

CONTRACT STANDING ORDERS

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CHAPTER I GENERAL

32. Contract Standing Orders and Financial Regulations

- 32.1. This Part IV set out the procedures that must be followed in relation to the making of council contracts and the persons empowered to determine select lists of tenderers, open tenders and enter into contracts in the Council's name.
- 32.2. The Council may take disciplinary action against anyone who fails to comply with the Standing Orders in this Part IV.
- 32.3. In procuring works, goods and services, every member of the Council and every officer and employee of the Council must have regard to the Corporate Procurement Strategy, the Forward Plan and must comply with the Standing Orders in this Part IV and the Council's Financial Regulations and the Public Contract Regulations 2015. □
- 32.4. To assist officers and members in their roles the Chief Finance Officer may, from time to time, issue written guidance notes which set out in more detail how the Council's procurement arrangements shall operate. Such Guidance Notes are not formally part of the Contract Standing Orders and can be issued by the Chief Finance Officer at any time.
- 32.5. In this Part IV of Standing Orders the terms below shall be interpreted as follows:

Assistant Director means an officer who reports directly to a Strategic Director (irrespective of their actual job title)

Approved List means a list of suppliers who are assessed as suitable to provide specified goods or services

Authorised Officer any officer who is designated as such in accordance with Standing Order [•]

Budget Manager means an officer who is given responsibility for controlling the expenditure for one or more cost centre or project

Chief Finance Officer means the person designated as the Section 151 Officer (currently the Strategic Director – Finance and Customer Services)

Chief Procurement Officer Head of Procurement

Contract Manager means the officer designated by a Strategic Director as such in respect of a specified contract in accordance with Standing Order [•]

Contracts Finder means the government web service which allows businesses to find contract opportunities with the UK government and its agencies

Dynamic Procurement System means a procurement tool available for contracts for works, services and goods commonly available on the market, procurement in line with Regulation 34 of the Public Contracts Regulations 2015

EU Threshold means the financial threshold from time to time at which the EU procurement directives are applicable to a procurement of works, goods or services (different thresholds apply to works, goods and services)

Framework Agreement means an agreement between the Council and one or more suppliers which set out the terms and standards for the supply of goods or services (but not the volume) and the method for calling off orders

Monitoring Officer means the Assistant Director – Legal Services

Procurement Business Case means the business case prepared in accordance with Standing Order [•]

Professional Buying Organisation (PBO) means an organisation which runs purchases goods and/or services on behalf of other organisations

Property Officer means Assistant Director – Planning, Regeneration and Transport

YORtender means the on-line supplier and contract management system used by the Council to operate e-tenders and for the online management of suppliers and contracts and to advertise contracts.

Standing Guide means CIPFA's Commissioning Joint Committee's *Standing Guide to the Commissioning of Local Authority Work and Services*

Strategic Director means an officer who is a member of the Strategic Leadership Team and reports directly to the Chief Executive

33. Guiding principles

- 33.1. The Standing Orders in this Part IV are founded on the principle that the making of council contracts, and the entering into of contracts under Standing Order 37.8 (functions carried out by the Council on behalf of a person, body or organisation), will be done in a business-like manner, with reasonable care, skill and caution and with due and alert regard to

the interests of local communities and council taxpayers in the Council's area.

- 33.2. Contracts will, in general, be awarded following a competitive exercise designed to identify the supplier who will provide the goods, services or works to the Council in the most value for money way.
- 33.3. Contract documentation shall reflect the following ten principles of good contract management:
 - 33.3.1. there should be clearly defined contract governance and assurance from the outset including:
 - 33.3.1.1. clarity about roles and responsibilities;
 - 33.3.1.2. agreed reporting requirements and assurance plan; and
 - 33.3.1.3. clear escalation procedures.
 - 33.3.2. the contract should include robust and appropriate key performance indicators (KPIs) and set out the requirement for the supplier to report their performance regularly and transparently;
 - 33.3.3. there should be a payment mechanism which is results-driven so that the supplier is paid in full only if they provide the goods, works, or services in full, on time and to the right quality;
 - 33.3.4. there should be an agreed process for managing changes to the contract, where the implications (in terms of price, KPIs, risks, benefits) are documented and approvals are sought;
 - 33.3.5. the allocation of risks between the Council and the supplier are documented and actively managed;
 - 33.3.6. there should be a benefits log developed from the original Procurement Business Case and the achievement of the benefits managed by the Contract Manager;
 - 33.3.7. the contract should be designed to incentivise and encourage the supplier to meet the Council's requirements;
 - 33.3.8. there should be suitable arrangements for communication between the Council and the supplier;
 - 33.3.9. there should be regular performance reviews capturing lessons learnt from all parties that should be addressed for remaining contract life and/or included in future procurement projects; and
 - 33.3.10. there should be arrangements put in place to encourage continuous improvement.

