

This is printed version of Contract Regulations contains exactly the same information as Contract Regulations on Compass, however it does not contain all the clickable links (which are shown in this document highlighted in green) to other documents and guidance that work within the version on Compass
http://compass.hertsc.gov.uk/policies/procurement_all/

Hertfordshire County Council

CONTRACT REGULATIONS

(annex 13 of the Constitution)

December 2014

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EXECUTIVE SUMMARY

Please Note

Defined words are shown in **Blue** and underlined and a definition is given in **Appendix 1 Definitions**.

Areas highlighted in Green will be clickable links

1. The Contract Regulations

- 1.1 **These Contract Regulations are a legal requirement** and are part of the Council's Constitution. Section 135 of the Local Government Act 1972 requires every Local Authority to make standing orders with respect to Contracts for the supply of goods or materials or for the execution of works and provides that local authorities may make standing orders in respect of other Contracts. Contract Regulations fulfil these statutory requirements. Contract Regulations set out the basic principles that must be followed by everyone proposing to enter into any Contract on behalf of the Council, any of its constituent parts, or on behalf of any Maintained School (when spending its delegated budget). Following these Contract Regulations ensures that we meet our legal obligations and therefore it is important that all Officers understand, apply and adhere to Contract Regulations
- 1.2 The Public Contracts Regulations (as amended) also require us to follow specific processes for certain Contracts. Contract Regulations are designed to ensure that open, fair and transparent processes are applied throughout the whole Commissioning/procurement cycle in order to help secure best value and continuous improvements for the Council. To achieve this, the Council has adopted a single Commissioning / procurement cycle that sets out the stages that all procurements should follow
<http://compass.hertsc.gov.uk/content/areapages/areanav/resandperf/procurement/templates/guide/17774752/medhighvalcontracts>
- 1.3 **Contract Regulations apply to all the Council's operations** (including arrangements with the voluntary and community sectors). This includes every Department, Maintained School (when spending its delegated budget), internal trading departments or organisations and external partners managing Contracts on our behalf.
- 1.4 **These Contract Regulations apply to all Contracts, except** land disposal, land sale or land purchase transactions and Contracts of employment of directly employed staff. See also A4.1 and **Appendix 3, Paragraph 10 (Further Information and Guidance)**.
- 1.5 **Schools with Academy status are not covered by these Contract Regulations.**
- 1.6 Detailed **Commissioning arrangements with the Third Sector** are laid out in **CRGN 5 (Commissioning arrangements with the Third Sector)**.
- 1.7 If there is any doubt or lack of clarity as to the meaning or application of these Contract Regulations, officers must seek advice from the nominated persons set out in **Appendix 3, Paragraph 22 (Further Information and Guidance)**.
- 1.8 External legal services, procurement, finance, property, IT or system advice and Fire Safety must not be sought, procured or obtained externally except through the Council's Resources and Performance and Community Protection Departments respectively
- 1.9 These Contract Regulations must be read in conjunction with Contract Regulations Guidance Notes (CRGNs) and Procurement best practice guidance on the Council's intranet, which provides additional support needed to help meet the requirements of these Contract Regulations

2. **Compliance with Contract Regulations**

Failure to comply with the provisions of [Contract Regulations](#) may be considered as misconduct and result in disciplinary action.

3. **Responsibility**

3.1 **Responsibility for compliance with [Contract Regulations](#) rests with everyone** who carries out procurement of [Goods](#), [Services](#) or [Works](#) (including [Contracts](#) for consultancy) for or on behalf of the [Council](#).

3.2 The ultimate responsibility for any procurement lies with the relevant Contract Authorised Officer. In their [Departmental Rules](#), the [Chief Officer for a Department](#) must nominate a Contract Authorised Officer, [Contracting Officer](#) and [Contract Manager](#) for every [Contract](#). This identifies clear accountabilities and encourages the best use of skills and knowledge.

3.3 All Officers involved in the [Commissioning](#) and procurement of [Goods](#), [Services](#) or [Works](#) must be appropriately trained to carry out their duties.

3.4 [Departmental Rules](#) identify which officers can fulfil the roles specified in these [Contract Regulations](#). They give more detail for a [Department](#) but must not conflict with these [Contract Regulations](#). See **CRGN 1 (Departmental Rules)**.

3.5 It should be noted that [Contracts](#) can be part of a larger project. This means that Officers have to recognise and identify the Contract Authorised Officer, [Contracting Officer](#) and [Contract Manager](#) within their specific projects.

3.6 The duties and responsibilities of [Chief Officer for a Department](#), Contract Authorised Officer, [Contracting Officer](#) and [Contract Manager](#) are specified in Section B of these [Contract Regulations](#).

3.7 In carrying out duties and responsibilities under the Contract Regulations officers must comply with the Code of Conduct for Officers and the Council's Anti-Bribery Policy

4. **Transparency**

4.1 The [Council](#) are required to ensure that our processes are fair and transparent and will publish data according to the requirements stated in **CRGN 3 (Transparency and Open Data)**.

4.2 As part of the requirement for greater transparency in decision making, all [Contracts](#) and contract variations over the EU threshold value (see **Appendix 2 Value Thresholds**) require a **Business Case** approved by the [Head of Procurement](#), Strategic Procurement Group ("SPG"), on behalf of Procurement Board. All [Contracts](#) and [Contract](#) variations worth more than £500,000 (for the [Council's](#) expenditure or savings) must also be declared in the **Forward Plan** and a **Decision Record** completed. Such [Contracts](#) (if not under seal) must also be signed by the [Chief Legal Officer](#) and one other officer. See **CRGN9 (Signing of contracts)**

4.3 All final completed [Contracts](#) over the Medium Value must be filed in the [Contract Repository](#)

5. **Processes**

5.1 [Tender](#) and [Quotation](#) processes assist [Contracting Officers](#) in meeting their obligation to deliver a fair and transparent contracting process that encourages competition and delivers best value solutions that meet the requirements of the [Council](#).

- 5.2 **The higher the value, the more rigorous the process.** The [Council](#) recognises the administrative cost involved in tendering [Contracts](#) and provides for proportionate processes for lower value [Contracts](#). [Contract Regulations](#) set value levels and describe how these will apply together with the procedures that must be followed. The use of electronic quotation and tendering processes helps to reduce the burden, improve transparency and reduces the [Council's](#) carbon footprint.
- 5.3 The procedures are designed in incremental steps depending upon the value of the [Contract](#). [Contracts](#) that exceed the EU procurement thresholds are subject to the most rigorous processes.
- 5.4 **When obtaining quotes please ensure you include at least one local supplier or third sector supplier where available.**

6. [Collaboration](#)

There may be demonstrable benefits for collaborative procurements with the wider public sector and the [Council](#) needs to take advantage of these where appropriate and also include the opportunity for others to join in [Contracts](#) that it is procuring. See also C10.

7. [Outsourcing](#)

When Outsourcing arrangements are being considered, please refer to **CRGN 2 (Traded Companies and Services)**. Outsourcing is a complex issue and all relevant officers must be consulted in good time including Legal Services, Insurance, HR, Finance and [SPG](#). Consideration needs to be given to the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014, known as TUPE, which may apply, and to ensuring consistency of the [Council's](#) standards for delivery.

8. [Expectations](#)

- 8.1 **The [Council](#) expects all [Contracts](#) to be in writing** and one original copy of the contract should be prepared for **each** party to the contract . Where exceptional action is required in situations of extreme urgency, a [Contract](#) may be arranged orally, and the [Contracting Officer](#) will record the reasons for taking this action, obtain the approval of the Contract Authorised Officer, make a written note of the terms agreed and communicate these to the [Contractor](#) in writing at the earliest opportunity.
- 8.2 In considering any specific set of circumstances, officers must at all times be mindful that the [Council](#) must be protected and the requirements of section 135 of the Local Government Act 1972 must be met, namely "*that contracting processes shall include provision for securing competition*".

9. [The Contract Register and other record keeping.](#)

- 9.1 Whilst supporting a [Departmental](#) focus of responsibilities [Contract Regulations](#) recognise the corporate need to gather information and share contracting expertise and knowledge across departments and with Members. The availability of information through the proper keeping of records is vital in allowing this to take place.
- 9.2 In order to meet Government data transparency requirements, all [Departments](#) must record all [Contracts](#) with a value of more than £5,000 in the [Contract Register](#). The [Contract Register](#) has the facility to record the use of [Framework Agreements](#) that have been procured by other organisations including recognised purchasing consortia. An explanation of the main functionality and minimum detail required is given at **CRGN 6 (Contract Register)**.

10. [Contract Terms](#)

[Contracting Officers](#) should ensure that [Contracts](#) are agreed using the [Council's](#) standard templates (where templates are available) and [Mandatory Clauses](#). It is acknowledged that on occasion it may be appropriate to use industry standard or collaboratively agreed templates (i.e. JCT, NEC or the Regional Standard for adult social care and housing support services in the East of England); however, the [Contracting Officer](#) is responsible for ensuring that all appropriate [Mandatory Clauses](#) are included. **See CRGN 8 (Mandatory Clauses)**. Seek advice from Legal Service or [SPG](#).

11. **Contract Signing/sealing**

11.1 [Contracts](#) must be signed by two council officers, together with appropriate signatory/signatories from the [Contractor](#). See also **CRGN 9 (Signing of Contracts)**.

