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Contract Standing Orders and Guidance

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PURPOSE

These Contract Standing Orders are designed and adopted by the Council to ensure that the Council demonstrates public accountability, obtains value for money and that there are formal and clear rules governing all contracts in connection with the procurement and supply of supplies, services and works.

Definitions & Explanations may change as new legislation and guidance is issued. The Head of Finance and Revenues shall update the Definitions & Explanations as required from time to time.

PROCUREMENT ACT 2023

Throughout these Contract Standing Orders, textboxes in this font are inserted to offer guidance directly relevant to each Standing Order.

FLOWCHARTS, CHECKLISTS, GUIDANCE AND FORMS

Flowcharts and checklists, together with guidance, templates and e-forms are available on the Procurement section of the intranet.

DEFINITIONS & EXPLANATIONS

Contracting Officer	The Chief Executive, Deputy Chief Executive and Heads of Service or an officer designated by the Head of Service to deal with the contract in question.
Award Procedure	The procedure for awarding a contract as specified in Contract Standing Orders 23, 24 and 25.
Best Value	Best Value means Most Economically Advantageous Tender (M.E.A.T.) for the purposes of the Public Contracts Regulations 2015.
Bond	An “insurance policy”: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the surety (usually a bank) the sum of money specified in the Bond. A Bond is intended to protect the Council from additional costs arising from the contractor’s failure.
Contracts Finder	The Government’s website where procurement opportunities and contract awards are advertised in accordance with the Regulations and the Local Government Transparency Code.
Competitive Dialogue	A procedure in which any economic operator may make a request to participate and whereby a contracting authority conducts a dialogue with the economic operators admitted to that procedure with the aim of developing one or more suitable alternative solutions capable of meeting its requirements and on the basis of which the economic operators chosen by the contracting authority are invited to tender.

Competitive Procedure with Negotiation	A procedure leading to the award of a contract whereby only economic operators shortlisted by the contracting authority following public advertisement for expressions of interest are invited to negotiate the terms of the contract before submitting tenders or quotations for the contract.
Contract agreement	A written document or deed incorporating the contract. In the case of procurement below £20,000, this is made by obtaining a written quotation followed by the placing of an official order.
Contracting Officer	Chief Executive, Deputy Chief Executive and Heads of Service or an officer designated by the Head of Service to deal with the contract in question. Officers authorised to sign orders, contracts, invoices and payments relating to the letting of contracts within their service in accordance with these Contract Standing Orders.
Contracts Register	<p>A list of the Council's contracts that is available on the Council's website as required by the Transparency Code 2015. Where the eProcurement System is not used, an eForm must be completed when awarding a contract valued at £5,000 or more so that the contract can be added to the Contracts Register</p> <p>Where the eProcurement System is used, the Contracts Register will be automatically updated on the system. This will then be uploaded by a system administrator.</p> <p>The Contracts Register is on the Council's website:- https://www.testvalley.gov.uk/business/doingbusiness/tenders/contracts-register</p>
E-Procurement System	The Council's e-procurement system allowing uploading of notices and invitations to quote/tender, tender documents and contract award notices. The Council's eProcurement system is Complete Tender Management supplied by EU Supply PLC. This will allow the Council to comply with its requirement to communicate electronically with bidders. This must be used for all procurements above £20,000 unless the use of hard copy tenders has been approved by Head of Finance and Revenues and Head of Legal & Democratic Services.
Estimated Contract Value	<p>The estimated contract value shall be calculated as follows:</p> <p>(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period. This should include any extension period where appropriate;</p> <p>(b) where the contract is for an indeterminate duration by multiplying the monthly payment by 48;</p> <p>(c) for feasibility studies: the value of the scheme or contracts which may be awarded as a result;</p>

	<p>(d) for nominated suppliers and sub-contractors: the estimated contract value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor;</p> <p>(e) where the contract is one where no payment is made by the Council (e.g. a concession) a best estimate of the financial value to the contractor shall be ascertained, this value is the full value of the opportunity and not only the available profit;</p> <p>(f) where establishing a framework the value is the total value of all the contracts which could be entered into by the Council and other contracting authorities further to that framework agreement.</p> <p>(g) where the Council is procuring on behalf of a third party, the total value of the opportunity must also include the amount which relates to the third party in the event of a joint procurement.</p>
Evaluation Criteria	The criteria (including sub criteria and weightings where appropriate) by which the successful Quotation or Tender is to be selected (see further Contract Standing Order 22).
Find A Tender	The e-notification website operated by the Government for advertising procurement opportunities and contract awards where so required under the Regulations.
Framework Agreement	<p>A 'framework agreement' is an agreement between one or more contracting authorities and one or more contractors, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. This also includes frameworks that have been set up by a third party, e.g. Government department, another local authority or consortiums, under which the Council can be supplied with goods and services during the period of the framework agreement.</p> <p>A framework agreement is not a contract between the Council and a supplier. The Council can call-off from a Framework to create a contract between the Council and the supplier.</p>
Full Procurement Procedure	The procedure required by the Public Contracts Regulations where the total estimated contract value exceeds the Threshold
Invitation to Tender	Formal document combining an invitation to tender and instructions regarding the process. Usually issued with a Specification/Bill of Quantity and draft Contract conditions.
One Stage Tender Procedure	A tendering procedure where the invitation to tender is publicly advertised and all tenders received are evaluated. This procedure may be used where the contract is valued above or below the

	Threshold. Where the contract value is over Threshold this is known as the Open Procedure.
Nominated Suppliers and Subcontractors	Those persons specified in a main contract for the discharge of any part of that contract.
Parent Company Guarantee	A separate contract between the parent of a subsidiary company and the Council. If the subsidiary company fails to do what it has promised under a contract the Council can require the parent company to complete the contract instead.
Procurement Strategy	The Council's Procurement Strategy current at the time of the procurement and which sets out the Council's procurement objectives and principles, including the need to reduce demand on natural resources and deliver services and functions in a more environmentally sustainable way, and taking into account social value.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Regulations	The Public Contracts Regulations 2015 (as amended or replaced)
Selection Questionnaire	A template document that is used to shortlist bidders when using the Two Stage Procedure, Competitive Procedure with Negotiation and Competitive Dialogue. The template is available on the procurement page of the intranet.
Short Listing	Where suppliers are selected: To quote or tender; or To proceed to final evaluation.
Standard Letter (Acceptance of Quotation/Tender)	A template document that is used to inform the successful bidder of our decision. The template is available on the procurement page of the intranet.
Standard Letter (Unsuccessful Quotation/Tender)	A template document that is used to inform unsuccessful bidders of their evaluation scores and the reasons why they were unsuccessful. The template is available on the procurement page of the intranet.
Supplier	This includes suppliers of goods, works or services provided to the Council whether by an individual supplier, company or consortium.

System Administrator	An officer in the Finance and Revenues Service authorised by the Head of Finance and Revenues to have access to the E-Procurement System to administer quotations and tenders.
Tender	A supplier's proposal submitted in response to an Invitation to Tender.
Tender Opening Sheet	The log recording details of Tenders received and opened. (see Contract Standing Order 20).
Threshold	The thresholds for contract values specified in Regulation 5 of the Regulations (as amended from time to time).
Two Stage Procedure	A procedure leading to the award of a contract whereby only economic operators shortlisted by the contracting authority following public advertisement for expressions of interest may submit tenders or quotations for the contract This procedure may only be used for contracts valued above the Threshold.