34. Delegation arrangements

- 34.1. The Cabinet has a general power to make council contracts.
- 34.2. In relation to their directorates, each Strategic Director has a general power to make council contracts, including power to determine select lists of tenderers, to accept tenders and to award contracts.
- 34.3. In the case of contracts not attributable to a particular directorate, the Chief Finance Officer and Chief Executive have the same general power to make council contracts as the other Strategic Directors.
- 34.4. Each Strategic Director has the power, in relation to their respective directorate and subject to consultation with the relevant Cabinet Member and Chief Finance Officer –
 - 34.4.1. to authorise the submission of a tender for a contract for –
 - 34.4.1.1. the supply of goods or materials to,
 - 34.4.1.2. the provision of administrative, professional or technical services to,
 - 34.4.1.3. the hire of vehicles or plant to, or
 - 34.4.1.4. the maintenance of buildings and land commissioned by,

another local authority or body designated as a public body under the Local Authorities (Goods and Services) Act 1970;
 - 34.4.2. to authorise the submission of a tender for a contract for a work or for the supply of goods, materials or services commissioned by a person, body or organisation for whom the Council is empowered to act as the agent; and
 - 34.4.3. to authorise the submission of a tender for a contract for work or the supply of goods, materials or services to a person, body or organisation in the private sector, where the Monitoring Officer's advice on the powers of the Council to undertake the work or supply the goods, materials or services has been obtained.
- 34.5. The Property Officer has the power –
 - 34.5.1. to agree the terms and conditions of any disposal or acquisition of land and buildings;

- 34.5.2. to approve the terms and settlement of rent reviews, assignments, lease renewals, licences, tenancies and consents both as landlord and tenant;
 - 34.5.3. to approve the terms and conditions of new leases;
 - 34.5.4. to grant or refuse consent to the assignment of leases, sub-lettings, ground landlord approval, variations to user clauses, the release of restrictive covenants, variations to, or the extinguishment of, easements or wayleaves, as grantor or grantee;
 - 34.5.5. to assign leases, approve sub-lettings, change user clauses and grant landlord's approvals;
 - 34.5.6. to approve the grant, refusal or seek consent to the assignment of leases, sub-lettings, ground landlord approval, variations to user clauses, the release of restrictive covenants, variations to, or the extinguishment of, easements or wayleaves as landlord or tenant;
 - 34.5.7. to approve the granting, taking and extinguishments of wayleaves, easements and access agreements as grantor or grantee;
 - 34.5.8. to determine the method of disposal of land and buildings, and to establish the appropriate price to be paid, including the appropriate guide and reserve price for disposal by auction;
 - 34.5.9. to authorise the entering into of leases and licences as tenant;
 - 34.5.10. to authorise the certification of valuations for insurance reinstatement, financial accounting purposes, statutory compensation, acquisition, disposal or letting of land and property;
 - 34.5.11. to determine applications to place land and property on the schedule of Assets of Community Value;
 - 34.5.12. to authorise the letting of land and property under the terms of the Council's adopted Asset Transfer Policy.
- 34.6. The Property Officer may approve the terms and conditions of any disposal or acquisition of land and buildings.

35. Compliance with Standing Orders, legislation and the adoption of the Standing Guide

- 35.1. Every contract made by the Council or on its behalf shall comply with this Part IV, the Council's Financial Regulations and applicable European and domestic law.
- 35.2. In conjunction with the application of this Part IV, the Council has adopted the Standing Guide.
- 35.3. The Standing Guide covers –
- commissioning strategy – deciding how projected work and services should be commissioned;
 - procurement, and the many other options available for carrying out work and services, including delegation, decentralisation, and the outright transfer of functions and activities to third parties;
 - managing and updating contracts once they have been completed.
- 35.4. In the case of building and construction-related contracts, the provisions of this Part IV shall apply to the nomination by the Council of a sub-contractor or supplier to carry out works or supply goods, materials or services to a main contractor appointed by the Council.
- 35.5. It shall be a condition of any contract between the Council and any person who is not an officer of the Council but who is authorised to carry out any of the Council's contracts functions that that person complies with this Part IV and the Council's Financial Regulations.
- 35.6. Subject to Standing Orders [•] (contract Standing Orders and financial regulations), Standing Order [•] (delegation arrangements) and Standing Order [•] (guiding principle in making contracts), the provisions of this Part IV do not apply to contracts in which the Council acts for –
- 35.6.1. another local authority or body designated as a public body under the Local Authorities (Goods and Services) Act 1970 or regulations made under the 1970 Act; or
- 35.6.2. a person, body or organisation for whom the Council is empowered to act as the agent,
- unless the agreement with the local authority, public body, person, body or organisation, stipulates that any or all of the provisions of this Part IV are to apply to the contract.