11.2 Over certain values [Maintained Schools](#) must obtain approval through the signature of an officer with delegated authority in Children's Services and / or the [Chief Legal Officer](#). Current Value Thresholds can be found in the Financial Handbook for Schools Part II: Scheme for Financing schools **See Appendix 2 (Value Thresholds) and Appendix 3 (Further Information and Guidance - 14. Financial Regulations)**

11.3 In appropriate circumstances, a [Contractor's](#) employee(s) may be designated as officer(s) of the [Council](#) and empowered to sign orders on behalf of the [Council](#).

12. **No Competition**

[Contract Regulations](#) recognise that some [Goods](#) and [Services](#) may be unique and available from one source only ([Proprietary Items](#)). In these circumstances competitive tendering may not be possible, but [Contracting Officers](#) are expected to comply with Regulation C7 and challenge such situations rather than accept the [Contractor's](#) prices, terms and conditions in order to maximise value for money for the [Council](#). In this case a [Single Tender Action/Proprietary Item](#) form must be completed and a copy sent to the Head of Procurement, [SPG](#) for discussion and recommendation See **Appendix 4 Single Tender Action/Proprietary Item Form**.

Please note that the Single Tender Action process should only be used in exceptional circumstances and in accordance with the grounds for use of the negotiated procedure without prior publication of a contract notice specified in EU Procurement Regulations.

13. **Best Value & the Delivery of Savings**

All Officers should be mindful of their responsibility in securing best value through all procurements and must consider how savings can be delivered through any re-procurement.

14. **Contract Management**

14.1 [Contracts](#) must be properly managed after they have been awarded to ensure compliance and continuous improvements. Therefore in addition to the processes by which [Contracts](#) are established, these [Contract Regulations](#) also cover aspects of [Contract](#) management which relate to ongoing [Contract](#) variation, price control or termination of [Contracts](#) at any time during the [Contract](#) period. Legal advice should be obtained in relation to variations and termination of a contract, particularly for high risk and high value contracts over the EU threshold.

14.2 The majority of the 'life' of any [Contract](#) is spent in [Contract](#) management and effective performance management will help ensure that the [Contract](#) delivers what is intended. [Contracts](#) must include a framework for [Contract](#) monitoring, measurement of continuous improvements and focus. The need to maintain proper and auditable records cannot be over emphasised.

For details and general principles on [Contract](#) management, please refer to **CRGN 10 (Contract Management)**.

A GENERAL PROVISIONS

Where there are inconsistencies between the provisions of [Contract Regulations](#) and the provisions of the Law, then the provisions of the Law shall prevail.

A1 Aims

These [Contract Regulations](#) aim to set out the rules required to:

- A1.1 achieve best value and deliver savings from the market
- A1.2 achieve accountability and transparency at all levels within the [Council](#), and ensure an adequate audit trail is maintained.
- A1.3 ensure that officers comply with the law and follow proper, fair and proportionate procedures for the involvement and selection of [Tenderers](#) and the award of [Contracts](#).
- A1.4 ensure that all procurement processes reflect appropriate and realistic quality requirements and that offers are judged by objective criteria set out in invitation to tender or quote documentation..
- A1.5 ensure that all procurement processes are delivered within an appropriate legal framework.
- A1.6 ensure that appropriate levels of monitoring and training exist to ensure compliance and that these [Contract Regulations](#) are regularly reviewed to take account of new requirements.

A2 Status

These [Contract Regulations](#):

- A2.1 are made under Section 135 of the Local Government Act 1972 and all other relevant enabling powers.
- A2.2 are applicable to all Members, Officers and staff of the [Council](#).
- A2.3 are applicable to all parts of the [Council's](#) activities, including all [Maintained Schools](#) and the [Council's](#) trading organisations.
- A2.4 are applicable where the [Council](#) is acting as agent for another body (principal) unless the principal directs otherwise.
- A2.5 must be adopted by any external [Contractor](#) that is acting as an [Agent of the Council](#) and empowered to form [Contracts](#) on behalf of the [Council](#) and by any person who is not an Officer of the [Council](#) engaged to manage a [Contract](#) on behalf of the [Council](#).
- A2.6 shall be interpreted so far as possible to ensure the **aims** set out at A1 of these [Contract Regulations](#) are achieved.
- A2.7 are not applicable to expenditure between [Departments](#).

A3 Effective Period and Reviews

These [Contract Regulations](#)

- A3.1 are applicable from 1 December 2014 to any new procurements.
- A3.2 shall be reviewed in their entirety by the Asst. Director Performance and Procurement and the [Chief Legal Officer](#) at least once every two years.

A4 Scope

These [Contract Regulations](#) are:

- A4.1 applicable to all [Contracts](#), for the provision, supply, hire or disposal of [Goods](#), materials, [Works](#) or intellectual products, for the provision of [Services](#), the use of [Consultants](#) and to [Contracts](#) from which the [Council](#) receives an income.
- A4.2 not applicable to [Contracts](#) for any interest in land nor to [Contracts](#) of employment.

A5 Functionality

These [Contract Regulations](#):

- A5.1 are applicable to the formation of [Contracts](#) and to any matters as may arise in the process of managing [Contracts](#) including those which significantly change, vary or terminate any such [Contract](#) during its term.
- A5.2 relate to the extension of [Contracts](#) beyond their initial term, such extension must be allowed for in the original [Contract](#).
- A5.3 are without prejudice to the need for budget holders to ensure that budgets are not exceeded.
- A5.4 are without prejudice to the requirements of English or EU [Legislation](#) which shall be followed (even if they conflict with these [Contract Regulations](#)).

A6 Exemptions

- A6.1 Exemptions from these [Contract Regulations](#) may only be granted by the [Executive](#) (where allowed in Law).

A7 Partnering Agreements

The [Contracting Officer](#) shall seek legal advice when considering the development of [Partnering Agreements](#).

A8 Financial Parameters

The Values specified in these [Contract Regulations](#) are detailed in **Appendix 2 Value Thresholds**

- A8.1 the [Chief Financial Officer](#) shall review them at least once every financial year.
- A8.2 the [Chief Financial Officer](#) is authorised to vary them in line with inflation.

Calculation of Estimated Value of a [Contract](#)

Calculation of Estimated Value specified in these [Contract Regulations](#)

- A8.3 shall exclude VAT and other taxes.
- A8.4 shall be without prejudice to the financial thresholds of the [Public Contracts Regulations \(as amended\)](#) set out in **Appendix 2 (Value Thresholds)**, of these [Contract Regulations](#), which shall take precedence and require that *all benefits* are assessed when calculating value.
- A8.5 the procurement requirement shall be looked at as a whole and must not be artificially split to avoid competition;
 - A8.5.1 nor any other form of disaggregation be accepted for similar purposes.

A8.5.2 nor a [Department](#) or section of the [Council](#) be permitted to regard itself as a 'discrete operational unit' within the terms of the [Public Contracts Regulations \(as amended\)](#).

A8.6 these relate to the estimated value over the term of the [Contract](#) and any extension (or over four years if the term is uncertain) and in estimating the [Contract](#) value the [Contracting Officer](#) shall take account of historic cost and an assessment of future market costs or, where the requirement is new, the best estimate of value available at the time and consider the contract value aggregation rules under the Public Contract Regulations (as amended)

A9 Bonds or Parent Company Guarantees:

A9.1 may be required of a [Contractor](#) or a parent company by the [Contracting Officer](#), having taken due account of risks involved for the [Council](#). Procurement best practice information on the Council's intranet gives guidance regarding the kind of situation where risk arises and how risk should be assessed.

A9.2 may be required if the value of any one [Contract](#) is expected to exceed £500,000. [The [Contracting Officer](#) must consult with the [Head of Procurement](#), Strategic Procurement Group ([SPG](#)), as to whether a bond or parent company guarantee is required.]

A9.3 where the parent company or the [Contractor](#) is based outside England or Wales seek advice from Legal Services or [SPG](#).

A10 Private Interests

A10.1 no Member, employee, [Agent of the Council](#), [Maintained School](#) employee or governor shall improperly use their position to obtain any personal or private benefit from any [Contract](#) entered into by the [Council](#).

A10.2 Employees shall comply with the Code of Conduct for Officers ([Annex 17 of the Constitution](#)). Paragraph 5 of the Code deals with contracting and tendering and includes the conduct required of employees when dealing with [Contractors](#) and the requirement for declarations of interest to be made to appropriate managers or, when a [Contract](#) is proposed in which you have an interest, to the Chief Executive.

A10.3 School employees and governors shall comply with the School's codes of conduct and the requirements of the Schools' Financial Handbook, which includes the requirement for the Head Teacher to maintain a register of business interests.

A10.4 Members' interests are governed by the Code of Conduct for Councillors and the Register of Interests ([Annex 18 of the Constitution](#)). This includes the requirement for Members to declare interests in [Contracts](#) to the [Chief Legal Officer](#).

A11 Rules

A11.1 External legal services, procurement, finance, property, IT or system advice and Fire Safety must not be sought, procured or obtained externally except through the Council's Resources and Performance and Community Protection Departments respectively

A11.2 Failure to comply with [Contract Regulations](#) may be considered as misconduct and result in disciplinary action.