1. Compliance

- 1.1 Every Member of the Council and every officer and employee of the Council must comply with these Contract Standing Orders.
- 1.2 Any third party (e.g. a consultant) who is engaged in the letting, management or supervision of a contract on behalf of the Council must comply with these Contract Standing Orders as if he/she were an officer of the Council. A copy of these Contract Standing Orders must be given to the third party by the Contracting Officer.
- 1.3 These Contract Standing Orders apply to **all** procurement decisions save for those set out in 1.6, regardless of the source of funding, or the status of the contractor (i.e. they apply equally to selection of both main contractors and nominated subcontractors or suppliers and to procurements funded by third parties).
- 1.4 **Every contract must be let in compliance with all applicable legal requirements, the Council's Procurement Strategy and the Council's Financial Procedure Rules.**
- 1.5 Contracting Officers must comply with aggregation rules set out in the Regulations and the Thresholds when estimating the value of the contract particularly if the contract involves annual or recurring expenditure. The splitting of contracts so as to avoid the Regulations is prohibited.
- 1.6 The Contract Standing Orders shall not have effect or relate to:-
 - a) arrangements with another Service within this Council for the supply of goods or for the provision of services or works by that other Service;
 - b) contracts of employment;
 - c) contracts in connection with the acquisition or disposal of land and premises by the Council unless this involves the appointment of a developer where the

transaction includes the provision of infrastructure back to the Council as part of the development (in which case seek advice from the Head of Legal & Democratic Services); or

d) non-contractual arrangements with Counsel.

1.7 Tenders will only be considered if received in response to a formal invitation to tender.

Guidance – Good Practice

Briefly, the following issues should be at the forefront of any procurement activity:

- *Follow the rules set out in Contract Standing Orders if you procure any goods, services or works;*
- *Take all necessary legal, financial and professional advice;*
- *Keep bids confidential;*
- *Keep records of dealings with suppliers;*
- *Assess each contract afterwards to see how well it met the procurement need and Best Value requirements;*
- *Provide all those tendering with the same information.*

2. Responsibilities

2.1 Heads of Service must:

- a) ensure that every officer within their Service is aware of these Contract Standing Orders and that they are observed; and
- b) ensure that all officers whom are authorised to act as Contracting Officers are properly trained and monitored.

2.2 Contracting Officers must:

- a) familiarise themselves with these Contract Standing Orders and observe them;
- b) determine whether there are any requirements of Legislation governing the proposed contract. If so those requirements shall be followed even if they conflict with these Contract Standing Orders;
- c) duly consider the provisions of the Council's Procurement Strategy;
- d) ensure that any contract includes a proper specification of the procurement ensuring where possible that generic rather than branded products are specified;
- e) ensure that any contract includes the mandatory conditions of contract;
- f) monitor the performance of the contract throughout its term; and

- g) ensure the retention of documentation to demonstrate compliance with these Contract Standing Orders.

2.3 The Finance & Revenues Service maintain a list of authorised signatories (Contracting officers) for all Service areas.

3. Pre Contract Checks

3.1 Prior to commencing a procurement of £20,000 and over the appropriate Contracting Officer must take any necessary advice and also consult with the Procurement Officer. A written record of relevant pre-procurement issues must be maintained, as outlined in the guidance below.

Guidance – Pre Procurement Checklist

Further guidance is available on the Procurement Section of intranet

When a Contracting Officer, as identified in 2.1, above starts a procurement process that is estimated to result in a contract valued at £20,000 and over, he/she should begin by completing a checklist of pre-procurement issues to be considered.

This is to demonstrate a planned approach to each piece of procurement activity, and enable background issues that may have an impact on the conduct of the procurement process to be taken account of from the outset.

3.2 Before entering into a contract with any supplier, the appropriate Head of Service must:

- (a) be satisfied that a specification or brief, which will form the basis of the contract/arrangement, has been prepared; and
- (b) have prepared and documented an estimate of the cost of the contract/arrangement, including where appropriate any maintenance costs.

3.3 Before entering into a contract with any supplier, the appropriate Head of Service must be satisfied that:

- (a) the budget is available;
- (b) the required approval for the project has been given;

Where the contract is a capital contract this must be approved by Cabinet or Council depending on the value.

- (c) the supplier is appointed using the quotation or tender procedure (as appropriate) set out in these Contract Standing Orders;
- (d) the proposed supplier's financial standing is sound;
- (e) Best Value is being obtained; and
- (f) the Council's Procurement Strategy is considered and its requirements taken into account.

- 3.4 Prior to the contract award, the financial capability of contractors must be assessed. The key objective of financial status checks in the procurement process is to analyse a potential contractor's financial position and to determine the level of risk that it would represent to the Authority, having regard to the contract requirement and value, criticality, and the nature of the market.
- 3.5 Financial Status checks are required on all purchases of goods, services or works. The financial status check set out in Contract Standing Order 3.4 is not required if:
- (a) the contracting body is either another public body (e.g. Police, Fire, NHS, Government Department, other Local Authorities); or
 - (b) it is for a single purchase of goods or services, not involving any further commitment for support or maintenance; or
 - (c) it is for a single purchase of goods where if they fail there is minimal financial loss to the Council should the goods need replacing; or
 - (d) there is no significant risk to the Council of financial loss, continuance of service issues or cost of replacement; or
 - (e) the Head of Finance & Revenues has instructed that a financial status check does not need to be carried out; or
 - (f) it is a call off from a framework agreement (save where the Head of Finance & Revenues requires checks to be undertaken).

Guidance – Financial status checks

Financial status checks are currently carried out by the Finance & Revenues Service (advice can be obtained from the Procurement Officer). It is recognised that the scope of a financial status check should be proportionate to the size and risk of the contract.

The financial status check needs to form part of a broader, holistic assessment of the bidder, which also looks at capacity (the ability to deliver), capability (to a required standard) and the degree of dependency on a single contract or customer.

To support this assessment the Council, through Finance & Revenues, will obtain a financial appraisal report. The report provides the Council with an overall Risk Score which will be used to assess the applicant's financial standing. If this information is not available from a credit reference check, a risk score will be calculated as per the model detailed in the Selection Questionnaire. A bidder's Risk Score will determine if they Pass, Fail or Pass (subject to provision of a guarantee) the financial status check.

Below the Threshold we are unable to use a Selection Questionnaire and so would usually only do financial status checks on the preferred bidder as part of pre-contract checks following tender evaluation.

- 3.6 In a contract where the technical expertise of the contractor is important to the successful delivery of the contract it is essential that the Head of Service letting the contract carries out appropriate technical checks. The nature of these checks will vary depending on the nature of the goods, services or works to be supplied.

Guidance – Technical Checks

It is up to the Head of Service letting the contract to determine whether and what technical expertise checks are necessary before the contract is let.

- 3.7 All prospective contractors must be required to confirm that neither the contractor nor any of its officers or employees have been convicted of an offence under the Bribery Act 2010
- 3.8 No officer or Member who has an interest requiring declaration under the Council's codes of conduct should evaluate any quotation or tender.

Guidance – Bribery Act 2010

These standing orders provide a means of safeguarding the reputation of the Council and its staff from any implication of dishonesty or corruption.

Officers and Members are required to declare any interest in a contract with the Council and shall ensure they have no part in award.

It is up to the Head of Service letting the contract to seek this confirmation from the contractor; the Selection Questionnaire includes a requirement to give this confirmation.

A form is available on the procurement section of the intranet to check the successful bidder's compliance with this requirement that may be used for tenders where a Selection Questionnaire is not used.

4. Framework Agreements

- 4.1 Before commencing the procurement process the Contracting Officer should first check if there is a Framework Agreement available for the subject of the procurement. The Council's Procurement Officer must approve its use.
- 4.2 Where the Contracting Officer wishes to use a Framework Agreement he/she must:
- check that the full requirements of the procurement are within the scope of the Framework Agreement, and that the Framework Agreement remains in force;
 - check and follow the rules that apply to the Agreement, e.g. whether a mini-competition has to be undertaken;
 - confirm that it is compliant with the Regulations including a check that the Council is either specifically named or is within the class of contracting

authorities set out in the Contract Finder/Find A Tender notice and is therefore legally permitted to use this Framework;

- check what technical advances have taken place since the Agreement was made; it may be that the Agreement is no longer the best option; and
- consider the value for money the Agreement represents; if the Agreement is more than 50% through its term it may no longer offer the most economically advantageous option.

