

Part 4

Contract Standing Orders

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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 & Revenues shall update the Definitions & Explanations as required from time to time.

PROCUREMENT ACT 2023

The Procurement Act 2023 is in force from 28 October 2024, and replaces the Public Contracts Regulations 2015. These Contract Standing Orders were amended to reflect the 2023 Act (and regulations made under the Act), which will apply to all procurements commencing after that date (other than where a Framework is used and the agreement was entered into prior to 28 October 2024).

FLOWCHARTS, CHECKLISTS, GUIDANCE AND FORMS

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

DEFINITIONS & EXPLANATIONS

Act	The Procurement Act 2023 and any regulations and other secondary legislation made under the Procurement Act 2023.
Award Procedure	The procedure for awarding a contract as specified in Contract Standing Order 15.
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.
Central Digital Platform	The Government’s website where procurement opportunities and contract awards are advertised in accordance with the Act and the Local Government Transparency Code.
Competitive Flexible Procedure	A competitive tendering procedure in accordance with the Act which is approved by the Council for the procurement. The Two Stage procedure set out in these Contract Standing Orders is deemed to be approved by the Council for this purpose, but where a Contracting Officer wishes to use a different procurement process, approval by full Council, Cabinet or under delegated authority must be obtained.

Contract agreement	A written document or deed incorporating the contract. In the case of procurement below £30,000, this is made by obtaining a written quotation followed by the placing of an official order.
Contract Officer	The officer responsible for the procurement and management of the contract, who should be either the relevant Head of Service or an officer designated by the relevant Head of Service.
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 £10,000 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 allows uploading of notices and invitations to quote/tender, tender documents and contract award notices. This allows the Council to comply with its requirement to communicate electronically with bidders. This must be used for all procurements above £30,000 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> <ul style="list-style-type: none"> (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; (b) for feasibility studies: the value of the scheme or contracts which may be awarded as a result; (c) 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; (d) 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>(e) 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.</p> <p>(f) 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> <p>(g) in the event that no contract term is ascertainable and it is intended to be a 'rolling' contract, then its value is to be taken as the applicable Threshold value.</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 15).
Framework	<p>A 'Framework' 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.</p> <p>A Framework 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
Guidance	Any guidance issued by the Head of Finance & Revenues in respect of procurement by the Council.
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 (also 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).
Selection Questionnaire	A template document that is used to shortlist bidders as part of a Competitive Flexible Procedure. 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 Feedback Document (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 and from the Procurement Officer.
Standard Feedback Document (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 and from the Procurement Officer.
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(s) in the Finance & Revenues Service authorised by the Head of Finance & 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 Schedule 1 of the Procurement Act 2023(as amended from time to time).
Two Stage Tender 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

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 the Act, any statutory guidance, any guidance issued by the Head of Finance & Revenues, 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 Act 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 Act 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.

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 the Act or any other 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 maintains a list of authorised signatories (Contracting Officers) for all Service areas.**3. Pre Contract Checks**

3.1 Prior to commencing a procurement of £30,000 and over the appropriate Contracting Officer must take any necessary advice and also consult with the Procurement Officer to determine the most appropriate procurement process to be used (including whether the use of a framework would be appropriate). A written record of relevant pre-procurement issues must be maintained, as outlined in the guidance published by the Head of Finance & Revenues.

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 ongoing costs such as licensing or 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 (either through the Scheme of Delegation or by an express approval by Cabinet or Council as appropriate);
 - (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) guidance on obtaining value for money has been complied with; 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 (save where the Head of Finance & Revenues requires checks to be undertaken).
- 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.
- 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.
- 4. Frameworks**
- 4.1 Before commencing the procurement process the Contracting Officer should first check if there is a framework 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 he/she must:
- check that the full requirements of the procurement are within the scope of the Framework, and that the Framework remains in force;
 - check and follow the rules that apply to the Agreement, e.g. whether a competitive selection process 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 competitive selection process is not required when:
The Framework has one Supplier
or
The terms of the Framework can be applied to allow the Contracting Officer to determine the successful Supplier.
- 4.4 Where a Framework has only one supplier or allows a direct award, the Contracting Officer must undertake reasonable action to ensure that the value of the contract represents value for money and that more effective contract value could not have been achieved through a competitive process.
- 4.5 Where the Framework requires a competitive selection process the Contracting Officer must:
- invite all Suppliers from the Framework that are capable of supplying the Council's requirements; or
 - invite all Suppliers from the Framework if it is unclear which are capable of supplying the Council's requirements.
- 4.6 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.
- 4.7 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.
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. 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 & 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.