B RESPONSIBILITIES AND DUTIES

Chief Officer for a Department, has overall responsibility for setting up the arrangements for contracting within their department as in B2

B1 Overview of Responsibilities

Each **Contract** must have a nominated Contract Authorised Officer, **Contracting Officer** and **Contract Manager** who have the following responsibilities:

- B1.1 The Contract Authorised Officer shall remain responsible for a **Contract** throughout the **Contract** term as well as during its formation.
- B1.2 No officer may carry the responsibility of both the Contract Authorised Officer and the **Contracting Officer** for the same **Contract**.
- B1.3 No officer may carry the responsibility of both Contract Authorised Officer and **Contract Manager** for the same **Contract**.
- B1.4 Any officer may discharge both the duties of a **Contracting Officer** and a **Contract Manager** for the same **Contract**.
- B1.5 The names of the officers undertaking the Contract Authorised Officer, **Contracting Officer** and **Contract Manager** roles shall be recorded in **Departmental Rules**, a copy of which must be lodged with the **Chief Legal Officer** and published on the **Council's** intranet. In **Maintained Schools**, these names will be recorded by the Chair of Governors in a sub delegation register.
- B1.6 For every **Contract** with a value exceeding £5,000, the names of the officers undertaking the **Contract Authorised Officer**, **Contracting Officer** and **Contract Manager** roles shall be recorded in the **Contract Register**.

B2 A Chief Officer for a Department:

The following are personal responsibilities of the Chief Officer for a Department that MAY NOT be delegated. The Chief Officer for a Department must;

- B2.1 ensure awareness and actively promote compliance with these **Contract Regulations**,
- B2.2 issue from time to time where required, **Departmental Rules** which provide the detail of departmental procedures including the basic format set out in **CRGN 1 (Departmental Rules)**. **Departmental Rules** must not contradict **Contract Regulations** and should be published on the **Council's** intranet and lodged with the **Chief Legal Officer**.
- B2.3 ensure that where they are not taking direct responsibility for a **Contract** (as the **Contract Authorised Officer** for that **Contract**) then this responsibility is delegated in accordance with these **Contract Regulations** for both the formation and the duration of the **Contract**.
- B2.4 appoint **Contracting Officers** and **Contract Managers** in accordance with the **Departmental Rules**. Such appointments may include staff in other **Departments** or staff of **Contractors** and other external bodies who are empowered by the **Council** to act on its behalf in these matters, such **Contractors** are thereby excluded from being awarded the **Contract** concerned.
- B2.5 ensure that **Contracting Officers** and **Contract Managers** have undertaken appropriate training in procurement.
- B2.6 ensure that full use is made of Procurement best practice information on the **Council's** intranet and that the **Council's** eProcurement system is used.

The following are responsibilities that the [Chief Officer for a Department](#) MAY delegate to a [Contract Authorised Officer](#) (for a [Contract](#)).

- B2.7 ensuring that [Tenders](#) are returned into the [Council's](#) eProcurement system and released in accordance with the provisions of the system ensuring that this is undertaken by two officers, independent of the [Tender](#) process See [CRGN 7 \(eProcurement\)](#)
- B2.8 ensuring that required data under [Contract Regulations](#) are properly recorded, maintained and the required entries are made in the [Contract Register](#). See [CRGN 6 \(Contract Register\)](#). These records must be freely available to persons needing to see them. See [CRGN 3 \(Transparency and Open Data\)](#).
- B2.9 ensuring that appropriate use is made of [Corporate Contracts](#), internal trading departments and Local Authority Trading Companies.
- B2.10 authorising exceptional variations that are not provided for within the terms or conditions of the [Contract](#), such variations to be within the remit of English and/or EU Procurement [Legislation](#)
- B2.11 terminating a [Contract](#) lawfully in the event of insolvency of the [Contractor](#), corruption, collusive tendering, material breach or any other termination event
- B2.12 When authorising a variation under B2.10 or terminating a [Contract](#) under B2.11 the [Contract Authorised Officer](#) must be satisfied that the variation or termination is in the best interests of the [Council](#) or [Maintained School](#), and where necessary has been agreed by the [Head of Procurement](#) who shall consult the [Chief Financial Officer](#) if there are wide financial implications and the [Chief Legal Officer](#) where there are significant legal implications.
- B2.13 In cases where variations are of a minor nature, are in line with the services originally specified in the contract advert and have no material effect upon the overall costs of the [Contract](#), a [Contract Manager](#) may be empowered to negotiate and agree new terms without further reference - see paragraph B4.3 of these [Contract Regulations](#).
- B2.14 where it is decided to compile [Approved Lists](#), ensuring that they are properly maintained in accordance with [Legislation](#) See Section E of these [Contract Regulations](#).

B3 Duties of [Contracting Officer](#):

B3.1 The [Contracting Officer](#) must before starting any contracting procedure:

- review the commissioning / procurement cycle to decide whether a [Contract](#) is required and how to proceed
- ensure that an entry has been made in the [Contract Register](#) if the estimated value of the [Contract](#) is greater than £5,000.
- for [Contracts](#) with an estimated value at or above EU Procurement thresholds - see [Appendix 2 \(Value Thresholds\)](#) complete a [Business Case](#) which must be approved by the [Head of Procurement](#), [SPG](#), before the placing of any [OJEU](#) notice or any other advertisement of the [Tender](#).
- ensure that an Equality Impact Assessment (EqIA) has been completed. See [Appendix 3 \(Further Information and Guidance\)](#).
- Undertake a Risk Assessment and identify, implement and maintain an appropriate risk management process. See [Appendix 3 \(Further Information and Guidance\)](#).

- determine (after seeking advice from Legal Services or [SPG](#) if needed) whether there are any requirements of English or EU [Legislation](#) governing the proposed [Contract](#). If so those requirements shall be followed (even if they conflict with these [Contract Regulations](#)).
- determine the competitive process to be followed by reference to C2 of these Contract Regulations. To aid transparency [all] Medium Value and above Contracts should be advertised appropriately.
- determine whether, as the result of the award of the proposed [Contract](#), any staff will be transferred from the [Council](#) to a [Contractor](#) or from one [Contractor](#) to another [Contractor](#) and if so seek advice concerning the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014, known as TUPE and the Local Government Pension Scheme from the [Chief Legal Officer](#) and the [Head of HR and OD](#). For further information, see the [TUPE Guide](#).

The [Contracting Officer](#) must also

- B3.2 ensure that any [Contract](#) includes an appropriate [Specification](#) for the [Goods](#), [Services](#) or [Works](#) required. The [Contracting Officer](#) shall ensure that wherever possible generic rather than branded [Goods](#) are specified.
- B3.3 ensure that any [Contract](#) includes the [Mandatory Clauses](#) see Section D of these [Contract Regulations](#), as well as clear and appropriate terms and conditions of [Contract](#). [CRGN 8 \(Mandatory Clauses\)](#) provides more detail.
- B3.4 ensure that all [Contracts](#) are awarded against clear criteria and that these criteria reflect a proper balance between price and quality. These criteria must be made available to [Contractors](#) in accordance with English and EU [Legislation](#) and must be stated in the invitation to [Tender](#) or [Quotation](#) documentation.
- B3.5 if, as may be the case for major procurements, hard copy submissions are required in addition to the electronic copies ensure that appropriate reply labels are attached to each invitation to quote or [Tender](#), showing the [Contract](#) title, [Contract](#) reference, closing date, and time and address to which the [Tender](#) must be returned,
- B3.6 A [Contracting Officer](#) may accept any appropriate [Tender](#) at the conclusion of the contracting procedure in accordance with the arrangements set out at F10 ensuring that the final [Contract](#) document is signed by two appropriate officers of the [Council](#).
- B3.7 shall ensure the Forward Plan and [Decision Record process](#) is followed when the [Contract](#) has a value of £500,000 or more. See [Appendix 3, Paragraph 16 \(Further Information and Guidance\)](#).
- B3.8 shall ensure that the [Contract Register](#) is updated to reflect the agreed [Contract](#).
- B3.9 shall ensure that the final signed copy of the [Contract](#) is saved in the [Contract Repository](#). See [CRGN 3 \(Transparency and Open Data\)](#).

B4 Duties of [Contract Manager](#)

[Contract Managers](#) must:

- B4.1 make themselves fully aware of the requirements and the terms and conditions of the [Contract](#) and work to maintain best value throughout the life of the [Contract](#).
- B4.2 establish and maintain a programme of contract monitoring against agreed performance indicators including complaints, monthly for significant contracts, and ensure the regular reporting of the [Contractor's](#) performance against the [Specification](#) and requirements of the [Contract](#).

Contract Managers may:

B4.3 authorise the following variations, providing that they are satisfied that the change is in the best interests of the Council;

- a negotiated variation provided for within the terms and conditions of the Contract, such variations to be within the remit of UK and/or EU Procurement Legislation.
- Changes to the Specification or delivery of the Contract where these have been foreseen within the terms of the Contract or where changes are of a **minor nature** as defined in Public Contract Regulations (as amended) and will not significantly affect the overall delivery or cost of the Contract. Any more significant variation **must** be authorised by the Contract Authorised Officer.

B5 The following relates to all officers with defined responsibilities under Contract Regulations

All such Officers shall:

B5.1 make themselves fully aware of:

- these Contract Regulations,
- principles of the Council's Commissioning / Procurement cycle
- Procurement best practice guidance on the Council's intranet <http://compass.hertscc.gov.uk/area/hcc/resperf/procurement/tempguidtrain/guidance/procprocess/howdoibuy/>,
- Financial Regulations (Annex 12 to the Constitution),
- guidelines on management of financial resources, <http://compass.hertscc.gov.uk/bp/resandperpolproc/financepolproc/goldenrules/goldrulebudmana>
- the Code of Conduct for Officers (Annex 17 to the Constitution)
- Departmental Rules
- the Forward Plan process. see <http://www.hertsdirect.org/your-council/councillors/pofkds/>

See **Appendix 3 (Further Information and Guidance)** for links to all of the above.