4.3 A mini-competition is not required when:

The Framework Agreement has one Supplier

or

The terms of the Framework Agreement can be applied to allow the Contracting Officer to determine the successful Supplier.

4.4 Where the framework requires a mini-competition the Contracting Officer must:

- invite all Suppliers from the Framework Agreement that are capable of supplying the Council's requirements; or
- invite all Suppliers from the Framework Agreement if it is unclear which are capable of supplying the Council's requirements.

4.5 The timescales shall be such that all contractors invited have an equal opportunity to respond and must be a reasonable amount of time giving consideration to the nature and complexity of the information requested.

4.6 A date and time for the return of bids must be specified and receipt, opening and evaluation of bids must be conducted in accordance with these Contract Standing Orders.

Guidance – Framework Agreements

The Procurement Officer can provide a list of bodies that regularly award framework agreements that may be available for use by the Council

Before using a framework the Contracting Officer must:

- *make sure that his/her procurement requirements are fully covered by the framework otherwise it cannot be used;*
- *check it still offers the best technical solution and economically advantageous option;*
- *check the requirements, i.e. is a mini competition needed; and*
- *check that it is compliant with the Regulations and the Council is able to use it.*

You will be able to get advice on all this from the Procurement Officer or the Head of Legal & Democratic Services

5. Exemptions

5.1 An exemption from these Contract Standing Orders may only be made in relation to the need to seek quotations or tenders through public advert. Prior approval must

be given by the Head of Service in consultation with the Head of Finance and Revenues and the Head of Legal & Democratic Services or Deputy Chief Executive. In order to seek this approval, a report must be produced by the Head of Service setting out:

- (a) the reasons for seeking the exemption; and
- (b) any consequences associated with the proposal in terms of risk, demonstrable value for money, propriety and compliance with legal requirements.

The Head of Finance and Revenues, Head of Legal & Democratic Services or Deputy Chief Executive may require the exemption to be approved by Cabinet or the relevant Portfolio Holder where the project is considered to be of a sensitive or strategic nature.

Guidance - Request for exemption

Any request for an exemption should be made using the eform on the procurement section of the intranet.

- 5.2 An exemption report **will not** be necessary for contracts let under the following circumstances:
 - (a) procurements obtained through any consortium, association or similar body of which the Council is a member or is entitled to use;
 - (b) emergency works which were not reasonably foreseeable and which must be addressed within 48 hours of the need arising; or
 - (c) purchase of goods or services under a Framework Agreement.
- 5.3 Exemptions granted pursuant to this Contract Standing Order shall be reported in the Members' Information Bulletin by the Head of Service who has made the decision.
- 5.4 An exemption must not be made if this would result in a breach of the Regulations save in an emergency as permitted by the Regulations or any other legislation.

6. Contract Value

- 6.1 The Contracting Officer must estimate and record in writing the Estimated Contract Value (net of VAT) prior to initiating any procurement activity.
- 6.2 The Estimated Contract Value must not be deliberately under-estimated, or contracts sub-divided, in order to avoid the application of any provision of these Contract Standing Orders or of the Regulations.

7. Contracts valued below £5,000

- 7.1 Where the estimated value of a proposed contract is below **£5,000** the Authorised Officer Officers shall ensure that best value in terms of economy, efficiency and effectiveness is obtained.

- 7.2 Only one verbal quotation for contracts below £1,000 or one written quotation for contracts where the contract value is £1,000 or over but below £5,000 is required and this does not need to be obtained by placing a public advertisement.
- 7.3 An official order must be placed and it must refer back to the verbal or written quotation or confirmation, as appropriate.

8. Contracts valued at £5,000 or over but below £20,000

- 8.1 Where the estimated value of a proposed contract is below **£20,000** the Contracting Officer shall ensure that best value in terms of economy, efficiency and effectiveness is obtained.
- 8.2 Use of the E-Procurement System is recommended to obtain quotations as required under this Contract Standing Order (in which case Contract Standing Order 20 must be followed). Where the E-Procurement System is not used, the provisions of Contract Standing Order 19 must be followed.
- 8.3 At least two written quotations are required as a means of demonstrating best value. These do not need to be obtained by placing a public advertisement. A written record containing the following information must be made before placing an order:
- details of the contract;
 - the full name and address of the contractor and other supplier(s) contacted;
 - the person who supplied the quotation; and
 - the prices submitted by the contractor and other supplier(s) contacted.
 - 8.4 Nothing in Contract Standing Orders precludes the use of tenders for contracts of lower values where tenders are considered more appropriate, for example, many building and civil engineering contracts, or other contracts whose subject matter may justify a more formal approach.
- 8.5 An official order must be placed and it must refer back to the written quotation or confirmation. Orders must be approved by an officer authorised in accordance with 2.3

9. Contracts valued at £20,000 or over but below £50,000

- 9.1 Where the estimated value of a proposed contract is £20,000 or more but below **£50,000** all procurements must be completed through the Council's eProcurement System. The Contracting Officer must consult with the Procurement Officer and shall ensure that Best Value in terms of economy, efficiency and effectiveness is obtained.
- 9.2 At least three written quotations are required as a means of demonstrating Best Value. These do not need to be obtained by placing a public advertisement but must be obtained through the Council's eProcurement System. A written record containing the following information must be made before placing an order:
- details of the contract;

- the full name and address of the contractor and other supplier(s) contacted;
- the person who supplied the quotation; and
- the prices submitted by the contractor and other supplier(s) contacted.

9.3 Nothing in Contract Standing Orders precludes the use of tenders for contracts of lower values where tenders are considered more appropriate, for example, many building and civil engineering contracts, or other contracts whose subject matter may justify a more formal approach.

9.4 An official order must be placed and it must refer back to the written quotation or confirmation. Orders must be approved by a Contracting Officer authorised in accordance with 2.3.

10. Contracts Valued at £50,000 or over but below £100,000

10.1 Where the estimated value of the proposed contract is £50,000 or more but less than **£100,000** all procurements must be completed through the Council's eProcurement system. The Contracting Officer must consult with the Procurement Officer. At least three written quotations or tenders shall be invited or a contract should be called off from a framework in accordance with Contract Standing Order 4.

10.2 The written quotations or tenders must be invited as a result of public advertisement using one of the following methods:

- The One Stage Tender Procedure should be used; or
- Through the use of Consortia as referred to in Contract Standing Order 6.3.

10.3 The criteria for evaluating the quotations or tenders must be determined in advance of invitation, stated in the Council's e_Procurement System advertisement in order of importance, and must be notified to the contractors when the quotations or tenders are requested. A record of the decision making process must be recorded in the file.

10.4 Contracting Officers must not deliberately disaggregate the contract requirements so as to enter into two or more contracts below the **£50,000** threshold.

The timescales shall be such that all contractors invited have an equal opportunity to respond and should be no less than 14 days save in the case of urgency where approved by the Head of Legal & Democratic Services and the Head of Finance and Revenues.

11. Contracts Valued at £100,000 or more

11.1 Where the estimated value of the proposed contract is £100,000 or more all procurements must be completed through the Council's eProcurement System. The Contracting Officer must consult with the Procurement Officer. At least six tenders shall be invited or a contract should be called off from a framework in accordance with Contract Standing Order 4.

- 11.2 The tenders must be invited as a result of public advertisement using one of the following methods:
- Where the estimated value is below the Threshold the One Stage Tender Procedure is to be used.
 - Where the estimated value is above the Threshold the Two Stage Procedure, or the One Stage Procedure, is to be used unless, in exceptional circumstances, approval has been given to use the Competitive Procedure with Negotiation in accordance with Contract Standing Order 13 or Competitive Dialogue in accordance with Contract Standing Order 14; or
 - Through the use of Consortia as referred to in Contract Standing Order 6.3.
- 11.3 The criteria for short listing and evaluating the quotations must be determined in advance of invitation, stated in the advertisement in order of importance, and must be notified to the contractors when the quotations are requested. A record of the decision making process must be recorded in the file.
- 11.4 Where the estimated value of the proposed contract exceeds the relevant threshold then tenders shall be invited in accordance with the Public Contracts Regulations 2015.
- 11.5 Contracting Officers must not deliberately disaggregate the contract requirements so as to enter into two or more contracts below the £100,000 threshold and avoid the need to enter into the formal tendering procedure.
- 11.6 The timescales shall be such that all contractors invited have an equal opportunity to respond and should be no less than 14 days save in the case of urgency where approved by the Head of Legal & Democratic Services and the Head of Finance and Revenues. If the estimated contract sum exceeds the Threshold timescales as prescribed in the Public Contract Regulations 2015 must be applied.

