I	A / R	C	C	C
Completing Procurement training relevant to the role	I	A	C	R	R	I

⁵ Including staff within Council wholly or jointly owned companies

Monitoring and reporting compliance with these Procedures	A	R	R	I	R	C
Definitions						
R = Responsible The people who do the work, to complete the task.			A = Accountable The person who makes sure the responsible people know the expectations and complete the task on time.			
C = Consulted The people who provide input and feedback on the work, as they have a stake in the outcome of the task.			I = Informed The people who need to be aware of the progress of the task, they need to know what is going on but are not decision makers			

30. Breach of Contract Procedures

- 30.1 Any breach of these procedures will be dealt with in accordance with the Council's Commercial Policy and human resources policies.
- 30.2 Where the breach is also a breach of legislation or regulations, the Council and / or individual Officers may be subject to legal proceedings.

31. Use of Consultants

- 31.1 Any consultant or agent acting for the Council in a procurement capacity will be required to comply with the requirements of these procedures and must be competent in public procurement.

32. Spend Category Definitions

- 32.1 Services – 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.
- 32.2 Light Touch / Social and Other Specific Services – the provision of certain health, education, social, religious, hospitality, legal, security, community and prison related services.
- 32.3 Relevant Health Care Services - any service that has a direct effect on the health of the service user accessing it.
- 32.4 Goods – the purchase, lease, rental or hire purchase (with or without an option to buy) of goods, supplies or products, which may also include, incidental to the supply, the putting on site or installation of the product.
- 32.5 Works – the execution or design and execution of construction, civil engineering, demolition, building installation and building completion works.
- 32.6 Concession – the supply, for financial interest, of works or services where at least part of the consideration for that supply is a right for the Supplier to exploit the works or services and where the Supplier is exposed to real operating risk.

B. Procurement Planning**33. Authority to Undertake a Procurement and Award Contracts**

- 33.1 Approval to commence a Procurement and the subsequent award of a Contract will be obtained in accordance with the Officer Scheme of Delegation.
- 33.2 Officers undertaking procurement activity will be appropriately trained in accordance with the requirements set out in the Commercial Policy.

34. Estimated Value of the Contract

- 34.1 The estimated value of a Contract will be calculated in accordance with the requirements set out in the Regulations and the Commercial Policy, considering any options to extend the Contract and/or the division of the Contract into lots.
- 34.2 The Council will not sub-divide or artificially disaggregate Contract values in any way and will consider spend across the whole Council for the requirement.

35. Threshold Values

- 35.1 The UK Government biennially sets Threshold Values for the purposes of applying the Regulations. There are different Threshold Values for goods and services and, light touch services, works and concessions (services, light touch services and works) Contracts.
- 35.2 The Council will take the Threshold into account when determining how to conduct a Procurement.

36. Procurement Timescales

- 36.1 The time limit for receipt of Tenders will be set in accordance with the requirements of the Regulations for above Threshold Procurements, considering the procurement procedure used, the complexity of the Contract and the length of time required by Suppliers to complete their Tender.
- 36.2 The time limit for receipt of Tenders for below Threshold Procurements will be based on the complexity of the Contract and the time required by Suppliers to complete their Tender.

37. Conflicts of Interest

- 37.1 To avoid any distortion of competition and ensure equal treatment of Suppliers the Council will take all appropriate measures to effectively identify, remedy and prevent any conflicts of interest which may arise during the course of a Procurement, in accordance with regulatory requirements (e.g. Part 5 of Chapter 6 of the Procurement Act 2023, regulation 24⁶ of the Public Contracts Regulations 2015) and the Commercial Policy.
- 37.2 Officers will be bound by their obligations under the Code of Conduct for Employees and the Bribery Act 2010.

⁶ refer to definitions for further details

38. Confidentiality

- 38.1 The Council will consider any requirements for the disclosure of information under the Regulations, Freedom of Information Act, and any other requirement or permission that is applicable under the law.
- 38.2 All Officers, agents of the Council or other stakeholders having access to information or documentation about the Procurement will be bound by the confidentiality requirements set out in the Commercial Policy.
- 38.3 Where there is a requirement to share confidential information with Suppliers, such as details relating to the transfer of staff, this will not be disclosed unless the Supplier has signed and submitted an appropriate Confidentiality Agreement.

39. Risk Assessments

- 39.1 The Council will take a risk-based approach to determining the route to market and level of Contract management required for individual Contracts. This approach is set out in the Commercial Policy.
- 39.2 For high value Contracts where there is a significant level of risk the Council may consider the requirement for a Supplier to provide some form of bond or guarantee. The inclusion of bonds or guarantees will be subject to the approval of any officer within Financial Services nominated by the Director of Finance to give such approval.
- 39.3 The assessment of Supplier financial standing will be undertaken in a manner that is proportionate to the nature of the Contract and level of risk, giving due regard to ensuring requirements do not have the effect of disadvantaging Small and Medium-Sized Enterprises (SMEs), Voluntary and Community Social Enterprises (VCSEs) or new businesses or barring them from Tendering.