36. Authorised Officers

- 36.1. Each Strategic Director shall –

- 36.1.1. compile and maintain a scheme of delegation for his/her service area; and
- 36.1.2. supply and agree the scheme of delegation with the Chief Finance Officer before the start of each financial year and on making any amendments to it.
- 36.2. Each Strategic Director's scheme of delegation must specify –
 - 36.2.1. the names, grades, post references and job titles of Authorised Officers for the purposes of –
 - 36.2.1.1. approving Procurement Business Cases;
 - 36.2.1.2. managing procurement projects; and
 - 36.2.1.3. entering into contracts
 - 36.2.2. the maximum contract value allocated to each Authorised Officer for those purposes.
- 36.3. The Chief Finance Officer shall keep a register of all schemes of delegation.
- 36.4. Authorised Officers shall –
 - 36.4.1. always seek value for money;
 - 36.4.2. act impartially towards contractors and ensure that contractors from other European Community states are not discriminated against;
 - 36.4.3. conduct tendering and price-testing in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information whilst complying with freedom of information legislation);
 - 36.4.4. do nothing that contravenes European or domestic law; and
 - 36.4.5. ensure that comprehensive contract files are kept for all contracts upon which they are engaged.

CHAPTER II PREPARING FOR A PROCUREMENT

37. Procurement Business Cases

- 37.1. A Procurement Business Case should be developed for every procurement project. In preparing a Procurement Business Case an officer should take appropriate legal, procurement and financial advice.

- 37.2. A Procurement Business Case should explain, to the level of detail that is proportionate to the value of the works, goods or services being procured:
- 37.2.1. the background and purpose of the procurement project;
 - 37.2.2. the strategic context (including the fit with the Council's policy framework and budget);
 - 37.2.3. details of the research undertaken in connection with the procurement, including an assessment of the relevant marketplace;
 - 37.2.4. the views of stakeholders;
 - 37.2.5. the available options in terms of variable such as service levels, contract duration, type of contract;
 - 37.2.6. the preferred option;
 - 37.2.7. the procurement route to be followed;
 - 37.2.8. risk assessment (including consideration of the need for the Council to seek additional security from the supplier);
 - 37.2.9. financial implications (including estimated costs, available funding and affordability);
 - 37.2.10. proposed management arrangements (for the procurement and the subsequent contract);
 - 37.2.11. proposed exit arrangements at the end of the contract.
- 37.3. Strategic Directors and Authorised Officers are empowered to carry out the procurement process and to award contracts in accordance with these Standing Orders, subject to consideration of any other rules set within the Constitution - in particular that the procurement is in line with the Budget and Policy Framework and that there is sufficient provision in the Revenue Budget or Capital Programme (as the case may be). Otherwise Cabinet approval must be sought.
- 37.4. For additional clarity, if the expenditure and procurement is part of day to day delivery of services, does not involve substantial service change (e.g. is simply a re-procurement of an expiring contractual arrangement and is part of normal business) and was in the reasonable contemplation of the Council when the Revenue Budget or Capital Programme was approved (in other words the procurement activity itself is not a Key Decision) then it does not require further Cabinet approval. If in doubt the advice of the Chief Finance Officer and the Monitoring Officer should be sought.

- 37.5. For all procurements in excess of £250,000 the decision to award a contract must be recorded and published in accordance with the Access to Information Rules and the Executive Procedure Rules.

38. Approved Lists

The Standing Guide contains guidance on approved and standing lists.