12 One Stage Procedure

- 12.1 This procedure is the Council's preferred method and should be used for all **advertised** contracts valued below the Threshold. Where the contract is valued above the thresholds this procedure is known as the Open Procedure.
- 12.2 An invitation to tender must be published on the Council's eProcurement System and advertised on Contracts Finder and, at the Head of Service's discretion, can also be published in one or more appropriate technical journals published nationally, or in the local press.
- 12.3 Where the value of the contract is above the Threshold, the Invitation to Tender must also be advertised on Find A Tender. Find A Tender adverts can only be placed by the Procurement Officer.
- 12.4 All invitations to tender must be in writing (but should be in electronic form for uploading onto the E-Procurement system and must include:
- the Council's Terms and Conditions of contract (approved by the Head of Legal and Democratic Services where required under Contract Standing Order 16);

- tender documents (as appropriate dependent upon the contract threshold);
- the contract specification;
- the criteria for evaluating the tenders which must be in order of their relative importance and include any weightings;
- the last date and time for receipt of tenders and advice that no tenders received after this date and time will be considered; and
- instruction that the tenders must be returned to the appropriate Contracting Officer via the E-Procurement System.

12.5 Where contracts are above the Threshold there are specific time limits that must be applied and the Procurement Officer, or Legal & Democratic Services can advise regarding these.

13. Two Stage Procedure

13.1 This procedure may only be used above the Threshold and is also known as the Restricted procedure

13.2 Notices inviting expressions of interest from contractors to apply for inclusion on a shortlist for the contract must be published on the Council's eProcurement System and advertised on Contracts Finder, and on Find A Tender. Find A Tender adverts can only be placed by the Procurement Officer At the Head of Service's discretion the opportunity can also be advertised in one or more appropriate technical journals published nationally or in the local press.

13.3 Notices in the Council's eProcurement System must include:

- a copy of the Selection Questionnaire tailored to this requirement;
- a copy of the Council's Terms and Conditions of contract (approved in accordance with Contract Standing Order 16);
- All procurement documents including the specification, evaluation criteria and tender documents;
- where and from whom to obtain further information; and
- the last date for receipt of expressions of interest.

13.5 Expressions of interest must be requested by a given date that must be realistic and in accordance with the specific minimum time limits that must be applied for contracts above the Threshold. The procurement officer, or Legal & Democratic Services can advise regarding these.

13.6 Expressions of interest must be accompanied by a fully completed Selection Questionnaire and must be submitted by suppliers using the E-Procurement System. .

13.7 A full record of the decision making process for applying the short listing criteria to the expressions of interests must be maintained by the Contracting Officer. This record must be signed by the Contracting Officer and retained for Audit and Legal purposes to ensure the fair selection of persons or bodies invited to quote or tender.

13.8 Invitations to tender for the contract must be sent to a minimum of 6 bodies from those who applied for permission to tender and which the Contracting Officers considers to be suitably qualified

or

where fewer than 6 applied, and are considered suitably qualified, all bodies that responded to that invitation shall be invited. Invitations should not be sent to only one such body without the specific approval in writing of the Head of Finance and Revenues and Head of Legal & Democratic Services.

13.9 All invitations to tender must be in writing and must include:

- tender documents (as appropriate dependent upon the contract threshold);
- the contract specification;
- the criteria for evaluating the tenders which must be in order of their relative importance and include any weightings;
- the last date for receipt of tenders; and
- instruction that the tenders must be returned via the E-Procurement System.

Guidance – Two Stage Procedure (Restricted Procedure)

A template Selection Questionnaire is available on the procurement section of the intranet. A standard ITT template is available on the procurement section of the intranet.

14. Competitive Procedure with Negotiation

14.1 This procedure may only be used above the Threshold and is similar to the Restricted Procedure but includes an option to negotiate with bidders after receipt of Tenders. Further information is available from the Procurement Officer.

14.2 In all cases, the Head of Service must obtain written approval from the Head of Finance and Revenues and the Head of Legal & Democratic Services and record in writing the reason for proposing the adoption of this procedure.

15. Competitive Dialogue Procedure

15.1 This procedure may be used for the letting of a contract where the contract is “particularly complex” and it is not possible to objectively define the:

- technical specification in terms of performance or functional requirements with sufficient precision; and/or
- legal or financial makeup of a project.

15.2 Notices inviting expressions of interest from contractors to apply for inclusion on a shortlist for the contract must be published on the Council’s eProcurement System and advertised on Contracts Finder, and on Find A Tender if above the threshold.

Find A Tender adverts can only be placed by the Councils Procurement Officer. At the Head of Service's discretion it can also be published in one or more appropriate technical journals published nationally or, in the local press.

- 15.3 Notices on the Council's E-Procurement System must include:
- a copy of the Selection Questionnaire tailored to this requirement;
 - All procurement documents including the specification, evaluation criteria and tender documents;
 - a copy of the Council's Terms and Conditions of contract;
 - where and from whom to obtain further information; and
 - the last date for receipt of expressions of interest.
- 15.4 The advert must include:
- the project needs and requirements;
 - an explanation that the competitive dialogue will take place in successive stages;
 - a time limit for replies; and
 - objective and non-discriminatory criteria that will be used to shortlist including any weightings to be applied.
- 15.5 In all cases, the Head of Service must obtain written approval from the Head of Finance and Revenues or the Head of Legal & Democratic Services and record in writing the reason for proposing the adoption of this procedure.
- 15.6 Interested parties may be excluded from taking part in the competitive dialogue if they fail to meet minimum standards on financial standing or technical or professional ability.
- 15.7 The minimum number invited to participate must not be less than the number specified in the contract advert which must not be less than 3.
- 15.8 Invitations to participate must be sent to each interested party accompanied by the contract documentation and the date for commencement of the competitive dialogue.
- 15.9 A dialogue should be commenced discussing all aspects of the contract with all participants and must ensure equality of treatment. Solutions proposed or confidential information communicated by a participant must not be revealed to the other participants without their **written** agreement. This dialogue should continue until one or more solutions have been identified.
- 15.10 Each participant must be informed that the dialogue has been concluded. Each participant must be requested to submit a final tender within a specified time limit based on the solution discussed during the dialogue.
- 15.11 Tenders shall be evaluated in accordance with Contract Standing Order 22 using the criteria specified in the advert.

15.12 The Participant providing the most economically advantageous tender (MEAT) may be requested to clarify aspects of the tender or confirm commitments contained in the tender provided this does not modify substantial aspects of the tender.

16. Form of Contract

16.1 The form of contract to be used must be determined before quotations or tenders are sought and either referred to or included in the quotation/tender documents.

16.2 Although it is preferable that the contract terms and conditions to be used are those put forward by the Council, there will be occasions when the use of the contractor's conditions will be required. In these circumstances the Contracting Officer shall either by himself or herself or by instructing Legal & Democratic Services amend the contractor's terms and conditions to ensure they are acceptable to the Council.

16.3 Where the contract is valued at £50,000 or above, terms and conditions must be approved by the Legal & Democratic Services and the Contracting Officer must consult with the procurement officer and agree a form of instruction to assist the Legal & Democratic Service in drafting a contract. Instructions should always allow sufficient time for the Legal & Democratic Service to prepare the contract.