B5.2 Maintain written signed and dated records (with reasons) of any significant decisions taken under these Contract Regulations, updating the Contract Register as necessary. See **CRGN 6 (Contract Register)**

B5.3 ensure that all documentation for the Contract is kept securely in one place and that a signed copy of the Contract is placed in the Contract Repository, see also **CRGN 3 (Transparency and Open Data)**

C PROCEDURES

A key requirement of these [Contract Regulations](#) is to ensure competitiveness in order to help deliver savings and best value.

Full details of Value Thresholds are contained in [Appendix 2 \(Value Thresholds\)](#). [Rules concerning the calculation of the Value of a Contract](#) are contained in [A8](#).

Flowcharts showing the process for each Value Threshold are contained in [CRGN 4 \(Outline of Quotes and Tendering Process\)](#).

C1 Instances Where There Is No Requirement For Competition

- C1.1 There is no requirement for competition for work placed with internal trading departments or organisations. Maximum use should be made of internal trading departments or organisations wherever possible. However where the value of the work is above the threshold for tendering i.e. above [Medium Value](#), see [Appendix 2 \(Value Thresholds\)](#), then [Contracting Officers](#) may seek competition. In such circumstances, the [Contracting Officer](#) must be able to demonstrate that competition is likely to lead to better value for money, taking into account not only price but the total cost to the [Council](#) including the competitive exercise and the loss of revenue to the trading unit.
- C1.2 Any [Goods](#) or [Services](#) ordered through internal trading departments or organisations will be deemed as having satisfied the competition requirement.
- C1.3 Where [Goods](#), [Services](#) or [Works](#) are purchased, by another public body on behalf of the [Council](#) or by the [Council](#) through a [Contract](#) properly let by another such organisation, then this shall be deemed as having satisfied the requirement for competition although authority within the Council will still need to be obtained to proceed on this basis. Notwithstanding this, [Contracting Officers](#) shall satisfy themselves that a proper process has been followed in respect of UK and EU Procurement [Legislation](#) where the value of the [Contract](#) is above the relevant threshold.

C2 Determining Which Value Threshold

The estimated value of a [Contract](#) is calculated in accordance with [A8](#). This value determines the process to be used. If the value of the [Contract](#) is above the EU Procurement thresholds then the [Public Contracts Regulations](#) must be complied with and advice must be sought from [SPG](#). The thresholds are detailed in [Appendix 2 \(Value Thresholds\)](#).

Notes:

- 1) for term [Contracts](#) the estimated total value relates to the entire term including any likely extensions or four years if the term of the [Contract](#) is uncertain.
- 2) A [Low Value Contract](#) does not mean that the processes laid down for higher value [Contracts](#) cannot be used
- 3) UK and EU Procurement [Legislation](#) requires all [Contracts](#) whether or not above the EU Procurement thresholds to be secured using a suitably defined process and in accordance with the principles of non-discrimination, equal treatment and transparency.
- 4) Where the [Council](#) is not procuring [Goods](#), [Services](#) or [Works](#) but the letting of a particular type of [Contract](#) will result in the generation of **income** for the [Council](#), the [Contracting Officer](#) in letting the [Contract](#) must comply with these [Contract Regulations](#) and with the [Public Contract Regulations \(as amended\)](#).

C3 Low Value – Quotation Process

- C3.1 The [Contracting Officer](#) will comply with [Departmental Rules](#) in respect of these [Contracts](#), ensuring demonstrable competition, unless the provisions of C1 or C7 apply. See **Appendix 2 (Value Thresholds)** for more guidance and detail on the values and numbers of [Quotations](#) required.
- C3.2 A formal tendering process (Section F) may not always be appropriate where the value of the [Contract](#) is relatively low and the [Specification](#) is simple. In these cases a [Quotation](#) process may be used instead of a formal [Tender](#). It is the responsibility of the [Contracting Officer](#) to determine how prospective [Contractors](#) should be selected to quote for [Contracts](#) following the guidance in the [Quotation Procedure](#) on the [Council's](#) intranet (using the [Council's](#) eProcurement system). At least one (1) Hertfordshire based or [Third Sector Tenderer](#) should be invited to submit a quote (where possible).
- C3.3 Invitations to quote should be made in writing, specifying the latest date and time for their return and detailing the [Goods](#), [Services](#) or [Works](#) required along with the terms and conditions of [Contract](#) that will apply. Full guidance and template documents are available on the [Council's](#) Intranet. See **Appendix 3, Paragraph 2 (Further Information and Guidance)**

C4 Medium Value but Below EU Procurement Thresholds – Tender Process

- C4.1 The [Contracting Officer](#) shall make full use of internal trading departments and organisations, as well as [Corporate Contracts](#) as permitted by the provisions of C1.
- C4.2 If C4.1 does not apply the [Contracting Officer](#) shall arrange for a competitive [Tender](#) to be undertaken using the [Council's](#) eProcurement system. See **CRGN 7 (eProcurement)**.
- C4.3 The [Contracting Officer](#) must:
- Follow the requirements detailed in B3 and establish a suitable [Tender](#) process. See Section F
 - Use the procurement guidance documents and templates available on the [Council's](#) intranet
http://compass.hertscc.gov.uk/policies/procurement_all/

C5 Value In Excess of EU Procurement Thresholds

In addition to following the requirements detailed in B3 and the [Tender](#) Process above, for [Contracts](#) with an estimated value in excess of EU Procurement thresholds the following requirements apply:

- C5.1 All [Contracts](#) exceeding EU thresholds must have a [Business Case](#) approved by the [Head of Procurement](#), [SPG](#), prior to the placing of an [OJEU](#) Notice and other advertisement. [Business Case](#) template can be found at:
http://compass.hertscc.gov.uk/policies/procurement_all/

NB: Officers requiring assistance in completing the [Business Case](#) must contact [SPG](#) for advice. See **Appendix 3, Paragraph 22 (Further Information and Guidance)**

C5.2 Concession Contracts

There are special rules relating to [Service Concession Contracts](#) and [Works Concession Contracts](#). (The basic model of a [Concession Contract](#) is that the public, rather than the [Council](#), pays for the use of the [Services](#) or [Works](#)). [Contracting Officers](#) must seek appropriate advice from Legal Services or [SPG](#). [Service](#)

[Concession Contracts](#) still have to comply with the principles of transparency, non-discrimination and equal treatment when the [Council](#) is letting them.

- C5.3 As the [Public Contracts Regulations](#) (as amended) procedures are complex, the [Contracting Officer](#) must seek advice from Legal Services and/or from [SPG](#) before commencing the process, to determine the particular procedure to be used and ensure full compliance with the [Public Contracts Regulations \(as amended\)](#).
- C5.4 The [Head of Procurement](#), [SPG](#) is responsible for placing and publishing all [OJEU](#) notices (advertisements), Prior Information Notices (PIN), [Contract](#) Award notices and Voluntary Ex Ante Transparency (VEAT) notices and completing EU annual statistical returns. Every [Contracting Officer](#) shall maintain a clear record including the [Contract Register](#), of all [Contracts](#) subject to the [Public Contracts Regulations](#) and keep [SPG](#) fully informed.
- C5.5 **With the exception of a PIN** no advertisements may be placed in any media and no prospective [Tenderers](#) may be notified prior to the publication of an [OJEU](#) notice, and any subsequent advertisements or communications must not contain additional information to that contained in the [OJEU](#) notice.

C6 Value Over £500,000

In addition to the provisions for [Goods](#), [Service](#) or [Works Contracts](#), [Contracts](#) over EU thresholds above, [Contracting Officers](#) must ensure that any [Contract](#) or contract variation with an estimated [Council](#) spend of £500,000 or more;

- C6.1 is included in the [Council's Forward Plan](#) as it constitutes a [Key Decision](#) (as defined at Section 11 of the [Constitution](#)). Such decisions must be taken in accordance with the Access to Information Rules (Annex 4 to the [Constitution](#)). See **Appendix 3, Paragraph 16 (Further Information and Guidance)**.
- C6.2 is signed by the [Chief Legal Officer](#) and one other officer **[See CRGN 9]**. If the original contract is sealed, any variation should also be sealed.
- C6.3 has provision for a bond or parent company guarantee if required.
- C6.4 and that once awarded, a [Decision Record](#) together with a record of any consultation is completed as appropriate, See **Appendix 3, Paragraph 16 (Further Information and Guidance)**.

C7 Single Tenders Of Any Value May Only Be Invited When:

- C7.1 by reason of regulation or [Legislation](#) only one supplier of the [Goods](#), [Service](#) or [Works](#) exists.
- C7.2 the value of the [Contract](#) is deemed to be “[Low Value](#)” see **Appendix 2 (Value Thresholds)** and the cost of complying with a [Tender](#) or [Quotation](#) procedure outweighs the likely benefits (this reasons for this assessment must be recorded in the [Contract](#) file).
- C7.3 only a [Proprietary Item](#) is suitable, or acceptable to customers, or the product consists of repairs or works to an existing proprietary product. See **Appendix 4 (Single Tender/Proprietary Item form)**
- C7.4 in the case of the [Third Sector](#), where there is a need for market or [Service](#) development.
- C7.5 [Services](#) are provided by [Third Sector](#) organisations where some of their income is or will be, derived from other public sector organisations and if the [Council](#) does not [Contract](#) with the [Third Sector](#) organisation it would significantly affect the [Service](#) users or other greater gains or benefits would be lost.