C. Routes to Market**40. Procurement Procedures**

- 40.1 The procurement procedure used will be established in accordance with Table 2, considering the value, complexity, and risk associated with the Contract.
- 40.2 Instructions on how to calculate the estimated value and full details of the individual procurement options are contained within the Commercial Policy.

Below Threshold Procurements

- 40.3 Commercial Services will establish the appropriate route to market from those identified in Table 2 considering the value, risk and complexity of the Contract and market capacity.

Above Threshold Procurements

- 40.4 The Council will use only those procedures permitted under the Regulations; Commercial Services will establish the appropriate route to market considering the value, risk and complexity of the Contract and size of the market. This includes the use of Framework Agreements, Dynamic Purchasing Systems (procured under the Public Contracts Regulations 2015 and available for use, in accordance with the transition arrangements set out in the Procurement Act 2023, after 24 February

2025) and Dynamic Markets which the Council is eligible to access and where the Procurement can be undertaken in accordance with the specific call-off process.

Table 2: Procurement procedures - below and above threshold Contracts

Goods/Services⁷/Works⁸ Estimated Value of the Procurement	Procurement Procedure
Up to £25,000	Where the requirement is not complex and can be assessed purely on the basis of price or price and simple quality requirements: • obtain at least one written quote by email from a Supplier based within the local authority boundary, including SMEs and / or VCSEs only. To ensure best value quotes should be requested from a minimum of three Suppliers; • where it can be demonstrated there is a lack of a local competitive market quotes may be sought from Suppliers (including SMEs and / or VCSEs only): ○ based within the Devon geographical boundary; or ○ with no geographical boundary. Where award of a Contract is subject to complex quality requirements, one of the options from £25,000 to Threshold should be used.
£25,000 to Threshold	The most appropriate option identified by Commercial Services, considering risk, value, complexity, market and urgency of the Contract: • request informal or formal written quotes by email or through the Council's e-tendering portal from a minimum of three: ○ Suppliers based within the local authority boundary; or ○ SMEs and / or VCSEs based within the local authority boundary; or ○ Suppliers (including SMEs and / or VCSEs only), where it can be demonstrated there is a lack of a local competitive market: ▪ based within the Devon geographical boundary; or ▪ with no geographical boundary. • open invitation to tender through the Council's e-tendering portal with competition reserved for: ○ Suppliers based within the local authority boundary; or ○ SMEs and / or VCSEs based within the local authority boundary; or ○ Suppliers (including SMEs and / or VCSEs only) based within the Devon geographical boundary; or ○ SMEs and / or VCSEs with no geographical boundary, where it can be demonstrated there is a lack of a local competitive market; • open invitation to tender through the Council's e-tendering portal, where there is a lack of a local competitive market;

⁷ Including Service Concessions

⁸ Including Works Concessions

Goods/Services ⁷ /Works ⁸ Estimated Value of the Procurement	Procurement Procedure
	• call-off from an established framework or dynamic purchasing system; • call-off from an established framework with participation in the further competition reserved for Suppliers based within the local authority boundary and where restricting competition in this manner is permitted under the terms and conditions of the framework; • call-off from an approved standing list; • direct award to a company wholly owned and controlled by the Council or jointly owned and controlled with other contracting authorities where best value is demonstrated; • direct award to another contracting authority where best value is demonstrated; • direct award where it can be clearly demonstrated that only one Supplier can meet the need and there is no scope for competition (refer to the Commercial Policy and guidance for the specific circumstances under which a direct award can be considered).
Above Threshold	• advertised invitation to tender through the Council's e-tendering portal; • call-off from an established framework, dynamic market or dynamic purchasing system; • direct award to a company wholly owned by the Council or jointly owned with other contracting authorities where the conditions set out in the Regulations permitting a direct award are met and best value is demonstrated; • direct award to another contracting authority where the conditions set out in the Regulations permitting direct are met <u>and</u> best value is demonstrated.

- 40.5 A Supplier is deemed to be based within the local authority boundary where the Supplier is based within the boundary or has established substantive business operations there, not taking account of the location of the corporate ownership or control of the supplier.
- 40.6 When reserving competition to Suppliers (including where reserved for SMEs and / or VCSEs) based within the local authority boundary, this must be clearly stipulated in any invitation to bid and / or below threshold tender notice. The invitation or notice must clearly set out the extent of the geographical area in which they must be based.
- 40.7 When reserving competition to SMEs or VCSEs, this must be clearly stipulated in any invitation to bid and / or below threshold tender notice.
- 40.8 Where the Contract relates to funding provided by an external body, the procurement procedure selected must comply with any requirements or thresholds

set by the funder or laid out in relevant statutory guidance. Where there is no such guidance the process will be established in accordance with 40.1 above.