Guidance – Form of Contract

1. *It is at this stage that the decision is to be taken as to the form of contract to be used.*
2. *For contracts valued below £20,000 the form of contract shall be a written official purchase order which refers to the contractor's quotation or written confirmation.*
3. *For contracts valued £20,000 and above whether a standard form of contract such as JCT or NEC or contract conditions drawn up by the Head of Legal & Democratic Services, these must be included in the tender documentation.*
4. *There may be occasions where it is appropriate to use contract forms such as PPC2000. If such a form is to be used this shall be agreed in advance by the Head of Finance and Revenues and the Head of Legal & Democratic Services.*
5. *A generic form of instruction is available on the procurement page of the intranet for your guidance.*

17. Partnerships and Partnering

17.1 Legislation prevents the Council from entering into a partnership as defined by the Partnership Act 1890 whereby the partnership is a body capable of entering into a contract itself. It is however a term used to describe many types of working relationships between the Council and other bodies.

- 17.2 Prior approval to establish a partnership must be obtained from Head of Legal & Democratic Services and/or Head of Finance and Revenues. A competitive process should be undertaken to select the partner/s in accordance with these Contract Standing Orders.
- 17.3 Any contract entered into in connection with a partnership or partnering arrangement will have to be entered into either by the Council or one of the other bodies involved in the arrangement and, depending on the circumstances, there may have to be a competitive process involved in the awarding of the contract. (see 17.10 below).
- 17.4 The Full Procurement Procedure may apply to contracts under partnerships and partnering arrangements (see 17.10 below).
- 17.5 If the Council is not the contracting party the Head of Service or Deputy Chief Executive must ensure, where this is required, that the Contracting Party's contract procedures comply with relevant legislation and are at least as robust as the Council's Contract Standing Orders. (see 17.10 below).
- 17.6 Where the Council is not the contracting body the Head of Service or Deputy Chief Executive may require assurance from the contracting body to demonstrate that the contract has been let as a Framework Agreement which can be used by the Council. A copy of the advert and, where applicable, the award notice should be obtained and retained for Audit and Legal purposes (see 17.10 below).
- 17.7 Legal & Democratic Services, the Procurement Officer or must be consulted before a contract is let so that the correct method of procurement is used.
- 17.8 All partnering contracts, whether entered into by the Council or one of the other bodies and where the Council's contribution is £50,000 or above, must be in a form approved by the Head of Legal & Democratic Services.
- 17.9 Where the partnering contract is an employment contract it is essential that the Human Resources Manager confirms that the contract meets all employment legislation requirements.
- 17.10 The only circumstances in 17.3, 17.4, 17.5 and 17.6 above where it will be appropriate for there to be no tendering process or compliance with the Full Procurement Procedure will be where the Council's partner has been appointed following a competitive process. These exceptions will not necessarily apply in all cases and the partner will, in any event, be expected to demonstrate value for money. In all cases the contracting officer must seek prior confirmation from the Head of Legal & Democratic Services and/or the Head of Finance and Revenues as to whether a tendering process or the Full Procurement Procedure applies to the partnership and/or partnering contract and/or procurement to be undertaken by the partnership
- 17.11 In the event that the Council's partner undertakes a tender process on behalf of the partnership:
 - a) the partner must apply these Contract Standing Orders unless the Head of Legal & Democratic Services and Head of Finance and Revenues approve an exception.

- b) where the contract is between the Council and a Contractor the award must be approved by the Contracting Officer
- c) where the contract is between the partner and a contractor the Contracting Officer must be consulted before award.
- d) Tenders should normally be submitted through the E-Procurement System or (for procurements valued at more than £5,000 but less than £20,000) in accordance with Contract Standing Order 19. With the prior approval of the Head of Legal and Democratic Services, the partner may operate an alternative tender receipt/opening process (e.g. use of the partner's own e-tendering system, or submission of sealed tenders). In such cases, a full report on the outcome of the opening procedure and confirmation that no tenders were opened before the specified date and time for receipt must be sent to the Contracting Officer following the tender opening.

Guidance - Partnerships and Partnering

The term 'partnership' is used loosely across the Council to describe many types of working relationships between the Council as service provider and other bodies, external to the Council.

There are a number of reasons for local authorities exploring the possibility of partnerships:

- *to share risk;*
- *to access new resources and specialist skills; or*
- *to review service delivery options.*

The Council's partner may be:

- *a voluntary organisation;*
- *a community enterprise/trust;*
- *a private contractor/developer;*
- *another public sector body;*
- *a local authority company;*

There are a variety of structures for a partnership arrangement:

- *contractually based (not PFI);*
- *joint ventures;*
- *not-for-profit joint entity (e.g. trust);*
- *PFI; and*
- *strategically co-ordinated services.*

However, the main point to remember is that intending to enter into a partnership arrangement does not automatically preclude the need for a competitive process at the outset, to actually choose the partner and the initial organisational and administrative arrangements. Indeed, many strategic partnership arrangements will exceed Threshold, and will therefore

automatically be subject to a Restricted, Open, Competitive Dialogue or Competitive Procedure with Negotiation in accordance with the Regulations. Similarly, other seemingly small value partnerships will extend over a large number of years in order to reap the benefits of the partnership approach, and will again be subject to the full Procurement Procedure. Even where the Threshold is not reached, a competitive process should be undertaken, in order to demonstrate probity in the choice of partner. However where the other party is another Local Authority this is unlikely to be relevant.

It will also be necessary to determine the identity of the contracting body where goods, services or works are being procured as the 'partnership' itself may not be a legal entity that is able to contract. The contracting party is likely to be one of the 'partners' or, in some occasions, all 'partners'.

Where the Council's partner has been appointed following a competitive procedure it may not always be necessary for subsequent contracts during the 'partnership' or for procurement undertaken by the partner to be subject to competitive tender or the Full Procurement Process. Contracting officers must always seek prior confirmation from the Head of Legal & Democratic Services and/or the Head of Finance & Revenues of the position.

18. Shared Services

- 18.1 This expression covers those arrangements where the Council enters into an arrangement with one or more other local authorities for the joint provision of part or the whole of a Council service.
- 18.2 The arrangement will take one of the following forms:
- a) the staff performing the service the subject of the agreement being employed by one of the councils concerned and an agreement with the other council(s) for the provision of the service by the employing council on terms agreed between the councils engaged in the shared service; or
 - b) the Head of Service or other senior manager only being employed by one of the councils concerned but managing staff employed by the councils engaged in the shared service; or
 - c) an agreement between one or more councils whereby staff within the specified service(s) work together on terms agreed between the councils engaged in the shared service.
- 18.3 The Contracting Officer must consult with the Head of Legal & Democratic Services so the best method of procurement is used in the event that the shared service wishes to procure a contract with a third party.
- 18.4 Where the Head of Legal & Democratic Services advises that a procurement exercise is required these Contract Standing Orders must be followed.
- 18.5 As a rule, shared services are not procurement contracts and can be established pursuant to provisions in the Local Government Act 1972, the Local Government Act 2000 and regulations made thereunder.

- 18.6 Special arrangements exist in respect of IT procurement as set out in the 'MEMORANDUM OF UNDERSTANDING between TEST VALLEY BOROUGH COUNCIL and WINCHESTER CITY COUNCIL for a SHARED INFORMATION TECHNOLOGY SERVICE'. The procurement of any new computer software or hardware for use by the Shared IT Service shall require the agreement of both the Authorities. The Shared Service Project Board shall agree which Authority will be the procuring Authority. Procurement of third party services and/or goods (including computer software), for the purposes of the Shared IT Service, shall be in accordance with the Contract Standing Orders of the procuring Authority.

Shared Services

The expression shared services encompasses a variety of different arrangements and can involve two or more councils.

Advice must be sought from the Head of Legal & Democratic Services at the outset to determine whether the proposed shared service can be effected under this legislation or should be the subject of a procurement exercise.