- 38.1. Where appropriate and with the agreement of the Chief Procurement Officer, Strategic Directors shall compile and maintain an Approved List for their the supply of specified works, goods or services.
- 38.2. Approved Lists shall be reviewed at regular intervals and agreed with the Chief Procurement Officer.
- 38.3. An Approved List shall–
- 38.3.1. set out the criteria for inclusion, suspension and exclusion from the list, including but not by way of limitation –
 - 38.3.1.1. economic and financial standing,
 - 38.3.1.2. technical ability and capacity,
 - 38.3.1.3. insurance arrangements,
 - 38.3.1.4. quality systems,
 - 38.3.1.5. health and safety record,
 - 38.3.1.6. environmental performance and compliance with environmental legislation,
 - 38.3.1.7. compliance with age discrimination, sex discrimination, race relations and all other relevant legislation, and
 - 38.3.1.8. transparency/basis of appointment;
 - 38.3.2. indicate the categories of contracts for which the contractors listed may be invited to tender; and
 - 38.3.3. contain the names and addresses of the contractors who have met the criteria for inclusion on the list and who wish to be included on it.
- 38.4. At least four weeks before an approved list is compiled or reviewed, notices inviting applications for inclusion in the list shall be published in one or more newspapers circulating in the borough and in one or more technical journals published nationally.

- 38.5. Approved Lists must be operated so as to ensure that all contractors on the list are given a reasonable opportunity of submitting tenders for appropriate contracts let by the Council from time to time.
- 38.6. Approved Lists must not be used for any procurement exercise over the EU Threshold.

39. Open competition for contracts

- 39.1. Notwithstanding Standing Orders Standing Order [•] (approved lists of contractors) and Standing Order [•] (Authorised Officers' lists of contractors), this Standing Order shall apply where the Cabinet or the Strategic Director for the service area concerned has decided that tenders for a particular contract are to be obtained by inviting tenders for the contract on the open market.
- 39.2. Notice of all procurement competitions shall be advertised through YORtender, and where the procurement value is £25,000 or more, it shall also be advertised on Contracts Finder.
- 39.3. The notice shall –
 - 39.3.1. specify the nature and purpose of the contract, including where further details may be obtained;
 - 39.3.2. invite tenders for the contract; and
 - 39.3.3. state the last date and time when tenders for the contract will be accepted.
- 39.4. The suitability of contractors who respond to a notice issued under Standing Order Standing Order [•] to perform the contract shall be assessed using the criteria for inclusion, suspension and exclusion from an approved list, in accordance with the procurement procedure chosen for the procurement project.

CHAPTER III ASCERTAINING THE VALUE OF CONTRACTS

40. Contract value and aggregation

The Standing Guide contains guidance on whether the EU procurement rules apply and packaging contracts.

- 40.1. An Authorised Officer must estimate and record the net value of a proposed contract excluding value added tax.

- 40.2. Where a requirement for a work, service or supply of goods or materials is subdivided into several elements, the estimated value of each element must be aggregated to calculate the total overall estimated value of the contract.
- 40.3. A contract must not be –
- 40.3.1. artificially divided into two or more separate contracts; or
 - 40.3.2. valued using a valuation method selected with the intention of avoiding the application of any of this Part IV.

41. Pre-tender quotations and enquiries

Part 41 of the Standing Guide contains guidance on selecting tenderers.

- 41.1. An Authorised Officer may make general enquiries of contractors before tenders or quotations are invited in order to –
- 41.1.1. establish whether the work, goods, materials or services that the Council wishes to procure are available and at what price;
 - 41.1.2. prepare tender documents, price estimates and contracts; and
 - 41.1.3. for contracts under £25,000, ascertain which contractors wish to be invited to tender or quote for a particular contract.
- 41.2. In making enquiries –
- 41.2.1. an Authorised Officer shall not disclose to one contractor information which is not also disclosed to all those of whom enquiries are made or who are subsequently invited to submit a tender or quote;
 - 41.2.2. no contractor shall be led to believe that the information he/she offers will necessarily lead to him/her being invited to submit a tender or quote or being awarded a contract; and
 - 41.2.3. a comprehensive written record, including notes of any meetings held, the responses made and the names of all individuals present shall be kept by the Authorised Officer on the contract file.