Procurements captured by the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR)

- 40.9 There are no spend thresholds associated with PSR; the Procurement procedure used will be established in accordance with PSR guidance and will comprise only those the procedures permitted under the legislation as set out in Table 3.
- 40.10 Procurement under PSR will be undertaken in all cases where the subject matter of the Contract encompasses any of the relevant health care specified within the legislation.
- 40.11 When a contract comprises a mixture of in-scope health care services and out-of-scope goods or services, relevant authorities may only use the PSR to arrange those services when both of the below requirements are satisfied:
- i. the main subject-matter⁹ of the Contract is in-scope healthcare services;
 - ii. the relevant authority is of the view that the other goods or services could not reasonably be supplied under a separate contract.
- 40.12 The ability to restrict competition to Suppliers based within the local authority boundary and / or SMEs and VCSEs does not apply to contracts tendered under PSR.

Table 3: Procurements for health services which fall under the Provider Selection Regime

In-scope Health Care Services	Procurement Procedure
All levels of spend – Procurements where all of the requirements are captured under PSR	One of the following options will be used, subject to the specific circumstances set out in the PSR which apply to the contract: • direct award process A; • direct award process B; • direct award process C; • the most suitable provider; • the competitive process.
All levels of spend – Mixed Procurements where only some of the requirements are captured under PSR	• here all of the conditions for undertaking a mixed procurement under PSR are met the appropriate Procurement procedure as set out above will be used. • where all of the conditions for undertaking a mixed procurement under PSR are not met the appropriate Procurement procedure as set out above will be used for those requirements which fall under PSR, all other requirements will be procured in accordance with Table 2 .

⁹ The main subject-matter of the contract is determined by the component that is higher: a) the estimated lifetime value of the health care services; or b) the estimated lifetime value of the other goods or services.

40.13 Further information on PSR award processes is provided within the Commercial Policy or can be found at: [NHS England » The Provider Selection Regime: statutory guidance](#).

41. Tender Advertising and Publication of Awarded Contracts

41.1 The Council will advertise procurements and publish details of awarded Contracts as follows:

Table 4: Advertising and publication requirements under the Regulations, Local Government Transparency Code and PSR

Notice Type	Below Threshold Procurements ¹⁰	Above Threshold Procurements
Prior Information	In some cases, a Prior Information Notice (PIN) may be published to inform the market of the Council's intention to issue a Tender in the future or to advertise Contract specific Supplier events.	
Advertising Tenders with restricted competition	There is no requirement to publicly advertise Tenders with a value below £5,000 (excl. VAT). Tenders with a value of £5,000 (excl. VAT) or more, where competition is restricted to pre-selected Suppliers (including quote processes, Framework further competitions and some awards through the waiver process) will not be publicly advertised.	Framework further competitions and all other forms of restricted competition will not be publicly advertised.
Advertising Tenders with open competition	All open Tenders with a value between £5,000 (excl. VAT) and £30,000 (inc. VAT) will be advertised in a manner appropriate to the route to market and the contract being tendered. As a minimum, all open Procurements with a value in excess of £30,000 (inc. VAT) will be advertised in accordance with the advertising requirements set out in the Regulations and on the Council's E-tendering System.	As a minimum, all open Tenders will be advertised in accordance with the advertising requirements set out in the Regulations and on the Council's E-tendering System.
Other means of advertising	In addition to the advertising requirements set out above, where applicable to the nature of the Contract, the opportunity may be advertised through other means, including social media or in relevant trade publications.	
Publishing	As a minimum details of awarded	As a minimum, notices relating to

¹⁰ Please note there are no thresholds in respect of Procurements carried out under PSR

Notice Type	Below Threshold Procurements ¹⁰	Above Threshold Procurements
contract award notices	Contracts with a value of £30,000 (inc. VAT) or more will be published in accordance with the publication requirements set out in the Regulations Where the Procurement is conducted under PSR, details of awarded contracts will be published in accordance with the requirements set out in PSR.	the award of a Contract will be published in accordance with the publication requirements set out in the Regulations or PSR.
Publishing contract modification notices	As a minimum, notices relating to the modification of a Contract will be published in accordance with the publication requirements set out in the Regulations or PSR.	
Contracts Register	Where it meets the threshold (£5,000 excl. VAT) for publication under the Local Government Transparency Code 2015 details of the awarded Contract will be published on the Council's Contracts Register. Details of awarded Contracts with a value below £5,000 (excl. VAT) will not be published, other than where they appear on the Spend Over £500 report. The Contracts Register will be updated when a Contract is extended, varied, or terminated.	

- 41.2 The Council will make all documents and information (other than that considered to be confidential) relating to the Procurement and its requirements available to Suppliers at the start of the procurement, where applicable this will be within any timescales from the date of publication set out in the Regulations.
- 41.3 Suppliers will be given free and unrestricted access to Tender documents, other than where they are of a confidential nature.
- 41.4 Confidential information will be issued to Suppliers following completion and submission of a confidentiality agreement.
- 41.5 The Council will run procurements through the E-tendering System where:
- (a) the Contract is above Threshold, including where competition is restricted (e.g. Framework further competitions, Dynamic Market and DPS call-offs¹¹);
 - (b) for below Threshold Contracts the procurement procedure used specifically requires use of the E-tendering System or where it is considered appropriate for market and process being undertaken.

unless the Commercial Services Team considers use of the E-Tendering System is not deemed appropriate for a particular procurement, e.g., where a Framework / DPS owner specifies use of an alternative system.