19. Receipt of Quotations valued at £5,000 or above but below £20,000.

- 19.1 Procurements between £5,000 and £20,000 must be undertaken either using the E-Procurement System in accordance with Contract Standing Order 20 or under this Contract Standing Order, which applies only where the E-Procurement system has not been used. Every quotation must be received and retained by the contracting Officer, unopened, until the time and date stated in the invitation to quote or tender.
- 19.2 The date and time of receipt must be written on the outside of the quotation by the Officer who first receives it, together with his/her initials.

Guidance – receipt of quotations

The Contracting Service should make clear in the advert/invitation to quote to whom the quotation should be returned, which should be the contracting Head of Service.

The Contracting Officer must ensure that either envelopes are provided with invitations to quote and clearly marked "Quotation for (contract title)" or instruction is given in the advert/invitation to quote that envelopes are to be marked "Quotation/ for (Contract Title)".

The Contracting Officer should instruct post opening staff not to open envelopes clearly marked "Quotation" and to record the date, time and their initials on the unopened envelope

An officer should be authorised to receive the quotations from post opening staff, to maintain a record and keep unopened quotations in safe custody until the time for opening.

20 Receipt and opening of Quotations and Tenders via the eProcurement System.

- 20.1 The eProcurement System's functionality prevents any access to submitted quotations/tenders (including access by the system administrators) until the date and time set for opening has passed. Every quotation or tender within the eProcurement System will therefore remain unopened, until the specified time and date.
- 20.2 The date and time of receipt of each quotation/tender will be recorded by the eProcurement System.
- 20.3 For all tenders submitted via the eProcurement System, the Contracting Officer shall be an officer within the contracting service who has been appointed for this purpose by the Head of Service.
- 20.4 Where a tenderer seeks to submit a tender after the deadline, and provides details of why it was unable to submit the tender before the deadline, the System Administrator shall:-
- a) ensure that other tenders received for that procurement are not opened until a decision on eligibility has been taken; and
 - b) report the full circumstances to the Head of Finance and Revenues and Legal and Democratic Services. Taking such report into account, the Head of Legal and Democratic Services, in consultation with the Head of Finance and Revenues, may determine that the tender be accepted after the deadline and evaluated. A record detailing the reasons for any such decision shall be kept.
- 20.5 All tenders received via the eProcurement system will be opened at the same time by a System Administrator after the tender deadline. The tender documents will then be downloaded and forwarded to the Contracting Officer, together with a Tender Opening Sheet completed by the System Administrator who opened the tenders, confirming the tender sum recorded against each tender. The Tender Opening Sheet shall also be sent to the Head of Internal Audit.
- 20.6 The System Administrator will ensure that reports are available from the eProcurement System if required..

Guidance – receipt of quotations and tenders

Use of the E-Procurement System ensures that tenders cannot be opened before the specified tender deadline, and provides a clear audit trail of the receipt/opening process.

The System will not allow the submission of "Late" tenders after the specified deadline, but in case of a technical issue with the System or fault on the part of the Council preventing a valid tender submission, 20.4 provides a procedure to consider and assess the full circumstances where a tenderer is unable to

submit before the deadline and (where appropriate) permits late submission and consideration of such a tender.

Where a tenderer states that they have been unable to submit in time, opening of the other tenders should be suspended to allow the process in 20.4 to be undertaken.

21. Errors and Discrepancies

- 21.1 As a minimum requirement, the three lowest priced tenders are to be examined for any arithmetical omission, error or discrepancy by the Contracting Officer.
- 21.2 The documents for all tenders that are based on, or supported by, a Schedule of Rates, Bill of Quantities or other pricing document shall indicate how arithmetical and other errors are to be dealt with.
- 21.3 The methods for dealing with errors in the tender documents must be determined at the time the tender documents are drawn up, and included in the documentation sent out to tenderers. All tenders should be checked for arithmetical accuracy.
- 21.4 Errors are to be dealt with as follows:
- Confirm the tender price as submitted, including errors or amend to correct these errors;
 - The tenderer to be given written details of the errors and discrepancies and given the opportunity to confirm their offer or amend to correct genuine errors/omissions; and
 - If the tenderer amends the tender to correct genuine errors/omissions, the tender sum should be revised (corrected). This can involve amendment of rates.

All amendments or confirmation of offer must be confirmed in writing by the contractor.

- 21.5 The procedure must be seen to be fair and equitable to all tenderers. The materiality of the error also needs to be assessed – if the stance taken by the tenderer when the error is pointed out is such that it casts doubt on his ability to perform the contract for that price, the decision to award at that price should be taken only after careful consideration of the facts, and seeking of further advice where necessary.

22. Evaluation of Tenders and Quotations

- 22.1 A minimum of 2 officers nominated by the Head of Service should evaluate the tenders. Where the contract sum is £100k or above the Head of Service must either be one of the team evaluating the tenders or must approve an evaluation report produced by the evaluation team.
- 22.2 The criteria for evaluating each tender or quotation must be notified to all tenderers as part of the contract documentation. Where the criteria include non-financial

matters as well as price, these must be formulated and prioritised clearly in the invitation to tender, together with any sub criteria and weightings.

- 22.3 All criteria and sub criteria used must be capable of objective assessment.
- 22.4 An evaluation model should be used to apply the evaluation criteria in order to identify the most economically advantageous tender for the Council. A full record of the decision making process should be recorded and filed. The evaluation model should be signed by the lead officer and one other officer from the contracting Service or where Members are involved by the lead officer and lead Member.
- 22.5 Submission documentation including costings must be retained for each tender involved in the evaluation for the duration of the contract plus one financial year for Audit and Legal purposes.

Guidance - Tender Evaluation

Tender evaluation is the process by which the Council decides which quotation or tender offers the best value for money for the Council, i.e. which is the most economically advantageous. For lower value contracts, the decision may be based on price alone, but for more complex and higher value contracts, the bids may be evaluated in terms of:

- a) Financial aspects;*
- b) Quality aspects; and*
- c) Other aspects such as sustainability.*

The criteria on which tenders will be evaluated and the method of evaluation (the tender evaluation model) must be set out in the tender documentation. An example Evaluation Model is available on the procurement section of the intranet.

23. Award of Contracts

- 23.1 Before awarding any contract, the contracting officer must ensure that an adequate approved budget is available to meet the cost. Where the quotation/tender proposed for acceptance exceeds the approved budget, there are a number of options available as set out in the Council's Financial Procedure Rules. The most common means of financing a budget shortfall is to identify savings elsewhere in the Service budgets and seek approval for a virement. If no spare financial capacity can be identified, it may be necessary to seek Cabinet approval for a supplementary estimate.
- 23.2 In the case of Capital Schemes, a tolerance of 10% of the project cost is built into the Capital Investment Programme and no further approval is necessary (unless the additional costs are over £100,000). If, however, quotations/tenders are more than 10% of the approved scheme budget and no virement opportunities exist, **prior** approval to proceed must be obtained from Cabinet even if this delays the project.

24. Award of Contracts below £20,000

- 24.1 Every contract shall be awarded to the contractor submitting the Best Value for money tender on the basis of the evaluation criteria.
- 24.2 Subject to 23.1 and 23.2 above, quotations/tenders may be accepted in writing by the Head of Service who must use the Standard Letter (Acceptance of Quotation/Tender).
- 24.3 Contractors submitting unsuccessful quotations or tenders shall be notified and the Standard Letter (Rejection of Quotation/Tender) must be used.
- 24.4 Where the contract value exceeds £5,000 and once the contract documentation has been completed details shall be entered into the Corporate Contracts Register. Where the Council's e_Procurement System was used to administer the quotation/tender process, this will be undertaken by the System Administrator. In all other cases, the Contracting Officer shall complete the eform on the procurement section of the intranet.