- 5.2 An exemption report will not be necessary for contracts let for emergency works which were not reasonably foreseeable and which must be addressed within 48 hours of the need arising.
- 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 Act 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 Act.
- 6.3 Contracting Officers must ensure that either the Estimated Contract Value can be properly determined (either because the procurement and the maximum price payable is clearly ascertainable, or the maximum duration of the contract (with any permitted extensions) is clearly defined in the procurement documents).

7. Selection of Procurement Process

- 7.1 The table below sets out the requirements and process to be followed for all procurements, according to the Estimated Contract Value.

Estimated Contract Value	Below £10,000	Between £10,000 and less than £30,000	Between £30,000 and less than £50,000	Between £50,000 and less than £100,000	£100,000 and above	Above Threshold
Minimum number of written quotes required to be sought	1	2	3	Not applicable – procurement must be advertised	Not applicable – procurement must be advertised	Not applicable (tender process and public advert)
Procurement Officer to be	N	N	Y	Y	Y	Y

ANNEX

Estimated Contract Value	Below £10,000	Between £10,000 and less than £30,000	Between £30,000 and less than £50,000	Between £50,000 and less than £100,000	£100,000 and above	Above Threshold
contacted ahead of procurement commencing						
Use of e-procurement system required.	N	N	Y	Y	Y	Y
Legal to confirm contract terms and conditions	N	N	N	Y	Y	Y
Advertising required?	N	N	N	Y	Y	Y
Contract to be under seal	N	N	N	N	Y	Y

8. General Requirements

- 8.1 Save where permitted by Guidance, Contract Officers shall ensure that best value in terms of economy, efficiency and effectiveness is obtained.
- 8.2 All requirements of the Council's Financial Procedure Rules relating to the use of official purchase orders must be complied with. Official purchase orders must refer back to the quotation, tender or contract as appropriate, and must be approved by an officer authorised in accordance with 2.3 above.
- 8.3 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.
- 8.4 A Framework may be used as an alternative to seeking quotations or tenders, provided that the Procurement Officer approves the use of the Framework for the particular procurement.
- 8.5 Timescales for submitting quotations or tenders shall be such that all suppliers 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 & Revenues.

8.6 Criteria for evaluating quotations or tenders (and shortlisting suppliers where the Two Stage Tender Procedure is to be used) must be determined in advance of invitation, and notified to suppliers (either through any public notice or quotation/tender documentation), in order of importance. A record of the decision making process must be recorded in the file.

9. Invitation of Tenders

9.1 Where tenders are to be sought, one of the following procedures should be used:-

- One Stage Tender procedure (open tender);
- Two Stage Tender Procedure (restricted tender);
- An alternative form of Competitive Flexible Procedure approved by the Council.

9.2 Where the One Stage Procedure is used, all tenders received must be evaluated.

9.3 Where the Two Stage Procedure is used, the first stage (shortlisting/selection of tenderers) must be carried out through a selection questionnaire tailored to the procurement being undertaken. Suppliers to be invited to tender must be selected by applying the pre-determined criteria for this assessment, and (save with the approval of the Head of Finance and Revenues and Head of Legal & Democratic Services) invitations to tender must be sent to not less than 3 suppliers selected through this selection process.

9.4 A full record of the decision making process for selection (Two Stage Process) and evaluating tenders (One Stage and Two Stage Processes) 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.

9.5 All invitations to tender (and all invitations to express an interest under the Two Stage Procedure) must be in writing and 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 & Democratic Services where required under Contract Standing Orders 7 and 10);
- tender documents (as appropriate dependent upon the contract threshold);
- the contract specification;
- the criteria for evaluating the tenders (and selecting suppliers to be invited to tender – Two Stage Procedure) which must be in order of their relative importance and include any weightings;
- the last date and time for receipt of tenders (or submission of selection questionnaires for Two Stage Procedure) and advice that no tenders (or selection questionnaires) 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.

10. Form of Contract

- 10.1 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.
- 10.2 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.
- 10.3 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.