¹¹ Refer to 40.4 for further information on use of DPS

D. Procurement Process and Tender Assessment**42. Communication**

42.1 The Tender documents will specify:

- (a) the manner in which Suppliers must submit clarification questions during the tender period and the deadline for submission of clarification questions;
- (b) the manner and timescales in which the Council will respond to clarification questions;
- (c) the manner in which post tender clarification questions will be issued to Suppliers and the manner in which they must respond.

42.2 Suppliers' clarification questions will be restricted to questions relating to the Tender documentation or the process as a whole. The Council will not accept or respond to questions relating to the negotiation of any of the substantive terms and conditions of the Tender.

42.3 Unless a Supplier's question is innovation based, the response will be provided to all prospective Suppliers. The identity of the Supplier who raised the question will remain confidential.

42.4 Where a clarification leads to amendments to the Tender documents or any of the Tender requirements, the changes will be communicated to Suppliers either through the clarification process for the procurement or through the issuing of clearly marked revised documents, as applicable to the nature of the change.

42.5 Where Tender documents are subject to significant modification, the Council will extend the submission deadline where it is deemed further time is required by Suppliers to address the changes.

42.6 Post tender clarification will be for the sole purpose of clarifying the content of a Supplier's submission. The Council will not enter into negotiations on fundamental aspects of a submitted Tender which is likely to distort competition.

42.7 Post tender clarification may be issued electronically or during a formal meeting with the Supplier. Where post tender clarification meetings are held, a record of the meeting will be made and held on file.

42.8 The Council will consider whether any specific post tender clarification questions relate to and should be asked to just one or all Suppliers.

42.9 Where post tender clarification results in a material change to the requirements and/or resultant Contract approval to proceed with the Procurement will be sought from the Commercial Services Team.

42.10 Where the Tender is being run through the E-Tendering System, all communication with prospective Suppliers will be conducted through the E-Tendering System.

43. Reserved Contracts

43.1 The Council may reserve the right to restrict participation in a particular Procurement where explicitly permitted to do so under the Regulations or other secondary legislation, including sheltered workshops / sheltered employment programmes, social enterprises / public service mutuals and SMEs or VCSEs.

44. Collaborative Arrangements

- 44.1 Where it is of benefit to the Council, considering any adverse effect on the local economy, opportunities to collaborate with other public bodies or use existing national or regional Contracts, Frameworks and Dynamic Purchasing Systems, including those put in place by Central Purchasing Bodies, will be explored.

45. Tender Pack

- 45.1 The Council's above Threshold Tender templates will be used for all above Threshold procurements to ensure compliance with Regulations and consistency for Suppliers, other than where use of a Framework Agreement or DPS requires use of specific Tender documents.
- 45.2 The Council's below Threshold Tender templates will be used for below threshold procurements where it is appropriate to do so, subject to the nature and complexity of the Contract, to provide consistency for Suppliers.
- 45.3 Where the value of the Contract is £25,000 (excl. VAT) or more the Council will issue an appropriate set of terms and conditions with the Tender pack, this may be the Council's own standard terms for the provision of goods or services, industry standard contracts such as JCT and NEC, Framework or DPS call-off contracts.

46. Tender Submission, Opening and Acceptance

- 46.1 The manner and deadline for submission of Tenders will be set out in the Tender documents' the Council will only accept Tenders submitted in accordance with the Tender requirements.
- 46.2 Where the E-Tendering System is used, all above Threshold Tenders and some below Threshold Tenders will be electronically sealed until the submission deadline has passed. Tenders will be unsealed at the same time by an authorised Verifier, independent of the Procurement, in the presence of the relevant procurement lead officer.
- 46.3 The Council will not accept Tenders which are received after the prescribed date and time for submission.
- 46.4 The Council will, at its sole discretion, have the right to reject Tenders under any of the following circumstances:
- (a) the Supplier has not submitted a full Tender response, i.e. where response documents are missing or are not fully completed;
 - (b) the Supplier has not submitted their Tender response in the format stipulated in the Tender documents;
 - (c) the Supplier is in breach of any of the conditions set out in the Tender documents;
 - (d) the price submitted by the Supplier is deemed by the Council to be abnormally low where, in accordance with the Regulations, the Supplier is unable to satisfactorily account for the low price, or the Supplier has received a Subsidy which has resulted in a distortion of competition;
 - (e) where the price exceeds the budget declared in the Tender documents and it is stated that Suppliers' prices cannot exceed that budget.

- 46.5 If the lowest price obtained exceeds the Threshold and the Procurement has not been undertaken in accordance with the Regulations, the Council will restart or abandon the Procurement.