CHAPTER IV THE TENDERING PROCESS

42. Contracts not requiring tendering

- 42.1. A contract need not be tendered if –

- 42.1.1. it is valued at less than £25,000 and the requirements of Standing Order Standing Order [•] (contracts valued at less than £50,000) are met, except where, notwithstanding Standing Order Standing Order [•], the contract must be tendered by law;
- 42.1.2. an exemption from tendering has been granted in respect of that contract under Standing Order Standing Order [•] (exemption from competition);
- 42.1.3. it is a contract entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the lead authority or organisation and European and domestic law;
- 42.1.4. it is a contract made under one of the suite of framework agreement or contracts that a public sector Professional Buying Organisations (PBO) has with suppliers of works, goods and services, except where the terms and conditions of the PBO's agreement include a requirement to undertake competition between providers under the agreement in which event a tendering exercise must be conducted in compliance with the requirement;
- 42.1.5. it is a social care contract, being the provision of individual care and support services to a client or group of clients that is not obtainable under any framework agreement or contract that the Council has with a provider of such services and enquiries have established that there is only one external provider of the required individual care and support services at the time the need arises;
- 42.1.6. it is for the purpose of formalising the funding of particular voluntary or community sector bodies where the purpose of the contract is to establish the general conditions which will apply to the funding from the Council;
- 42.1.7. it is for the engagement of counsel or the provision of specialist legal advice; or
- 42.1.8. it is for the appointment of an expert witness in connection with court proceedings, tribunal proceedings, statutory inquiries, or any other proceedings in which the Council is a party; or
- 42.1.9. it is for the renewal of an ICT or property support or maintenance contract within 5 years of the original contract having been made.

43. Exemption from competition

44. The Strategic Director has power to waive any requirements within these contract procedure rules for specific projects, and any such decision may be a Key Decision, except where the said decision would constitute a breach of EU Legislation.

44.1. Subject to statutory requirements and Public Contract Regulations, quotations or tenders need not be invited in accordance with these Standing Orders in the following cases:

- 44.1.1. where the technical characteristics of the goods are only compatible with an existing supply or installation, such that procurement of another product other than one available from the original Contractor would result in incompatibility and/or disproportionate technical difficulties. The duration of a contract negotiated in accordance with this exemption shall not exceed 3 years;
- 44.1.2. the procurement of a unique work of art or artistic performance;
- 44.1.3. where competition is absent for technical reasons where no reasonable alternative or substitute exists;
- 44.1.4. where due to exclusive rights, including but not limited to intellectual property rights, no reasonable alternative or substitute exists;
- 44.1.5. where the price of the goods, services or works that are to be procured is controlled by statutory bodies, trade organisations or legislation and in the opinion of the appropriate Strategic Director no reasonable satisfactory alternative is available;
- 44.1.6. Where the contract is for the execution of work or the supply of goods or services that are required so urgently (the urgency not being due to the action or inaction of the Council or its officers) that compliance with any competitive process prescribed by these Standing Orders cannot be achieved;
- 44.1.7. Where the contract relates to goods, services or works in circumstances where the publication of documents detailing the Council's requirements could reasonably be considered to prejudice the security of the activity to be undertaken and the Council have considered the use of reasonable measures that would protect such security and allow the normal procurement process to be followed (e.g. the use of confidentiality agreements);

- 44.1.8. to allow for the continuation of a contract beyond its contractual term, in exceptional circumstances and where the term of such an extension is determined in accordance with the timescales required to complete a re- procurement or decommission the existing arrangement;
 - 44.1.9. in any case where works are to be executed or goods or services are to be supplied, the Strategic Director believes there can be no genuine competition;
 - 44.1.10. an alternative, competitive process to that prescribed by these Standing Orders may be approved for contracts with a value between £50,000 and the EU Threshold subject to reasonable justifications for such a request.
- 44.2. All exemptions require the approval of the Chief Finance Officer (in consultation with the Monitoring Officer) who is ultimately responsible for procurement within the Council, as well as the approval of the relevant Strategic Director for the service concerned.
- 44.3. An exemption request form must be completed for every instance of an exception with a total value of £10,000 or more to inform the Chief Finance Officer and the relevant Strategic Director for the service of all the relevant implications associated with the proposed course of action and aid their decision making. The request must clearly document the exemption to be applied, along with the justifications and all necessary procurement, legal and financial risks.
- 44.4. A copy of all approved exemption requests must be provided to the Corporate Procurement Team, where a record of all approved exemptions will be maintained. The relevant Strategic Director is responsible for ensuring the appropriate Cabinet Member is kept informed.
- 44.5. Where an exemption has been approved, the Authorised Officer must ensure that the best possible balance of value for money and quality is obtained for the Council. A specification and Terms and Conditions must be developed and a formal quote/tender must be requested from the chosen supplier. The supplier must not be told that they are the only company submitting a bid. A copy of the final Contract must be uploaded to the YORtender and managed in line with the requirements of these Standing Orders.