- C7.6 in the case of [Third Sector](#) organisations it is proposed to renew or extend a [Contract](#) and if the [Contract](#) were not renewed or extended it would significantly affect the [Service](#) users or other greater gains or benefits would be lost.
- C7.7 in exceptional cases of such extreme **unforeseen urgency** that a [Tender](#) process cannot be undertaken. In these cases the reasons for the urgency must not be within the control of the [Contract Authorised Officer](#) or the [Contracting Officer](#). In such a case an arrangement for a limited period only can be put in place to allow sufficient time for a proper procurement process to be carried out.
- C7.8 in all such cases above, the [Contract Authorised Officer](#) and the [Contracting Officer](#) must record, justify and certify the reason(s) why a competitive process has not been used on the [Single Tender Action/Proprietary Item](#) form. See **Appendix 4 (Single Tender Action/Proprietary Item Form)**, keeping the signed and dated certification in the [Contract](#) file. [Council Departments](#) (excluding schools) must copy these certifications to the [Head of Procurement](#), [SPG](#) for discussion and recommendation.
- C7.9 The use of [Single Tender Action](#) should only be used in the exceptional circumstances set out above, and the [Contract Authorised Officer](#) and the [Contracting Officer](#) must still endeavour to secure best value for money and look to secure the best possible terms and price for the [Council](#).
- C7.10 The use of [Single Tender Action](#) may be used by officers in Legal Services when instructing counsel where the client department officer has requested a particular counsel, provided the officer in Legal Services complies with guidance issued by the [Chief Legal Officer](#) and the [Chief Legal Officer](#) is satisfied that this solution provides best value. In such cases the [Chief Legal Officer](#) will record, justify and certify the reason(s) why a competitive process has not been used.

C8 [Grants, Funds And State Aid](#)

- C8.1 Where funding has been allocated via a [Grant](#), Fund or [State Aid](#) then an application process should be used in order to satisfy the requirement for competition. The evaluation criteria for applications should be made available at the point the opportunity is published and applications should be processed following the principles in Section F (Processing of Tenders) below. The rules around [Grants](#), Funds and [State Aid](#) are complex and therefore advice must be sought from Legal Services and [SPG](#). Members Locality Budgets are excluded from the requirements of C8.1.
- C8.2 When carrying out application processes the [Contracting Officer](#) shall have regard to **CRGN 5 (Commissioning Arrangements with the Third Sector)**
- C8.3 Award of funding should be accompanied by the issue of a grant funding agreement which states what the funding is to be used for and contains appropriate clauses to allow the [Council](#) to claw back any under spend.

C9 [Framework Agreements](#)

- C9.1 When looking to use a [Framework Agreement](#) officers must seek advice at the earliest stage from Legal Services, Insurance and [SPG](#), in particular in relation to terms and conditions, access arrangements, [Council](#) standards and EU [Legislation](#).
- C9.2 When procuring a [Framework Agreement](#) as the lead buyer, officers will need to consider and identify any other public procurement bodies that may be interested in using the [Framework Agreement](#) prior to the [OJEU](#) notice being advertised, (Only those organisations identified in the [OJEU](#) notice will be able to buy from the [Framework Agreement](#) at a later stage).
- C9.4 The [Framework Agreement](#) must be entered onto the [Contract Register](#)

C10 [Collaboration](#)

- C10.1 If the [Collaboration](#) results in a [Framework Agreement](#) please refer to paragraph C9.1 and C9.2. Any potential [Collaboration](#) with other public procurement bodies requires advice from Legal Services, Insurance and [SPG](#). Any liability issues must be considered and the reputation of the [Council](#) protected.
- C10.2 An agreement may be required to set out the rules in respect to liability, should other public procurement bodies wish to participate in a collaborative arrangement initially procured or established by the [Council](#).
- C10.3 [Collaborations](#) can be published on the [Contract Register](#), together with the terms and conditions as a means of reference, and the [Contract Register](#) can also be used to set out how to access and utilise the collaborative arrangement.

D MANDATORY CLAUSES

- D1 Every [Contract](#) (including those where standard forms of [Contract](#) are used e.g. JCT (Joint Contracts Tribunal) or NEC (New Engineering Contract)) shall contain clauses of the nature that protect the [Council](#) in the form of [Mandatory Clauses](#), unless otherwise authorised by the [Chief Legal Officer](#).

The [Mandatory Clauses](#) are set out in **CRGN 8 (Mandatory Clauses)**

E APPROVED LISTS

The rules around [Approved Lists](#) are complex and therefore [SPG](#) or Legal Services must be consulted before any such List is established.

- E1 A [Chief Officer for a Department](#) may decide to keep [Approved Lists](#) of [Contractors](#) willing and able to supply [Goods](#) or [Services](#) or [Works](#) of any particular type or description. Where a decision is taken to keep such an [Approved List](#), this list shall be established and maintained in accordance with all relevant [Legislation](#).
- E2 The maintenance of an [Approved List](#) is governed by the Local Government Act 1988 as amended
- E3 Any proposal to cease operating an [Approved List](#) or to operate a closed [Approved List](#) can only be carried out with the approval of a [Chief Officer for a Department](#) and in accordance with advice from Legal Services and in accordance with [Legislation](#).
- E4 [Approved Lists](#) cannot be used for the selection of [Tenderers](#) for any [Contract](#) above the EU value thresholds as set out in **Appendix 2 (Value Thresholds)**.
- E5 A defined process needs to exist for the maintenance and governance of an [Approved List](#), including the criteria and process for inclusion, amendment and removal. An [Approved List](#) is not the same as a [Framework Agreement](#)
- E6 All [Approved Lists](#) must be reviewed regularly and at least every two years
- E7 By exception, there may be occasions where [Contractors](#) on an [Approved List](#) are not suitable, e.g. when applying C7 of these [Contract Regulations](#)
- E8 Where there is an [Approved List](#), any [Contractors](#) who are used despite not being on the list must meet the same criteria as those included on the [Approved List](#) and the required checks must be carried out to ensure the risk to the [Council](#) of engaging the [Contractor](#) is low.

F PROCESSING OF TENDERS

A key function of [Contract Regulations](#) is to set down a framework which clearly demonstrates that all the requirements of public accountability and transparency are met. .

F1 eProcurement

F1.1 With the introduction of eProcurement across the [Council](#) many of the requirements for security and segregation required for the processing of [Tenders](#) are covered by the inbuilt security of the system. In addition the system is fully auditable. Full details of the [Council's](#) eProcurement systems are detailed in **CRGN 7 (eProcurement)**.

F1.2 The eProcurement system must be used for the procurement of all [Contracts](#) and enables the whole [Tender](#) process to be electronic from advertising the opportunity to issuing the final [Contract](#).

F2 Principles of open, fair and transparent processes

F2.1 It is essential that the [Council](#) applies fair and transparent tender processes. By following the procurement guidance and template documents and seeking the advice of Legal Services and [SPG](#) as appropriate [Contracting Officers](#) will be following best practice and reduce the risk of legal challenge.

F2.2. It is essential that all potential suppliers have access to doing business with the [Council](#) and the eProcurement system and Supplier Portal are used to promote equality of opportunity.

F3 Tender documents

F3.1 The eProcurement system provides a document exchange facility which ensures that Tenderers are all provided with the same information in a secure environment. It allows the documents to be available for [Tenderers](#) to download and work on and then upload their submission into a secure vault.

F4 Clarifications

Clarifications can be sought by [Tenderers](#) and provided by the [Council](#) before the closing date for receipt of [Tenders](#). The same information must be supplied to all [Tenderers](#) at the same time and the eProcurement system supports this.

Please refer to the guidance from [SPG](#) around clarifications in **CRGN 4 (Outline of Quotes and Tendering Process)**

F5 Receipt

F5.1 The closing date and time shall be set for each [Tender](#) and will be notified within the [Tender](#) documentation. The eProcurement system ensures that [Tenders](#) cannot be opened or seen by officers prior to the closing date and time. The system also ensures that each [Tenderer's](#) information is only accessible by them and by the [Council](#), once the closing date and time has been reached.

F5.2 The eProcurement system does not allow [Tenders](#) to be received after the closing date and time, and tenders will not be accepted where the [Tenderer](#) did not allow sufficient time to upload their submission.

F5.3 Advice must be sought from [SPG](#) before agreeing any request for an extension of time. The principles of equal treatment must be applied to all [Tenderers](#)

F6 Opening

F6.1 The eProcurement system allows for [Tenders](#) to be released by two officers who must not be involved in the [Tender](#) exercise. See **CRGN 7 (eProcurement)**.

F6.2 No request to amend a [Tender](#) after the closing date and time shall be accepted.

F7 Amendment to Tenders, Errors and Omissions

F7.1 If a [Contracting Officer](#) finds an error in a [Tender](#), the [Tenderer](#) shall be given the opportunity of either confirming that an error has been made or withdrawing the [Tender](#).

F7.2 The [Contracting Officer](#) may certify that any error contained in an offer appears to be a genuine typing, printing or arithmetic mistake, in which case the [Contracting Officer](#) may, in consultation with the [Contract Authorised Officer](#), draw the error to the attention of the [Tenderer](#), and allow them to correct it.