47. Tender Assessment

- 47.1 Tenders will be assessed against the criteria set out in the Tender documents, including any sub-criteria, weightings, and scoring methodology. The assessment criteria will be proportionate and applicable to the nature, value, level of risk and complexity of the Contract and cover the following:
- (a) Mandatory and discretionary grounds for exclusion – this looks backwards at whether the supplier and any other organisations (including parent company or sub-contractors) have been convicted of any of the offences set out in Schedule 6 (Mandatory Exclusions Grounds) or Schedule 7 (Discretionary Exclusion Grounds) of the Procurement Act 2023 or any other mandatory or discretionary exclusion grounds relevant to the regulations under which the contract is being procured.
 - (b) Conditions of Participation – this looks backwards at the Supplier's track record, considering their suitability to pursue a professional activity, economic and financial standing and technical and professional ability; and
 - (c) Award criteria – this looks forwards at what will be provided under the Contract, directly linked to the subject matter of the Contract, used to establish the Most Advantageous Tender (MAT) and comprising an assessment of quality, price and social value.
- 47.2 Where there are errors or discrepancies within a Supplier's Tender response, the Council will give the Supplier the opportunity to rectify the errors or discrepancies only if it is determined the Supplier will not gain an unfair advantage.
- 47.3 Assessments will be conducted by an appropriately skilled and experienced panel and, subject to the route to market, will be moderated by a member of the Commercial Services Team.

E. Award Procedures

48. Contract Award

- 48.1 Contracts will be awarded in accordance with the stated criteria, and all awards will be approved in accordance with the Officer Scheme of Delegation.
- 48.2 The Council will notify Suppliers of the Tender outcome in accordance with the requirements of the Regulations (where applicable), the Commercial Policy. Where mandated under the Regulations, this will include the observance of a standstill period before the Contract can be entered into.
- 48.3 Where applicable, the Council will prepare an award report as required under Regulation 84 of the Public Contracts Regulations 2015 or the Procurement Act 2023 and any associated secondary legislation such as the Procurement Regulations 2024.
- 48.4 Notices will be published as stated in paragraph 42 (Tender Advertising and Publication of Awarded Contracts).

49. Contracts Arrangements

Note: This Procedure (so far as it relates to Contracts entered in the course of the discharge of executive functions) complies with the requirements of Article 8 of the Local Authorities (Executive and Alternative Arrangements) (Modifications of Enactments and Further Provisions) (England) Order 2001 (SI 1517/2001) and power to modify this Procedure may not be delegated by the Council.

- 49.1 Any Contract with a value exceeding £25,000 (excl. VAT) entered into on behalf of the Council in the course of discharge of any function (whether executive or Council) will be made in writing and in a form in accordance with Financial Regulations and these Procedures. The Supplier will not be permitted to commence any activities until the Contract has been signed by both parties.
- 49.2 All Contracts with a value exceeding the Threshold for Goods and Services will be made under the common seal of the Council attested by at least one Officer.
- 49.3 All contracts below the threshold set out in 49.2 must be submitted to Legal Services for signing unless written approval has been given by Legal Services for the Director, Divisional Director or budget holder to sign the contract.
- 49.4 The use of Supplier Terms and Conditions will not be permitted other than where explicitly approved through the Waiver Procedure.

F. Contract Management**50. Contract Performance Management**

- 50.1 An appropriate Officer will be appointed to act as the Contract Manager, to conduct regular reviews of the Supplier's performance against the requirements and key performance indicators specified in the Contract and monitor compliance against contractual obligations for the life of the Contract.
- 50.2 All Contracts with a value exceeding £25,000 (excl. VAT) will be risk assessed using the Contracts Risk Matrix to determine the required level of Contract Management and frequency of Contract review meetings required.
- 50.3 The level of contract management and monitoring will be based on the value, risk and complexity of the Contract. The outcome of all Contract review meetings will be recorded in writing.
- 50.4 The Contract Manager will deal with any instances of poor performance, claims or disputes in accordance with the procedures set out in the Contract.

51. Contract Modification

- 51.1 Approval to modify Contracts during their term will be in accordance with the Officer Scheme of Delegation.
- 51.2 Contracts will be modified following the Change Control Procedure set out in the Contract terms and conditions and in accordance with the Commercial Policy.
- 51.3 Changes will only be made where the Regulations, the Tender documents and / or the terms and conditions explicitly permit the change.

52. Contract Termination

- 52.1 Approval for the early termination of a Contract will be in accordance with the Officer Scheme of Delegation. Where the value of the Contract exceeds £100,000 Legal Services, the CFO and the Monitoring Officer will be consulted prior to termination of the Contract.

G. Other Procurement Considerations**53. Gifts and Hospitality**

- 53.1 Officers will comply with the Council's Code of Conduct for Members and Employees and the Local Protocol on Gifts and Hospitality in their dealings with Suppliers and Suppliers.
- 53.2 Officers will not be permitted to accept any gift or hospitality, including drinks, meals, entertainment, overnight accommodation, travel and holidays, but does not include a lift in a private or company car, a taxi, or refreshments in the course of their duty.

54. Audits

- 54.1 Officers will agree responses to audits by external funders in relation to procurement procedures used in spending of the funds with the Commercial Services Team, including meetings and written responses.
- 54.2 Where an internal audit raises concerns or identifies areas of non-compliance with these Procedures, the Commercial Services Team will be consulted by the service on any actions required to rectify the issues.

55. Nomination of Sub-contractors

- 55.1 Where the Council stipulates, use of specific sub-contractors by a main Supplier' this will only be permitted where the sub-contractor has been appointed in accordance with these Procedures.