45. Framework Agreements and Dynamic Purchasing Systems

- 45.1. Officers must use a third party Framework Agreements and Dynamic Purchasing Systems procured by another public sector body or Professional Buying Organisation where these are available to the Council for the goods or services that are required.
- 45.2. The Chief Procurement Officer shall maintain a list of such Framework Agreements and Dynamic Purchasing Systems which officers are permitted to use and make the list available to officers.
- 45.3. Framework Agreements may also be procured and used by Strategic Directors, subject to legislative requirements and advice from the Chief Procurement Officer, as a procurement tool to manage the process of competition and sourcing of suppliers in an efficient way.
- 45.4. Where the relevant Strategic Director is satisfied that a requirement for works or services falls outside any Framework Agreement or contract that the Council has with a provider of such works or services, the particular works or services shall be procured in accordance with these Standing Orders.
- 45.5. Contracts based on Framework Agreements may be awarded by either –
 - 45.5.1. applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without re-opening competition; or
 - 45.5.2. where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini-competition in accordance with the following procedure –
 - 45.5.2.1. inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders;
 - 45.5.2.2. fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - 45.5.2.3. awarding each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specification of the framework agreement.

46. Contracts valued at less than £25,000

- 46.1. This Standing Order is predicated on the presumption that the provision of works, services or supplies of goods or materials by internal trading organisations employed by the Council for that purpose is more economically efficient than inviting tenders for each contract.
- 46.2. This Standing Order applies to any internal trading organisation of the Council.
- 46.3. Where a contract for a work, service or supply of goods or materials is valued at less than £25,000 the order shall be placed with an internal trading organisation if the internal trading organisation can perform the work, carry out services or supply goods or materials and achieve value for money, after taking into consideration as appropriate –
 - 46.3.1. cost effectiveness;
 - 46.3.2. quality, aesthetics and functional characteristics;
 - 46.3.3. technical assistance and technical merit;
 - 46.3.4. the period for completion or delivery;
 - 46.3.5. running costs;
 - 46.3.6. after sales service; and
 - 46.3.7. profitability.
- 46.4. A contract should be made with an external contractor on an Authorised Officer's list if but only if the condition specified in Standing Order [•] is not met.
- 46.5. Except as required by law and subject to Standing Orders Standing Order [•] (frameworks) Standing Order [•] (prohibition on artificial division of a requirement for a work, goods, material or services into two or more contracts) and Standing Order [•], a contract made under Standing Order [•] where the estimated value is –
 - 46.5.1. less than £5,000 may be made without seeking competitive, written quotations;
 - 46.5.2. £5,000 but less than £25,000 may be made after inviting at least two written quotations.
- 46.6. Authorised Officers must keep a written record of all quotations sought, including the full name and address of the contractor, details of the contract and the contractor's price for its performance.

- 46.7. A written quotation must be obtained before an order is placed or a contract made in accordance with this Standing Order.

47. Contracts valued at £25,000 or more

- 47.1. Where a contract for a work, service or supply of goods or materials is valued between £25,000 and the EU Threshold it should be let on a competitive basis, advertised to the open market on YORtender and Contracts Finder.
- 47.2. a sufficient (but not disproportionate) time limit is applied to allow potential bidders to respond. This therefore needs to be considered on a case by case basis, dependent upon any prior market engagement undertaken, the complexities of the specification and the level/amount of detail required within the tender response.
- 47.3. Tenders undertaken for procurements between these thresholds must not include a pre-qualification stage or a stage in the procurement process where the authority can assess the suitability of a candidate for the purpose of reducing the number of candidates to a smaller number who will proceed to a later stage of the process.
- 47.4. Suitability questions may be included within a procurement exercise, where they are relevant to the subject matter of the procurement and proportionate, and must be considered as part of the wider overall quality evaluation.
- 47.5. Where there is a need to determine the financial standing of a potential supplier as part of the evaluation process, this should be done through due diligence with the top scoring bidder only.
- 47.6. Where the value of the proposed Contract exceeds the EU Threshold (taking account of aggregation), it must be tendered in accordance with the Public Contracts Regulations 2015, i.e. using one of the following permitted procedures:
- 47.6.1. open tender;
 - 47.6.2. restricted tender;
 - 47.6.3. competitive procedure with negotiation;
 - 47.6.4. competitive dialogue;
 - 47.6.5. innovation partnership.
- 47.7. The Procurement Business Case should have identified which of the permitted procurement procedures would be most suitable for the

procurement project and taken into account the resources and timescale needs to complete the procurement.

- 47.8. All tenders above the EU Threshold must be advertised in *the Official Journal of the European Union* (OJEU) using the YORtender portal.
- 47.9. All OJEU notices for non-routine procurements shall be referred in advance of sending to the OJEU, to the Chief Procurement Officer for advice on its wording.

48. Tender invitation and receipt of tenders

The Standing Guide contains guidance on e-procurement and e-auctions.