F7.3 A [Contracting Officer](#) may seek clarification of the information provided, or not provided, by a [Tenderer](#) only where this is necessary to aid understanding. This must not be an opportunity for a [Tenderer](#) to improve their bid. All such clarifications shall be through the eProcurement system, (where a tender has been advertised using the system) see **CRGN 7 (eProcurement)** and F4.

F8 Amendment of Specification

If, for any reason, it is necessary to amend the [Specification](#) after [Tenders](#) have been received, and this change has a material effect on the price, then the [Tender](#) procedure shall be repeated to ensure equal treatment and transparency. Contact [SPG](#) or Legal Services for advice

F9 Evaluation of Tenders

The evaluation of [Tenders](#) shall be in line with the pre published criteria for award and the evaluation methodology set out in the [Tender](#) documents. It is essential to evaluate and record in an objective, consistent and fair manner and to record scoring and comments regarding the submission in order to satisfy the requirement to give feedback in writing, see F10.4 below. See also **Appendix 3 (Further Information and Guidance)**.

F10 Acceptance of Tenders

The [Contracting Officer](#):

F10.1 may accept the [Tender](#) which offers the most economically advantageous [Tender](#) in line with the published award criteria providing that budgetary provision is not exceeded. If the [Tender](#) exceeds the budget the [Contract Authorised Officer](#) shall consult the [Chief Officer for a Department](#) and/or budget holder and consideration must be given as to whether the [Contract](#) can be awarded.

F10.2 may accept the highest [Tender](#) where any resulting associated income provides the best proposition for the Council.

F10.3 may accept a [Tender](#) not complying with the above only if the [Contract Authorised Officer](#) and the [Contracting Officer](#) together certify why it is in the [Council's](#) best interest to do so. Officers must seek advice from [SPG](#) and Legal Services as appropriate. The signed and dated certification must be kept on the [Contract](#) file.

F10.4 must write to [Tenderers](#) informing them of the intention to award and provide written feedback to unsuccessful [Tenderers](#). In order to protect the [Council](#) the relevant template letters **must** be used and the appropriate process followed. See **Appendix 3, Paragraph 2 (Further Information and Guidance)** for full details.

F10.5 Shall place the [Contract](#) documents before the [Contract Authorised Officer](#) for signing and, where appropriate, the [Chief Legal Officer](#) for signature or seal, with such

explanations as they may require. See section G (Completion of Contracts) and **CRGN 9 (Signing of Contracts)**.

G COMPLETION OF CONTRACTS

- G1** All [Contracts](#) shall be attested either [Under Hand](#) by two officers or [Under Seal](#). The [Chief Legal Officer](#) shall be consulted if a [Contract](#) is to be attested [Under Seal](#).
- G2** Over certain values Maintained Schools must obtain approval through the signature of an officer with delegated authority in Children's Services and / or the Chief Legal Officer. Current Value Thresholds can be found in the Financial Handbook for Schools Part II: Scheme for Financing schools **See Appendix 2 (Value Thresholds) and Appendix 3 (Further Information and Guidance - 14. Financial Regulations)**
- G3** All [Contracts](#) and variations require appropriate authorisation from both parties (the [Council](#) and the [Contractor](#)). See **CRGN 9 (Signing of Contracts)**.
- G4** The [Contracting Officer](#) shall consider (in consultation with the [Chief Legal Officer](#)) whether, having regard to the need for extension of the limitation period or for any other reason, a [Contract](#) or variation should be attested [Under Seal](#). See **CRGN 9 (Signing of Contracts)**.
- G5** The [Chief Legal Officer](#) and one other officer shall attest a [Contract](#) or variation [Under Hand](#) if the total value of that [Contract](#) exceeds £500,000, otherwise the Contract Authorised Officer for any [Contract](#) and one other officer shall attest it [Under Hand](#).
- G6** If the [Contract](#) is to be executed as a Deed, the Common Seal of the [Council](#) must be affixed. The Common Seal shall be attested by the [Chief Legal Officer](#) and an entry of every sealing shall be made and consecutively numbered in a book and shall be signed by the person who has attested the seal. The seal shall not be affixed without the authority of the [Executive](#) or of an officer acting under delegated powers.
- Please refer to **CRGN 9 (Signing of Contracts)** for more details and clarification.**
- G7** A signed copy of each [Contract](#) must be kept in the [Contract Repository](#), which stores the documents and allows them to be searched. See **CRGN 3 (Transparency Open Data)**
- G8** All [Contracts](#) that fall within the [Public Contracts Regulations \(as amended\)](#) for [Goods](#), [Services](#), and [Works](#) are required to have [Contract](#) Award Notices placed via the [OJEU](#) if the total value of the [Contract](#) exceeds the EU threshold value.
- G9** [Contract](#) Award Notices are required to be placed within the period specified in Public Contract Regulations (as amended). Such Award Notices will be placed by [SPG](#), with information supplied by the [Contracting Officer](#). See also C5.4

APPENDIX 1 to Contract Regulations

DEFINITIONS

“Agent of the Council”	means Contractors or partners who have been procured or engaged to act on behalf of the <u>Council</u> .
“Approved List”	means a list of potential Contractors, who have met the Council’s predetermined criteria and who are willing and able to supply Goods, Services or <u>Works</u> of a particular type or description and which complies with <u>Section 22</u> Local Government Act 1988. The rules around Approved Lists are complex and therefore before considering whether to set up an approved list advice must be obtained from SPG or Legal Services
“Business Case”	means the Business Case document in the format held on the Council’s intranet http://compass.hertscc.gov.uk/policies/procurement_all
“Chief Legal Officer”	means the person designated as the Head of Legal Services of the Council. The actual title is detailed in Appendix 3, Paragraph 22 (Further Information and Guidance)
“Chief Financial Officer”	means the Chief Finance Officer within the Council with responsibility for Finance under Section 151 of the Local Government Act 1972, The actual title is detailed in Appendix 3, Paragraph 22 (Further Information and Guidance.)
“Chief Officer for a Department”	means the Chief Officer with overall responsibility for setting up the arrangements for contracting within their department as in B2
“Collaboration”	means the process whereby the Council is involved with other public procurement bodies for the efficient and effective delivery of mutually advantageous procurements.
“Commissioning”	means the process whereby <u>Services</u> are designed, procured and performance managed so as to best meet the needs of a given population within available resources and has a similar meaning to procurement
“Common Use”	means any <u>Goods, Services</u> or Works procured by the Council which are required for use by more than one Department of the Council or by Maintained Schools.
“Consultant”	means a person or organisation, engaged to give support help and guidance for procurement or provision, of Goods or Services or Works. By the nature of the public procurement and commercial market, it is unusual for the provision of a Consultant to be deemed to be Proprietary
“Constitution”	means the document approved by the Council setting out the rules under which the Council conducts its business
“Contract”	means the agreement between the Council and the Contractor comprising the conditions of Contract, Specification and any defined schedules and all matters referred to in the invitation to Tender/Quotation and the Contractor’s response together with acceptance by the Council.

“Contract Authorised Officer”

is the term used to denote the lead officer for a particular Contract who has been delegated the authority by the Chief Officer for a Department

“Contract Authorised Officer” means a Head of Department designated in the Departmental Rules and includes for the purposes of these Contract Regulations the Head of Procurement, SPG, (who shall be the Contract Authorised Officer for Goods and Services in Common Use).

In respect of Contracts for Services for all telecommunications and major corporate information technology the Contract Authorised Officer shall be the Officer with responsibility for the management of the Council’s Information, Communication and Technology.

For all Hertfordshire’s Maintained Schools, the Contract Authorised Officer will be the Chair of Governors.

“Contract Manager”

means a person appointed by a Chief Officer for a Department to manage the performance of a Contract throughout its term. It shall be for the Chief Officer for a Department to decide whether, having regard to any need for the separation of duties, the Contract Manager may also be the Contracting Officer for the same Contract. The duties of a Contract Manager shall begin when the Contract is awarded and shall cease when it is completed or terminated.

“Contract Regulations”

means standing orders for Contracts as required by section 135 of the Local Government Act 1972 covering Contracts for Goods, Services and Works.

“Contract Register”

means the Council’s Contract Register or a register maintained by a Maintained School containing the details of every relevant Contract exceeding £5,000. The Contract Register can also record Framework Agreements let by other organisations that the Council can use. Departments are responsible for entering details of their Contracts directly into the Contract Register, **CRGN 6 (Contract Register)** provides details of the entries required. Schools are encouraged to set up electronic registers in a similar format.

“Contract Repository”

means the Council’s repository for all signed Contracts. See **CRGN 3 (Transparency and Open Data)**

“Contracting Officer”

means a person appointed by a Chief Officer for a Department for the purpose of carrying out the appropriate duties set out in these Contract Regulations. A Contracting Officer may be appointed specifically for the purpose of a single Contract or for a range of Contract requirements but may not also be the Contract Authorised Officer for any Contract for which they are the Contracting Officer.

“Contractor”

means any person or organisation contracted to sell, provide or buy Goods, Service or Works. This term applies after a Contract is formed.

“Corporate Contract”

means any Contract for Goods, Services or Works in Common Use and applies particularly to Contracts where exclusive use by the Council is a term of the Contract.