H. Waivers**56. Waiver Procedure**

- 56.1 Officers may only seek exemptions to the application of these Procedures in respect of the requirements set out in this section.
- 56.2 Exemptions to the application of these Procedures will be subject to written authorisation in accordance with the Waiver Procedure set out in the Commercial Policy.
- 56.3 The Council will maintain a record of all waivers requested, declined, and approved.

57. Exemptions from Using the Applicable Procurement Procedure**Below Threshold Contracts**

- 57.1 An exemption to use an alternative Procurement Procedure to that stipulated in these Procedures will only be considered where the requesting officer is able to provide appropriate justification and supporting evidence in respect of the request, for example:
- (a) the proposed contract is of a very specialist nature and there are insufficient

Suppliers to undertake the applicable procedure, including:

- genuine monopoly Supplier situation where it is not possible to undertake a competitive tender exercise;
- specialist products where no legal challenge from an alternative Supplier could occur;
- standardisation policy or compatibility requirements for products / equipment / services where there is only one source of supply and change could result in significant alterations to working practices or service delivery;

- (b) the proposed contract is required urgently; the urgency is not brought about by events that were foreseeable by or attributable to the Council and where the situation would result in risk of harm to individuals or loss or damage to the Council;
- (c) it would be in the best interests of the Council or local people not to undertake the applicable procedure.

57.2 All Contracts put in place through an exemption will be for the minimum period, necessary, and appropriate due diligence checks will be undertaken in respect of the selected Supplier(s).

57.3 All other requirements of these Procedures will apply to the award of the Contract, other than where the waiver includes Other Exemptions as set out at section 60 below.

Above Threshold Contracts

57.4 Exemptions to the application of these Procedures for above Threshold Contracts will only be considered where the alternative procedure is permitted under the Regulations and the specific circumstances under which an alternative procedure can be undertaken are met.

58. Other Exemptions

Tender Pack

58.1 Agreement may be sought for the use of alternative Tender templates to those applicable to the Procurement procedure.

Tender Submission, Opening and Acceptance

58.2 Agreement may be sought to follow an alternative route for the issuing and submission of tender to facilitate ease of access to opportunities for SMEs VCSEs.

Contract Arrangements

58.3 Exemption may be sought for the use of Supplier Terms and Conditions, subject to review of the terms and conditions in accordance with the Commercial Policy.

58.4 Use of another contracting authority's terms and conditions of contract.

I. Definitions

Term	Definition
Above Threshold	A Procurement which is above the relevant Threshold for the requirement.
Award	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.
Award Criteria	The criteria against which Tenders are assessed and on which Contract award decisions are made, will include but is not limited to consideration of quality, price and social value.
Award Notice	The official notice which the Council is required to publish under the Regulations to notify the details of Contracts awarded.
Below Threshold	A Procurement or Contract which is below the relevant Threshold for the requirement.
Call-Off	The process of awarding a Contract under a Framework or Dynamic Purchasing System.
Call-Off Contract	The Contract awarded following a call-off from a Framework or Dynamic Purchasing System.
Central Purchasing Body	A contracting authority which: • acquires goods or services intended for one or more Contracting authorities; • awards public Contracts intended for one or more Contracting authorities; or • conclude framework agreements for work, works, goods or services intended for one or more Contracting authorities.
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 and other legislative or regulatory obligations in relation to Procurement.
Commercial Services	The Council department responsible for the management and oversight of Procurement activities, including the setting of policies and guidance.
Concession (Contract)	A contract for the supply, for pecuniary interest, of works or services to a contracting authority where: • 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.

Term	Definition
	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: • are reasonably foreseeable at the time of award; and • arise from matters outside the control of the contracting authority and the Supplier.
Concession Contracts Regulations 2016	The legislation incorporated into English law concerning the procurement by public authorities or utilities of public services or works concessions contracts. The Concession Contracts Regulations 2016 (legislation.gov.uk)
Conditions of Participation	The criteria used to establish a Supplier’s legal, economic and financial standing, capacity and capability to fulfill the requirements of the Contract.
Confidentiality Agreement	An agreement which binds one or more parties to non-disclosure of confidential or proprietary information.
Constitution	The document which sets out the rules governing the Council’s business.
Contract(s)	A legally binding agreement between the Council and one or more Suppliers, including formal terms and conditions of contract or the terms stated on a Council Purchase Order.
Contract Management	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.
Contract Procedures	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.
Contract Value	The estimated or actual price of the Contract to be awarded.
Contracting Authority	A public authority or body governed by public law in whose name the Contract is awarded.
Contracts Finder	The government website on which the Council must publish all openly advertised opportunities, and all subsequently awarded Contracts, regardless of the route to market, above £30,000 (inc. VAT).
Contracts Register	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).