25. Award of Contracts £20,000 and above

- 25.1 Every contract shall be awarded to the contractor submitting the best value for money tender on the basis of the evaluation criteria.
- 25.3 Subject to 23.1 and 23.2 above, quotations/tenders may be accepted in writing by the Head of Service who must use the Standard Letter (Acceptance of Quotation/Tender). The award letter will be submitted through messaging on the E-Procurement System.
- 25.4 Contractors submitting unsuccessful quotations or tenders shall be notified and the Standard Letter (Rejection of Quotation/Tender) must be used. The award letter will be submitted through messaging on the E-Procurement System.
- 25.5 Where the contract exceeds the Threshold the Council is required by law to allow a period of at least ten (10) days to elapse between the date of despatch of the notice referred to in 25.4 above and the date on which the contract commences.
- 25.6 Once the contract documentation has been completed details shall be entered into the Corporate Contracts Register by the Procurement Officer via the Council's E-Procurement System.
- 25.7 Where the contract value exceeds £25,000 and once the contract documentation has been completed details shall be recorded by the Procurement Officer on Contracts Finder via the Council's E-Procurement system.
- 25.8 Where the contract value exceeds the Threshold and once the contract documentation has been completed details shall also be recorded on Find A Tender by the Procurement Officer via the Council's E-Procurement System

Guidance Note - Award of Contracts

Where the contract sum exceeds the Threshold the successful tenderer must be informed that the contract cannot commence until the expiration of 10 days from the notification of the award (this presupposes that electronic notification of the outcome is sent to all tenderers on the same day).

10 days must elapse between the sending of the notification to unsuccessful tenderers to ask for additional information to challenge the award. There are strict time limits for this and if additional information is sought the Contracting Officer should check with, the procurement officer or the Head of Legal & Democratic Services for these.

26. Contents of Contracts

- 26.1 All contracts must be in writing and those that are £50,000 and above in value and in any other case where the Head of Legal & Democratic Services so decides, shall be in a form approved by the Head of Legal & Democratic Services.
- 26.2 Where the appropriate Head of Service is satisfied that works must be executed, or supplies or services obtained as a matter of urgency prior to the execution of the contract, the procurement may commence provided that:
- the Head of Service has consulted with the Head of Finance and Revenues and the Head of Legal & Democratic Services and approval has been given;
 - an official order has been placed for the pre-contract element of the procurement; and
 - a written Contract is executed as soon as practicable thereafter.
- 26.3 In the case of the purchase or sale of goods by auction where a written contract is not appropriate the Head of Service must be satisfied that the best price has been obtained.
- 26.4 Every Contract of £100,000 and above in value, and in any other case where the Head of Legal & Democratic Services so decides, shall be under seal, unless the Head of Legal & Democratic Services or Director approves the use of an official order, such as a Call Off under a Framework Agreement.
- 26.5 Every Contract shall specify:
- a) the work, supplies or services to be undertaken or supplied;
 - b) the price to be paid with a statement of discounts or other deductions;
 - c) the time or times within which the Contract is to be performed and, where appropriate, the amount of liquidated damages which may otherwise become due;
 - d) insurance provisions ; and
 - e) the conditions of the Contract.
- 26.6 Every Contract in writing not made under seal shall be signed by the appropriate Head of Service and Contracting Officer (or where the Head of Service is the Contracting Officer – the Head of Legal & Democratic Services or Head of Finance and Revenues) in accordance with the limits defined in the list of authorised signatories.

Performance Guarantees

26.7 Where appropriate the Council shall require the Contracting Body to give sufficient security for the due performance of the contract. This can be

- a) a performance bond in the following sums

<u>Contract Value</u>	<u>Amount of Security</u>
£100,000 to £1,000,000	10%
Over £1,000,000	the higher of £100,000 and 5%

(all figures inclusive of VAT)

or

- b) a retention until expiry of the defects liability in such sum as shall be agreed in writing between the Contracting Officer and the Head of Finance and Revenues

26.8 If a performance bond is required to be provided the Authorised Officer shall arrange through the Head of Finance and Revenues for the financial status of the bondsman to be investigated.

26.9 The Head of Finance and Revenues may determine that for contracts where the Council will not or is unlikely to suffer loss or that any loss will be small such as those for:

- (a) maintenance; or
- (b) the supply of goods paid for upon invoice following delivery; or
- (c) services paid in arrears

that no performance bond or retention is required. The Head of Finance and Revenues may advise contracting officers on request.

Usual Clauses

26.10 Liquidated Damages

Where a Contract is for the execution of works, the provision of services or supplies by a particular date or series of dates, the appropriate Head of Service shall determine whether it should contain provision for liquidated damages.

26.11 Insurances

- (a) Where the Council is procuring works or services evidence of public liability insurance must be provided by the contractor and maintained throughout the period of the contract.
- (b) The value of Public Liability Insurance must not be less than £10,000,000 or such other sum as the Head of Finance and Revenues may advise.
- (a) Where the contractor is providing a professional service the Head of Finance and Revenues should be consulted to establish if Professional Indemnity insurance is appropriate and the sum to be required.

- (d) Where the contract extends beyond the expiry date of current insurances the Contracting Officers shall ensure that copies of renewal certificates are obtained and examined.

26.12 Construction Industry Tax Certificates

The Contracting Officer shall, where it is a lawful requirement, ensure that the contractor has produced for inspection a current Tax Certificate in respect of the contractor and any sub-contractors and a copy provided to the Head of Finance and Revenues.

Contract Clauses (all contracts)

26.13 Non-assignment or transfer of contract

Every written Contract shall include a clause to prevent the Contractor from transferring or assigning the Contract either directly or indirectly, without the written consent of the Council and to prevent the sub-letting of the Contract except to the extent permitted in writing by the appropriate Head of Service.

26.14 Prevention of Corruption

Every written Contract shall include a clause to secure that the Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if, in connection with the Contract, the contractor or an officer or employee of the contractor commits or, after commencement of the contract, it becomes known that prior to the commencement the contractor or an officer or employee of the contractor committed an offence under the Bribery Act 2010 or gives any fee or reward the receipt of which is an offence under s.19(2) of the 1972 Act, or has directly or indirectly canvassed any member or officer, or has obtained or attempted to obtain information concerning any other tender or otherwise acts in a similar unlawful manner.

26.15 Termination Provisions

Every written Contract shall include a clause to secure that, should the contractor fail to carry out the works, provide the services or deliver the supplies or any part thereof within the time specified in the Contract, the Council, without prejudice to any other remedy available, shall be at liberty to terminate the Contract either wholly or to the extent of such default and execute the works, procure the services or purchase other supplies to make good such default, or in the event of the Contract being wholly terminated, the remainder of the works to be executed, services to be provided or the supplies remaining to be delivered. Such clause shall further secure that the amount by which the cost of so executing the works, so procuring the services or so purchasing other supplies exceeds the amount which would have been payable to the contractor in respect of the works, services or supplies shall be recoverable from the contractor.

Specific Conditions

- 26.16 Where appropriate, every contract must provide for compliance with all relevant legislation including:
 - a) The European Convention on Human Rights
 - b) Equalities and Disabilities

- c) Health and Safety at Work – the Contractor must comply with the Council's policy which can be found on the Intranet
 - d) Data Protection
 - e) Freedom of Information
 - f) Employment legislation, including TUPE where applicable.
- 26.17 Every contract must provide for information to be reasonably requested by the Council and provided by the supplier in relevant cases regarding:
- a) Equalities and Disabilities Matters
 - b) Best Value
 - c) Transfer of Undertakings and Protection of Employment
 - d) Open book accounting
 - e) Safeguarding

Standards

- 26.18 All goods, materials and workmanship must be specified by reference to any relevant European or International Specification or Standard or, if there are none, to any relevant British Specification or Standard.
- 26.19 Goods and materials shall not be specified by reference to a particular make, source or process which has the effect of favouring or eliminating particular contractors or suppliers, except when this is unavoidable because of the subject matter of the contract or the absence of relevant specifications or standards. When goods and materials are so specified, the contract shall permit the successful contractor to propose suitable alternatives.