“Council”

means Hertfordshire County Council

“Decision Record”

means the form to be completed for all Key Decisions including all contracts with an expenditure for the Council of £500,000 or above see **Appendix 3 Paragraph 16 (Further Information and Guidance).**

“Department”	means the Departments within Hertfordshire County Council and each Maintained School.
“Departmental Rules”	means rules made by a Chief Officer for a Department under section B of these Contract Regulations which shall provide details of officers who can fulfil the roles of Contract Authorised Officer, Contracting Officer and Contract Manager. They also cover any arrangements whereby a Contractor or other external person is authorised to act on behalf of the Council in any matters connected with these Contract Regulations, See CRGN 1 (Departmental Rules)
“Executive”	means the Council’s Executive as detailed in the Constitution It exercises all of the Council’s functions which are not the specific responsibility of any other part of the Council and comprises; <p>a) a County Councillor elected as Leader by the Council; and</p> <p>b) between 2 and 9 County Councillors appointed to the Executive by the Leader as set out in section 7 of the Constitution.</p> <p>http://www.hertsdirect.org/your-council/cpdrp/constitution</p>
“Financial Regulations”	refers to the Financial Regulations at Annex 12 of the Constitution which apply to all activities of the Council
“Forward Plan”	means the Council’s Forward Plan which contains details of all key decisions which it is anticipated will be taken by the Executive or by Council officers. See Appendix 3, Paragraph 15 (Further Information and Guidance) .
“Framework Agreement”	means an overarching agreement that the Council (or other public sector authorities) can access to form a Contract for provision of Goods, Services or Works. Framework Agreements are utilised by means of a ‘call off’ Contract. The maximum term of a Framework Agreement is four (4) years.
“Goods/Services/ Works	means any goods, equipment, material, works, service(s) design, technology or technique or benefit.
“Grant”	means a sum of money awarded following the receipt of a successful application against published criteria. The issue of funds will be reliant on the entering into of an agreement and the submission to published compliance and monitoring criteria.
“Head of HR and OD”	means the post so designated in the organisation. Details are contained in Appendix 3, Paragraph 22 (Further Information and Guidance) .
“Head of Procurement”	means the Head of the Strategic Procurement Group (SPG) responsible for strategic procurement across the Council. The actual title is detailed in Appendix 3, Paragraph 22 (Further Information and Guidance) .
“Key Decision”	means a decision with a value over £500,000 for the Council or significant impact or outcome. See Appendix 3 (Further Information and Guidance)
“Legislation”	means all statutes passed by Parliament, European Directives and includes subordinate legislation.
“Low Value”	means the Contract value that requires Quotations to be obtained and is detailed within Appendix 1 Value Thresholds.

“Maintained School”	means any Hertfordshire school that is a Community, Voluntary Controlled, Voluntary Aided or Foundation school spending its delegated funding from the Council.
“Mandatory Clauses”	means the list of Mandatory Clauses detailed at CRGN 8 (Mandatory Clauses) , which must be considered for inclusion in all Contracts
“Medium Value”	means the Contract value that requires Tenders to be obtained but is below EU threshold value and is detailed within Appendix 1 Value Thresholds.
“OJEU”	means the Official Journal of the European Union (OJEU)
“Partnering Agreement”	means an agreement between the Council and a Contractor which is intended to govern the way in which both parties work together in the management and delivery of the Contract. The basis of the agreement would normally imply a long-term relationship based on trust and on clear mutually agreed objectives.
“Proprietary Item”	means Goods, Services or Works, which have unique characteristics which alone meet the required realistic performance Specification
“Public Contracts Regulations”	the Public Contracts Regulations as amended EU Regulations shall have the same meaning
“Quotation”	means the process to be followed for securing Low Value Goods Services or Works see Appendix 2 (Value Thresholds)
“Service Concession”	means a Service Contract where that the consideration for Service to be provided consists either in the right to exploit the Service or in the right together with payment. Provided that more than 50% of the Contract value is derived from exploiting the Service (Contract). This type of Contract is not covered by the Public Contracts Regulations but is covered by the EU Treaty principles of equal treatment, transparency and non-discrimination.
“Single Tender Action”	means an action taken in accordance with paragraph C7 of these Contract Regulations, with the required authority of the Contract Authorised Officer.
“Specification”	means a clear written statement of the Goods, Services or Works, in sufficient detail to; <ul style="list-style-type: none"> (a) enable the Tenderer to submit a competitive price, demonstrating quality and added value. (b) ensure that Goods, Services or Works supplied will meet the requirement of the Council. (c) define the precise output and/or outcomes required.
“SPG”	means Strategic Procurement Group
“State Aid”	refers to forms of assistance from a public body, or publicly-funded body, given to undertakings engaged in economic commercial activity on a selective basis.
“Tender”	means the process to be followed for securing Medium Value and above Goods Services or Works see Appendix 2 (Value Thresholds)
“Tenderer”	means any person offering to sell to or purchase from the Council any Goods, Services or Works. This term applies before a Contract is formed and includes unsuccessful Tenderers.

- “Third Sector”** means voluntary, community and social enterprise organisations.
- “Under Hand”** means under the signature of two authorised officers. **See CRGN 9 (Signing of Contracts)**.
- “Under Seal”** means under the common seal of the Council attested by the Chief Legal Officer. The application of the common seal to a Contract will increase the limitation period (for legal remedy) from 6 years to 12 years. **See CRGN 9 (Signing of Contracts)**.
- “Works Concession”** means a Contract similar to a standard Works Contract except that the consideration for the Works carried out consists either solely in the right to exploit the construction or in the right together with payment. When more than 50% of the consideration comes from the right to exploit the construction, it is deemed to be a Works Concession Contract, and where the value is above the threshold, it is covered by the rules relating to the letting of Works Contracts.

APPENDIX 2 to Contract Regulations

VALUE THRESHOLDS

Within [Contract Regulations](#) references to values for [Quotations](#) and [Tenders](#) and other required processes are categorised as:

[Low Value,](#) [Medium Value](#)

EU Thresholds

[Contracts](#) with a [Council](#) spend of £500,000 or over.

Further guidance is contained in [CGRN4 \(Outline of Quotes and Tender Process\)](#)

1. [Low Value - Quotation](#)

For [Contracts](#) with an estimated value of up to £100,000 the [Quotation](#) procedure shall be used.

Full guidance and template documents are available on the [Council's](#) intranet

<http://compass.hertscc.gov.uk/pp/ecspolproc/15929428/spgppolproc/17001905/quotguid>

The [Contracting Officer](#) will comply with [Contract Regulations](#) and [Departmental Rules](#) in respect of these [Contracts](#), ensuring demonstrable competition, unless the provisions of C1 or C7 of [Contract Regulations](#) apply. Full guidance on the [Quotation](#) Procedure and template documents are available on the [Council's](#) intranet:

<http://compass.hertscc.gov.uk/pp/ecspolproc/15929428/spgppolproc/17001905/quotguid>

- Below £5,000, obtain at least 1 written quotation
- £5,001 - £10,000, obtain at least 2 written quotations
- £10,001 - £100,000, obtain at least 3 written quotations
- £100,001 and above need to follow the [Medium Value, Tender](#) Procedure

2. [Medium Value - Tender](#)

For [Contracts](#) with an estimated value of £100,001 up to the EU Threshold values the [Tender](#) Procedure shall be used.

The [Contracting Officer](#) will comply with [Contract Regulations](#) and, [Departmental Rules](#) in respect of these [Contracts](#), ensuring demonstrable competition, unless the provisions of C1 or C7 of [Contract Regulations](#) apply. Full guidance on the [Tender](#) Procedure and template documents are available on the [Council's](#) intranet:

http://compass.hertscc.gov.uk/policies/procurement_all/

3. EU Thresholds

These are updated bi-annually in January, the current EU Thresholds can be found by following the link below:

Where the estimated value of the procurement is likely to exceed the EU Thresholds advice must be sought from [SPG](#) and see C5 of these [Contract Regulations](#)

http://compass.hertscc.gov.uk/policies/procurement_all/

4. [Council](#) spend of £500,000 or over

See C6 in [Contract Regulations](#) for additional requirements for [Contracts](#) with an estimated value of £500,000 or more

5. **Maintained Schools** – Approval

All [Contracts](#) over the threshold set out in the Financial Handbook for Schools Part II: Scheme for Financing Schools require approval through the signature of an officer with delegated authority in Children's Services. All [Contracts](#) over £500,000 must be signed by the [Chief Legal Officer](#). **See Appendix 3 (Further Information and Guidance - 14. Financial Regulations)**

APPENDIX 3 – to Contract Regulations

FURTHER INFORMATION AND GUIDANCE

Here you will find links to other Policies and Procedures and guidance referred to within [Contract Regulations](#), plus other useful information and Contact details for further help.

1. The Commissioning / Procurement Cycle

How and where the [Council](#) spends its money is subject to an increasing level of scrutiny. All staff involved in [Commissioning](#) and procurement across the [Council Departments](#) need to be aware of the generic commissioning / procurement cycle.

This cycle of activities underpins all [Commissioning](#) and procurement activity.

Adopting this model will help to align departmental approaches to [Commissioning](#) and procurement and ensure a best practice approach is adopted for all activities.

This sets out in a single process, all of the aspects that need to be considered when [Commissioning](#) and procuring [Goods](#), [Services](#) and [Works](#) for the [Council](#). It informs our training and development needs in this area, and highlights where the organisation needs to concentrate on improving skills, knowledge and processes.