Term	Definition
Council	Torbay Council
Criteria	The standards against which a Supplier's Tender will be assessed.
DPS	Dynamic Purchasing System
Dynamic Market	Is a procedure available under the Procurement Act 2023 for above threshold 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.
Dynamic Purchasing System(s)	Is a procedure available under the Public Contracts Regulations 2015 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.
Economic Operator	The generic term used in the Regulations to cover a contractor, provider, supplier, service provider, applicant, bidder, candidate, tenderer, company, organisation or any other legal entity bidding for or awarded a Council Contract.
E-Tendering System	A web-based system used to facilitate a complete Tendering process, covering advertising, issuing and receiving Tender related information, assessment and Contract award.
Find a Tender Service	The government website on which the Council must advertise all opportunities above Threshold and publish details of the subsequently awarded Contracts.
Formal Request for Quote	Quote process undertaken using the relevant Council Tender templates.
Framework Agreement(s)	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.
Goods	The purchase, lease, rental or hire purchase (with or without an option to buy) of goods, supplies or products, which may also include as an incidental, the putting on site or installation of the product.
GPA	World Trade Agreement on Government Procurement
Health Care Services (Provider Selection Regime) Regulations 2023	The rules for procuring health care services in England by organisations termed relevant authorities. For the purposes of the regulations relevant authorities are: • NHS England; • integrated care boards (ICBs);

Term	Definition
	- NHS trusts and NHS foundation trusts; - local authorities and combined authorities. The Health Care Services (Provider Selection Regime) Regulations 2023 (legislation.gov.uk)
Informal Request for Quote	Quote process undertaken without the need to use Council Tender templates.
JCT	Joint Contracts Tribunal
JCT Contract	A nationally recognised suite of construction contracts developed and provided by the Joint Contracts Tribunal.
Light Touch	The regime under which certain above Threshold social and other specific services may be procured.
Local Business, SME or VCSE	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
Monitoring Officer	The statutory officer responsible for matters relating to the conduct of Councillors and officers, the operation of the Council's Constitution and reporting on matters they believe to be illegal or amount to maladministration.
National Procurement Policy Statement (NPPS)	Guidance from Cabinet Office, setting out the strategic priorities for public procurement and how contracting authorities can support their delivery. National Procurement Policy Statement.pdf (publishing.service.gov.uk)
National Procurement Strategy (NPS) for Local Government in England	Sets out the ambition of the sector, including guidance and a roadmap to improvement and innovation. This strategy promotes: - 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.

Term	Definition
NEC	New Engineering Contract.
NEC Contract	A nationally recognised suite of engineering and construction contracts created by the UK Institution of Civil Engineers.
Officer Scheme of Delegation	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.
Other Applicable Legislation	Primary and secondary legislation and regulations relevant to public procurement, this includes but is not limited to: • 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; • 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; • Public Bodies Corrupt Practices Act 1889; • Public Sector Equality Duty; • Public Services (Social Value) Act 2012; • Transfer of Undertakings (Protection of Employment) Regulations 2006.
Participation	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.
Participation Questionnaire	The questionnaire completed by Suppliers to set out their legal, economic and financial standing, capacity and capability to fulfill the requirements of the Contract.
Procedures	These Contract Procedures.
Tender Document(s)	The documents issued by the Council, setting out 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.

Term	Definition
Procurement(s)	1. The award, entry into and management of a contract, including: • 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, regardless of whether the procurement is covered under the Regulations or not. And / or 2. Steps taken for the purpose of awarding, entering into or managing a contract include, but are not limited to: • 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.
Procurement Act 2023	The rules, effective from 24 February 2025, for procuring public contracts for the provision of goods, services or works. <u>Procurement Act 2023</u>
Procurement Regulations 2024	Secondary legislation to the Procurement Act 2023, effective from 24 February 2025 <u>The Procurement Regulations 2024</u>
Procurement Lead Officer	The officer who is leading on the provision of procurement advice and support for a Procurement.
Procurement Playbooks	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: • sourcing; • construction; • consultancy; • digital, data, and technology.
Procurement Policy Note (PPN)	A document that sets out information and guidance for public bodies on procurement regulations and policies issued by the UK and devolved governments.
Tender Template(s)	The proforma Tender Document(s) for completion by the contracting department and procurement lead officer.
Provider Selection Regime	Health Care Services (Provider Selection Regime) Regulations 2023.

Term	Definition
PSR	Provider Selection Regime
Public Contracts Regulations 2015	The legislation incorporated into English law concerning the Procurement by public authorities of public goods, services and works Contracts, as amended from time to time. The Public Contracts Regulations 2015 (legislation.gov.uk)
Public Service Mutual	An organisation which: • has left the public sector; • continues to deliver public services and aims to have a positive social impact; • has a significant degree of staff influence or control in the way it is run.
Regulation 8 – Public Contracts Regulations 2015	Public contracts, or design contests, for the principal purpose of permitting contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications services.
Regulation 9 – Public Contracts Regulations 2015	Public contracts awarded, and design contests organised, pursuant to international rules.
Regulation 10 – Concession Contracts Regulations 2016	Concession contracts awarded to a contracting authority or a utility or to an association of such contracting authorities or utilities on the basis of an exclusive right.
Regulation 10 – Public Contracts Regulations 2015	(a) acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property, or which concern interests in or rights over any of them; (b) (i) the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, which are awarded by audiovisual or radio media service providers, or (ii) broadcasting time or programme provision that are awarded to audiovisual or radio media service providers; (c) arbitration or conciliation services; (d) (i) legal representation of a client by a lawyer in an arbitration or conciliation or judicial proceedings before a court, tribunal or public authorities, or (ii) legal advice given in preparation of proceedings referred to in paragraph (i) or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings; (e) (i) financial services in connection with the issue, sale, purchase or transfer of securities, (ii) central bank services, or (iii) operations conducted with the European Financial Stability Facility and the European Stability Mechanism; (f) loans; (g) employment contracts;