- 48.1. All tenderers invited to tender must be issued with the same information at the same time and subject to the same conditions and any supplementary information must be given on the same basis.
- 48.2. All invitations to tender must state that the Council is not bound to accept any tender submitted for the contract and should include the following –
 - 48.2.1. a specification that describes the works, goods or services in sufficient detail for the tenderers to provide robust, competitive tenders which can be relied upon by the Council to be a sound basis for the subsequent contract;
 - 48.2.2. the conditions of contract that will apply;
 - 48.2.3. a requirement for tenderers to declare that the contents of their tender, including the price or any other figure or particulars, have not been disclosed by the tenderer to any other party (except where the disclosure is made in confidence for a necessary purpose);
 - 48.2.4. a requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion;
 - 48.2.5. notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense;
 - 48.2.6. a description of the award procedure and, unless defined in a prior advertisement, a definition of the Council's tender evaluation criteria in objective terms and if possible in descending order of importance;
 - 48.2.7. the method by which any arithmetical error discovered in the submitted tenders is to be dealt with and, in particular, whether

the overall price prevails over the rates in the tender or vice versa.

- 48.3. All invitations to tender should include any other information or instructions that the Monitoring Officer and Chief Finance Officer may require.
- 48.4. The Council uses an electronic supplier and contract management system (YORtender) which is designed to give suppliers, contractors, consultants and service providers direct access to procurement opportunities with the Council and other local authorities across the region. Tenderers shall be invited to submit tenders electronically.
- 48.5. The YORtender system shall be administered and managed by the corporate procurement team.
- 48.6. All tendering exercises for contracts valued at £25,000 or more shall be conducted using the YORtender system.
- 48.7. Tenderers must submit all of the tender documents electronically into the YORtender system prior to the deadline for the close of tenders otherwise the tender will be rejected.
- 48.8. The successful tenderers' details will be listed on the Council's contracts register.

49. Evaluation of tenders

- 49.1. Tenders shall be opened using the secure, auditable functionality of the YORtender system.
- 49.2. An evaluation panel must be convened for the evaluation of tenders. Representation on the panel must be from people who have knowledge of the subject area and be proportionate to the size and value of the procurement being undertaken.
- 49.3. For all Contracts, regardless of value, no person with a personal or financial interest in any of the tenderers invited to submit a quote/tender should be involved in evaluating quotations or tenders or involved in any way in influencing the decision as to which tenderer is to be awarded the Contract. A declaration of interest form must be completed by each officer involved in the evaluation process and held on file by the Authorised Officer. No access to the tender responses should be granted until this declaration of interest form has been received.
- 49.4. It is essential that during the evaluation process the principles of Public Contract Regulations are applied, i.e:

- 49.4.1. non-discrimination
 - 49.4.2. equal treatment
 - 49.4.3. transparency
 - 49.4.4. proportionality
 - 49.4.5. open competition and
 - 49.4.6. free movement of trade within Europe.
- 49.5. The evaluation of quotations/tenders must be in accordance with the evaluation criteria specified in the original request for quotation/tender documents. Under no circumstances should there be a deviation away from this.
- 49.6. The evaluation panel must keep detailed notes on the decision making process.
- 49.7. Where a tenderer submits a qualified or conditional quotation/tender, they must be given the opportunity to withdraw the qualification or condition without amendment to the bid submitted. If the tenderer fails to do so their bid must be rejected unless it is dealt with as an alteration to their submission in accordance with Standing Order [•].
- 49.8. Identifying and dealing with abnormally low bids shall be the responsibility of the Authorised Officer. Where a tender/quote appears to be abnormally low, the Council are under a statutory duty to request that the Contractor concerned provides a full and detailed response to explain the price/cost proposed. The Council may reject an abnormally low bid, where the justification does not satisfactorily account for the low level of price. Where consideration is being made to the rejection of a bid on these grounds advice must be sought from the Chief Procurement Officer.
- 49.9. Post-tender negotiation is only permissible in limited circumstances. The advice of the Monitoring Officer and Chief Procurement Officer must be followed if an Authorised Officer considers there are issues which *might* be addressed in post-tender negotiations.