For further details on the commissioning / procurement cycle please go to the following link;

<http://compass.hertscc.gov.uk/area/hcc/envcs/procurement/publications/dbs/>

2. Best Practice Procurement Guidance

Detailed Procurement Guidance that supplements [Contract Regulations](#) can be found by following the link below where you will also find other procurement guidance and documents and templates

http://compass.hertscc.gov.uk/policies/procurement_all/

3. Business Case

This must be approved by the [Head of Procurement](#), [SPG](#), prior to the placing of an [OJEU](#) notice see 4.2 in the Executive Summary and B3.1 and C5.1 in [Contract Regulations](#). The [Business Case](#) template can be found on the [Council's](#) intranet

<http://compass.hertscc.gov.uk/area/hcc/envcs/procurement/forms1/proc11.doc/>

4. Code of Conduct

Includes information on contracting and tendering, relationships with [Contractors](#), declaring interests and hospitality

<http://compass.hertscc.gov.uk/pp/resandperpolproc/hrpolproc/conducthr/codecon>

5. Official Conduct

This covers Gifts and Hospitality, and Officers Interests and Outside Employment:

<http://compass.hertscc.gov.uk/pp/resandperpolproc/hrpolproc/16331152/16331243>

6. Corporate Information Security Policy

This policy applies to all information within the [Council](#) with the exception of that held by schools. It includes information printed or written on paper; stored electronically;

transmitted by post or using electronic means; shown on films; or spoken in conversation.

This policy applies, at all times, to the [Council](#) at a corporate level. Associated policies and guidelines to support this document are in place, which are applicable to all the [Council](#) employees and [Contractors](#). The principles of this policy must be included in all [Contracts](#), including those of facilities management providers, involved with the processing of the [Council's](#) information.

<http://compass.hertscc.gov.uk/pp/resandperpolproc/ictpolproc/15855316/intro>

7. [Departmental Rules](#) (Delegated Authority)

[CRGN 1 – Departmental Rules](#) for further information of how to create your [Departmental Rules](#)

8. Document Retention and Destruction Policy

<http://compass.hertscc.gov.uk/area/hcc/resperf/perfint/publications/recretdisp.doc>

9. Disposal and re-use of Property

If you need to dispose of property then follow the link below to the policy:

<http://compass.hertscc.gov.uk/area/hcc/resperf/propertytech/infres/property/disposreuseprop/>

10. Self-Employed Consultants Policy

This guide deals with the use of self-employed [Consultants](#) or [Contractors](#), this particularly applies to sole contractors or [Consultants](#). The best practice advice given is based on:

- Managing the risk to the [Council](#) of a self employed person subsequently claiming that they were an employee and therefore entitled to rights under Employment [Legislation](#) e.g. sick pay, holiday pay, maternity rights, notice rights, unfair dismissal rights.
- Managing the risk to the Council of HM Revenue & Customs (HMRC) claiming arrears of Tax and National Insurance for a person who should have been paid through the payroll.

It is very important to be clear whether an individual is an employee or self-employed. Their status will determine their rights under Employment [Legislation](#). Follow the link below to the policy.

If you need to complete a status questionnaire as part of the policy then this should be sent to the Finance Tax Team.

If you wish to use a self-employed consultant then they must be engaged utilising a proper contract using the [Quotation Procedure](#).

<http://compass.hertscc.gov.uk/pp/resandperpolproc/hrpolproc/conpol/conspol>

11. EU Regulations requirement to place an Award Notice

The Strategic Procurement Group ([SPG](#)) is responsible for undertaking this task to comply with the [Council's](#) legal obligations in this matter.

12. Equalities Impact Assessment (EqIA)

An Equalities Impact Assessment for a contract must be carried out at the beginning of the process. Guidance and the relevant template form are available at:

http://compass.hertsc.gov.uk/policies/procurement_all/

13. Risk Assessment

It is essential at the beginning of a procurement process that a risk assessment is carried out. Guidance and the relevant template form are available at:

http://compass.hertsc.gov.uk/policies/procurement_all/

14. Financial Regulations

The authority needs a sound financial control environment in which to operate and [Financial Regulations](#) helps us to achieve that. They provide clarity about the financial accountabilities of individuals and a framework for decision-making. Where there are specific statutory powers and duties the regulations seek to ensure these are duly complied with as well as reflecting best professional practices. They also provide a reference point to other documents which contain the detailed procedures, guidance and instructions behind the Regulations. In addition the Regulations form part of the framework in order that the [Council](#) can demonstrate its compliance with the principles of good governance, which is essential in maintaining public confidence in elected members and officials.

[Financial Regulations](#) apply to all staff and members of the [Council](#) although the prime audience consists of Members, [Chief Officers](#), Budget Holders, Budget Managers and Finance staff. It is the responsibility of staff to ensure they are aware of the content of [Financial Regulations](#). Compliance with [Financial Regulations](#) is compulsory for all staff and a failure to comply may result in disciplinary action being taken.

http://compass.hertsc.gov.uk/pp/resandperpolproc/financepolproc/17026671/fi_nregmet

The Scheme for Financing Schools is the formal document underpinning the financial relationship between schools and the Authority.

<http://www.thegrid.org.uk/info/sfu/publications.shtml>

15. Forward Plan

The [Forward Plan](#) contains brief details of all [Key Decisions](#) which it is anticipated will be taken, by the Cabinet or by [Council](#) officers, in the coming four months. The [Forward Plan](#) is updated monthly by the 15th day.

To view the latest version of the [Forward Plan](#) please click on the link below.

<http://www.hertsdirect.org/your-council/councillors/fpofkds/>

16. Key Decisions or Decision Record

Information and requirements concerning the legal requirements for taking and recording decisions, including the requirements in respect of [Key Decisions](#) and the [Forward Plan](#) can be found at:

http://compass.hertsc.gov.uk/pp/resandperpolproc/17159633/17159636/keyoff_decs

17. Procurement Documents and Templates

There are many procurement documents and templates that have been created and you should use them wherever possible. There are for example templates for [Service Tender](#) documents, [Quotation](#) Procedure and documentation, award and reject letters

and pre-procurement market engagement. All procurement guidance and templates are on the [Council's](#) intranet and can be found by following the link below:

<http://compass.hertsc.gov.uk/area/hcc/resperf/procurement/tempguidtrain/guidance/procprocess/howdoibuy>

18. Procurement Strategy

The Procurement Strategy for 2013-2016 seeks to align procurement activity across HCC with the organisation's wider goals, the key areas it seeks to address are:

- Increasing commercial awareness
- Understanding of our suppliers
- Management of our contracts
- Working together with partners
- Reducing our procurement costs
- Supporting the local economy

<http://compass.hertsc.gov.uk/area/hcc/envcs/procurement/plansreports/procurementstrat/>

19. School's [Commissioning](#) Toolkit

This Toolkit has been developed for schools It is available to schools through the Hertfordshire Grid for Learning website.

<http://www.thegrid.org.uk/info/office/commissioning/index.shtml>

20. Single Tender/[Proprietary Item](#)

The process for approving [Single Tender Action](#) or [Proprietary Item](#) is detailed in C7 in [Contract Regulations](#). The template form to be completed can be found on [Appendix 4 \(Single Tender Action Proprietary Item Form\)](#)

21. TUPE Guide

Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (referred to in The TUPE Guide as TUPE Regulations 2014) protects employees' terms and conditions of employment when a business is transferred from one organisation to another.

HCC Guidance is for use by both HR Officers and [Contracting Officers](#). The TUPE Guide and the TUPE Toolkit which contains template letters and forms are available on the Council's intranet in Procurement Policies.

<http://compass.hertsc.gov.uk/pp/ecspolproc/commsenpolproc/spqppolproc/16378659/tupeguidesum>

22. Contacts for Further Help

For further assistance and useful contacts including the current title and post holder for the generic titles contained in [Contract Regulations](#). e.g. [Chief Financial Officer](#) follow the link below:

http://compass.hertsc.gov.uk/policies/procurement_all/

APPENDIX 4 to Contract Regulations

SINGLE TENDER ACTION/PROPRIETARY ITEM FORM

NB: Please ensure you complete this form in its entirety

INSERT DEPARTMENT

SINGLE TENDER ACTION/PROPRIETARY ITEM JUSTIFICATION

CONTRACT TITLE:

CONTRACT REF:

CONTRACT START DATE:

CONTRACT END DATE:

VALUE:

Contract Authorised Officer
Contracting Officer
Contract Manager

In accordance with C7 of Contract Regulations, we certify that the above contract should be placed with **INSERT SUPPLIER** as a single tenderer or proprietary item and we confirm that the requirements under C7 are in place.

Justification:

(Description of why a single tender action is required, e.g. proprietary item should be purchased) see C7 in Contract Regulations)

Specification:

Contract Issue:

(Implications on service delivery)

Negotiation:

Provisions for Adjustment in Price:

Further Action to be Taken:

(e.g. in the case of a short term award of contract to allow a proper procurement process to be undertaken)

Contract Authorised Officer:

Contracting Officer:

Name:

Name :

Department:

Department:

Date:

Date:

Copy to be sent to Head of Procurement for consultation, to allow discussion and recommendation strategic.procurement@hertscc.gov.uk

Once signed:

Copy to be filed with Contract

Copy to strategic.procurement@hertfordshire.gov.uk

Any Proprietary Product needs to undergo a review to ensure the product remains Proprietary. Consideration should be given to the use of a mainstream alternative Product and outcomes should be specified rather than specific solutions and/or systems. The definition of the Product must not be constructed to exclude the use of a mainstream product. In such case a Single Tender Action/Proprietary Item form must be completed

This form can be found on Compass

<http://compass.hertscc.gov.uk/pp/ecspolproc/15929428/spgppolproc/spgstandfm/17266412/addprofor>