Term	Definition
	(h) civil defence, civil protection and danger prevention services provided by not-for-profit organisations, except patient transport services; (i) public passenger transport services by rail or metro; (j) political campaign services when awarded by a political party in the context of an election campaign.
Regulation 11 – Concession Contracts Regulations 2016	Concession contracts for the principal purpose of permitting contracting authorities to provide or exploit public communications networks, or to provide to the public one or more electronic communication services.
Regulation 11 – Public Contracts Regulations 2015	Service contracts awarded on the basis of an exclusive right.
Regulation 12 – Concession Contracts Regulations 2016	(a) concession contracts awarded to provide or operate fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; (b) concession contracts awarded to supply drinking water to such networks; (c) concession contracts for either or both of the following: (i) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations, or (ii) the disposal or treatment of sewage, when the contracts are connected with an activity referred to in paragraph (a) or (b).
Regulation 12 – Public Contracts Regulations 2015	Award of contracts to controlled persons; award of contracts where there is joint control and contracts which establish or implement co-operation between contracting authorities.
Regulation 13 – Concession Contracts Regulations 2016	Concession contracts awarded: (a) by a utility to an affiliated undertaking, or (b) by a joint venture, formed exclusively by a number of utilities for the purpose of conducting activities listed in Schedule 2, to an affiliated undertaking of one of its members; where the conditions set out in regulation 13 are met.
Regulation 14 – Concession Contracts Regulations 2016	Concession contracts awarded to a joint venture or to a utility forming part of a joint venture.
Regulation 16 – Concession Contracts Regulations 2016	Concession contracts awarded by utilities where it has been established that the activity is directly exposed to competition in accordance with regulation 34(2) of the Utilities Contracts Regulations 2016.

Term	Definition
Regulation 17 – Public Contracts Regulations 2015	Public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules.
Regulation 24 – Public Contracts Regulations 2015	Conflicts of interest – contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of Procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
Regulations	The Procurement Act 2023, the Procurement Regulations 2024 and other applicable secondary legislation - for goods, services and works contracts procured on or after 24 February 2025. The Health Care Services (Provider Selection Regime) Regulations 2023 – for relevant health care services procured on or after 1 January 2024 The Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and/or Utilities Contract Regulations 2016. For goods, services and works contracts procured before 24 February 2025 or relevant health and care services procured before 1 January 2024.
Section 151 Officer	The statutory officer responsible for the arrangements for the proper administration of the Council's financial affairs.
Services	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.
Services Concessions	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.
SME	Small and medium enterprise.
Social and Other Specific Services	Specific services which can be subject to Light Touch Procurement.
Social Enterprise	A business which trades for a social or environmental purpose.
Sub-Criteria	The criteria which sit below the main criteria, against which the Supplier's Tender will be assessed.
Subsidy	Where a public authority provides support to an enterprise that gives them an economic advantage, meaning equivalent support could not have been obtained on commercial terms.
Supplier	The generic term to cover a contractor, provider, supplier, service provider, applicant, bidder, candidate, tenderer,

Term	Definition
	company, organisation or any other legal entity who may or does Tender for or is awarded a Contract.
Tender(s)	An invitation to bid for a Contract or Supplier's response to that invitation.
Threshold(s)	The contract value thresholds (inclusive of VAT) set by the UK government above which the Regulations apply, as amended every two years, covering: • goods • light touch regime services • services • services and works concessions • works
Threshold Values	Means the same as Threshold(s).
Utility	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: • gas and heat; • electricity; • water; • transport services; • ports and airports; • postal services; and • extraction of gas, oil, coal, or other solid fuels.
Utilities Contracts Regulations 2016	The legislation incorporated into English law concerning the Procurement by utilities of public goods, services and works Contracts, as amended from time to time. The Utilities Contracts Regulations 2016 (legislation.gov.uk)
Verifier(s)	The officer(s) authorised to unseal electronic Tenders.
VCSE	Voluntary and community sector enterprise.
Waiver Procedure	The procedure set out in the Commercial Policy governing the exemption of the application of these Procedures.
Weighting	A score which may be allocated to individual criteria and/or sub-criteria to denote their level of importance in comparison to other criteria.
Works	The execution or design and execution of construction, civil engineering, demolition, building installation and building completion works.

Term	Definition
Works Concessions	The execution of works for financial interest, giving the Supplier the right to exploit the works with or without payment.
World Trade Agreement on Government Procurement (GPA)	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. Government Procurement Agreement [WP for Windows Docs] (wto.org)