11. Receipt of Quotations by Email valued at £10,000 or above but below £30,000.

- 11.1 Procurements between £10,000 and £30,000 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.
- 11.2 Where the Contracting Officer considers that it is unlikely that a sufficient number competitive quotes will be obtained using the E-Procurement System, quotations may be sought and/or received using email, provided the following requirements are complied with:-
- Emails seeking quotes are sent to suppliers at the same time;
 - A clear return date/time for submitting quotes is specified;
 - All suppliers from whom quotes are sought must be given the same information;
 - The Contracting Officer must retain adequate records to demonstrate that all suppliers have been treated fairly and equally throughout the process, including copies of all emails sent and received.

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

- 12.1 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.
- 12.2 The date and time of receipt of each quotation/tender will be recorded by the eProcurement System.
- 12.3 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.

- 12.4 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 Heads of Finance & Revenues and Legal & Democratic Services. Taking such report into account, the Head of Legal & Democratic Services, in consultation with the Head of Finance & 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.
- 12.5 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.
- 12.6 The System Administrator will ensure that reports are available from the eProcurement System if required.

13. Errors and Discrepancies

- 13.1 As a minimum requirement, the three lowest priced tenders are to be examined for any arithmetical omission, error or discrepancy by the Contracting Officer.
- 13.2 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.
- 13.3 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.
- 13.4 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.

- 13.5 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.

14. Evaluation of Tenders and Quotations

- 14.1 A minimum of 2 officers nominated by the Head of Service should evaluate quotations (above £30,000) and all 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.
- 14.2 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.
- 14.3 All criteria and sub criteria used must be capable of objective assessment.
- 14.4 An evaluation model should be used to apply the evaluation criteria in order to identify the most 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.
- 14.5 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.

15. Award of Contracts

- 15.1 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.
- 15.2 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.
- 15.3 Contracts must be awarded using the evaluation criteria for the procurement published prior to quotations/tenders being invited.
- 15.4 Where the Act requires, assessment summaries must be provided to suppliers before the contract award notice is published.
- 15.4 The Contracting Officer shall ensure that the Contracts Register is updated following the award of all contracts. 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.

16. Contents of Contracts

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 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 Deputy Chief Executive approves the use of an official order, such as a Call Off under a Framework.
- 16.5 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) The duration
 - e) insurance provisions ; and
 - f) the conditions of the Contract.
- 16.6 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

- 16.7 Where appropriate, the Council shall require the supplier 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

16.8 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.

16.9 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

16.10 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.

16.11 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.

16.12 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)**16.13 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.

16.14 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 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.

16.15 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**16.16 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.

16.17 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

- 16.18 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.
- 16.19 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.

17. Specific Contracts

Consultants

- 17.1 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.
- 17.2 Where the contract value is £30,000 or above a Head of Service or Deputy Chief Executive should approve the appointment of a consultant.
- 17.3 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.
- 17.4 Where consultants are employed on a regular or ongoing basis the Estimated Contract Value should be calculated and these Contract Standing Orders applied accordingly.
- 17.5 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.
- 17.6 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 £30,000) in accordance with Contract Standing Order 11. With the prior approval of the Head of Legal &

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.

- 17.7 The contract should be awarded on the basis of who best meets the brief in terms of cost/quality criteria.
- 17.8 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 & Revenues and the Head of Legal & Democratic Services is given. This is to ensure transparency and fairness of opportunity is maintained.

IT

- 17.9 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 Strategy & Information.

Leasing Agreements

- 17.10 All lease agreements shall be arranged through the Head of Finance & 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

- 17.11 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.

18. Contract Monitoring & Evaluation

- 18.1 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

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

19. Variations

19.1 Subject to the provisions of the contract and in consultation with the Head of Legal & Democratic Services and Head of Finance & 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.

19.2 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,
- b) where prior approval has been obtained in writing from the Head of Finance & Revenues, from another source within the Capital Programme.

19.3 Where the additional cost cannot be met from an existing source of funding, or the Head of Finance & Revenues considers it to be a material change to an existing scheme then a report to the Cabinet or Council (depending on the amount of additional budget being sought) shall be submitted by the Contracting Officer requesting additional funds.

20. Payments to contractors

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

20.2 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 & Revenues.

20.3 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.

21. Project Management

21.1 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.

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

22. Retention of Documentation

22.1 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.

- 22.2 All contracts bearing the common seal of the Council must be retained in the strong room.
- 22.3 Where the procurement takes place under a Framework advice must be sought from the Head of Legal & Democratic Services as to the documentation to be retained.
- 22.4 All documents, including unsuccessful tenders and quotations, should be retained as per the Council's Document Retention Schedule.

23. Amendments to Contract Standing Orders

- 23.1 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 & Revenues.