27. Specific Contracts

Consultants

- 27.1 The Contracting Officer shall ensure that it is a condition of the engagement of a consultant that they are required to comply with these Contract Standing Orders and shall provide the consultant with a copy of these Contract Standing Orders.
- 27.2 Where the contract value is £20,000 or above a Head of Service or Deputy Chief Executive should approve the appointment of a consultant.
- 27.3 One off consultancy projects shall be managed in accordance with the Council's Project Management Methodology where applicable. The Head of Strategy and Innovation can advise on the need to follow the Methodology.
- 27.4 Where consultants are employed on a regular or ongoing basis the Estimated Contract Value should be calculated and these Contract Standing Orders applied accordingly.
- 27.5 The consultant should on request produce all records maintained by him in relation to the contract and on completion of the contract transmit all such records to the Contracting Officer.
- 27.6 In the event that the consultant is instructed to undertake a tender process:

- a) the consultant must apply these Contract Standing Orders unless the Head of Legal & Democratic Services and Head of Finance and Revenues approve an exception.
- b) where the contract is between the Council and a Contractor the award must be approved by the Contracting Officer
- c) where the contract is between the consultant and a contractor the Contracting Officer must be consulted before award.
- d) tenders should normally be submitted through the E-Procurement System or (for procurements valued at less than £20,000) in accordance with Contract Standing Order 19. With the prior approval of the Head of Legal and Democratic Services, the consultant may operate an alternative tender receipt/opening process (e.g. use of the consultant's own e-tendering system, or submission of sealed tenders). In such cases, a full report on the outcome of the opening procedure and confirmation that no tenders were opened before the specified date and time for receipt / no late tenders were accepted must be sent to the Contracting Officer following the tender opening.

27.7 The contract should be awarded on the basis of who best meets the brief in terms of cost/quality criteria.

27.8 Where a consultant is involved in the design stage of a project neither the consultant nor an associated company or business can enter any subsequent expression of interest to bid for the work without an independent assessment having been undertaken and the prior written consent of the Head of Finance and Revenues and the Head of Legal & Democratic Services is given. This is to ensure transparency and fairness of opportunity is maintained.

IT

27.9 All contracts for computer hardware or software or for any services or works in relation to Information Technology shall be procured in consultation with the Head of Information Technology.

Leasing Agreements

27.10 All lease agreements shall be arranged through the Head of Finance and Revenues save that this clause does not apply to those leases that are delegated to the Head of Property and Asset Management under the Council's Officer Delegation Scheme.

Contracts linked with Leases or Licences of Property

27.11 There will be occasions where the Council is entering into a contract that is linked with the granting of a lease or licence of Council property to the contractors. At the start of the process for such contracts the Contracting Officer must consult with the Head of Property and Asset Management and the Head of Legal & Democratic Services to ensure that:

- a) all payments or payments in kind, e.g. rental reduction to the contractor, are taken into account when valuing the contract, and

- b) the termination provisions for both the contract and the property transaction coincide.

28. Contract Monitoring & Evaluation

28.1 During the life of the contract the Contracting Officer must monitor in respect of

- performance
- compliance with specification and contract
- cost
- any Best Value requirements
- user satisfaction and risk management

28.2 This provision applies to all contracts but the level of monitoring will depend on the type and value of the contract.

Guidance - Contract Monitoring and Evaluation

The methods by which contract monitoring will be undertaken should be included in the contract documentation as performance monitoring clauses and the link to the specification must be clear

- a) *Decide on the most **appropriate method(s)** for monitoring performance. These include:*
- i) *Continuous/ Close/ Direct*
 - *particularly important at the beginning of the service, especially if it is an unusual type of outsourcing*
 - *labour intensive*
 - *can upset relationships.*
 - ii) *Scheduled arranged in advance according to :*
 - *Client's schedule*
 - *Contractor's schedule – joint inspection.*
 - iii) *Random/Sample Basis*
 - *must be based on planned sample basis*
 - *encourages contractor to maintain consistent standards*
 - iv) *Exception*
 - *based on reports received from contractor.*
 - v) *Self monitoring*
 - *Any monitoring method should try to avoid duplication of contractor's work and responsibilities.*

b) **The Performance Standards**

Where it is possible to determine the critical functions that the contractor is to perform and what counts as satisfactory or

unsatisfactory performance these should be defined in objective and measurable terms and included in the contract.

Where this is not possible, performance monitoring will have a more generalised effect. It will be based on client/contractor liaison, and dependent on the pre-existence of a good relationship between the client and the contractor and upon the contractor being able, within its own skills base and within the contract price, to deliver a highly professional service/works.

c) **Performance Monitoring Procedures**

Their complexity depends on the nature and importance of the service/works. A simple (“do it again”) approach may be adequate. Alternatively, the Council may want specific procedures to allow it to adjust the price or issue a written instruction to the contractor. There may be a system for the issue of default notices (for which a charge may be imposed to reflect the administrative costs of investigation and issue), with more than a certain number leading to termination.

A more sophisticated approach may be needed for long-term professional-type services. In that case, simpler procedures based on default notices leading to termination may not be appropriate given the nature and length of the likely relationship. As an alternative, the Council may prefer escalation procedures with a series of steps providing, for example, for the issue of a preliminary letter, agreement of an action plan and an advanced action plan, with only then notice of intention to cease instructions and possible termination of the contract. This approach to managing performance implies a long term, partnership-type approach to the services – and so would not be suitable for managing a contractor delivering routine services on an aggressively priced bid.

d) *The point at which poor performance leads to **Termination**.*

What is the client’s strategy to control the move from monitoring and improvement to termination?

29. Variations

29.1 Subject to the provisions of the contract and in consultation with the Head of Legal & Democratic Services and Head of Finance and Revenues where appropriate, every variation order shall be authorised in writing by the Contracting Officer. All such variation orders must be agreed prior to the work being carried out but, in exceptional circumstances, should be issued as soon as possible thereafter.

29.2 All capital contracts must include a contingency sum to allow for variations. Variation Orders may be issued as long as they can be met from:

- a) the contingency allowed within the budget or,

19.3 where prior approval has been obtained in writing from the Head of Finance and Revenues, from another source within the Capital Programme. Where the additional cost cannot be met from an existing source of funding, or the Head of Finance and Revenues considers it to be a material change to an existing scheme then a report to the Cabinet shall be submitted by the Contracting Officer requesting additional funds.

30. Payments to contractors

30.1 The contracting officer must monitor instalment payments to contractors against the contract terms.

30.2 Payments to contractors in respect of works contracts made under seal shall only be made on a contract certificate signed by the Contracting Officer. The form of such certificate shall be agreed by the Head of Finance and Revenues.

30.3 Upon issue of the final certificate the Contracting Officer shall request the Head of Legal & Democratic Services to release the bond or other security. The Head of Legal & Democratic shall determine if it is in order for the bond to be released and shall inform the contracting service accordingly.

31. Project Management

31.1 Whatever the size of the contract to be let the Authorising Officer must seek advice from the Head of Strategy and Innovation to determine whether the Council's Project Management Methodology applies.

31.2 Where the contract is to be managed in accordance with the Project Management Methodology the steps and processes required shall be followed.

32. Retention of Documentation

32.1 All Contracts together with the documentation prepared as a result of applying these Contract Standing Orders must be securely retained for the duration of contract and in accordance with statutory retention timescales. Provided that all the documentation is scanned and a certificate of scanning (in a form approved by the Head of Legal & Democratic Services) is signed by the person undertaking it this requirement can be satisfied by retaining the scanned copies in an archive designated by the Council's IT Service.

32.2 All contracts bearing the common seal of the Council must be retained in the strong room.

32.3 Where the procurement takes place under a Framework Agreement advice must be sought from the Head of Legal & Democratic Services as to the documentation to be retained.

32.4 All documents, including unsuccessful tenders and quotations, should be retained as per the Council's Document Retention Schedule.

33. Amendments to these Contract Standing Orders

33.1 The Head of Legal & Democratic Services shall have the power to make technical amendments from time to time to make these Standing Orders consistent with legal

requirements, changes in Council structures and personnel and best practice after consultation with the Head of Finance and Revenues.