50. Form and content of contracts

- 50.1. Every contract must be in writing in some form.
- 50.2. As appropriate, a contract must specify –
- 50.2.1. the parties to the contract, including any surety or guarantor;

- 50.2.2. the goods, materials or services to be supplied or the work to be performed;
 - 50.2.3. the price to be paid together with a statement as to the amounts of any discounts or other deductions;
 - 50.2.4. the period within which the contract is to be performed;
 - 50.2.5. the conditions and terms agreed between the Council and the contractor;
 - 50.2.6. in the case of a contract for building or construction-related works, a term requiring the contractor to retain and produce at the Council's reasonable request all accounts, vouchers and documents in the contractor's possession, until the Council's accounts for the contract have been audited; and
 - 50.2.7. any other terms and conditions stipulated by the Monitoring Officer (who has general powers to set standard and particular contract conditions), including a condition that –
 - 50.2.7.1. the contract may not be assigned without the prior written consent of the Council, and
 - 50.2.7.2. the Council shall be entitled to cancel the contract with immediate effect and recover any loss it has suffered as a result of the contractor offering or agreeing to give an inducement or reward to anyone in order to obtain the contract or another contract with the Council, committing an offence under the Bribery Act 2010 or giving any fee or reward the receipt of which is an offence under section 117 (disclosure by officers of interest in contracts) of the Local Government Act 1972.
- 50.3. Where appropriate, a contract with an estimated value of £50,000 or more should include standard terms and conditions, in the form approved from time to time by the Monitoring Officer, in respect of –
- 50.3.1. a right of access to relevant documentation and records of the contractor for monitoring and audit purposes;
 - 50.3.2. data protection requirements;
 - 50.3.3. discrimination and equalities requirements;
 - 50.3.4. freedom of Information Act requirements;
 - 50.3.5. health and safety requirements;
 - 50.3.6. human rights requirements;

- 50.3.7. insurance requirements;
 - 50.3.8. indemnification of the Council;
 - 50.3.9. ombudsman requirements.
- 50.4. Where appropriate, a contract with an estimated value of £50,000 or more must provide for the contractor to pay liquidated damages (where these can be assessed and ascertained) or other damages to the Council if the terms of the contract are not carried out properly, including the method by which such damages are to be calculated and the circumstances in which they will be payable.

51. Security for performance of contract

The Standing Guide contains guidance on performance bonds.

- 51.1. Prior to the award of a contract with an estimated value of £100,000 or more, the Authorised Officer must consider whether the successful contractor should be required to provide security for the performance of the contract, in the form of a parent company guarantee or performance bond.
- 51.2. In considering the need for either form of security, the Authorised Officer must –
- 51.2.1. estimate the increase in the contract price that would result from requiring the contractor to provide security for the performance of the contract; and
 - 51.2.2. identify and assess the risks to which the Council could be exposed should the contractor fail to perform satisfactorily the contract.
- 51.3. In identifying and assessing the risks, the Authorised Officer must have regard to any guidance issued from time to time by the Chief Finance Officer and –
- 51.3.1. to any advice from the Chief Finance Officer on the contractor's financial standing;
 - 51.3.2. to the value of the contract, particularly where this is significantly higher in value than contracts for similar works, goods or services let by the Council;
 - 51.3.3. to the complexity or degree of technical difficulty of the subject matter of the contract;

- 51.3.4. to any technical or financial evaluation undertaken prior to the letting of the contract and whether this was based on an evaluation of the contractor or the contractor's parent company;
- 51.3.5. to any concerns about the contractor's stability or financial standing or both, particularly where the contract provides for staged or other payments in advance of receiving the whole of the subject matter of the contract; and
- 51.3.6. to the need to repeat periodically any financial checks that were conducted prior to the award of the contract, particularly in the case of long-term contracts such as partnering contracts.

52. Signing contracts and the Common Seal

Contracts under seal

- 52.1. The Common Seal of the Council must be affixed to any building contract or construction-related contract with an estimated value of £100,000 or more and to any contract, instrument or other document that is required by law to be made by deed.
- 52.2. Contracts that are required to be made by deed include contracts made without valuable consideration, conveyances or transfers of land or any interest in land and transfers of shares in certain companies.
- 52.3. The affixing of the Common Seal of the Council to any contract, instrument or document shall be deemed to be duly authenticated if but only if the impress of the Seal is accompanied by the signature of –
 - 52.3.1. the Chief Executive; or
 - 52.3.2. the following officers in Legal and Democratic Services, namely the Director of Legal and Democratic Services, the deputy Monitoring Officer, the Service Manager of the Litigation and Social Care Teams, the Service Manager of the Property, Commercial and Information Governance Teams or the Team Manager of the Commercial Team (including any temporary appointment to any of those positions to cover a vacancy or long- term absence),

whether or not, in the case of a contract that relates to the discharge of an executive function, a member of the Cabinet also attests the Seal.

Contracts under hand

- 52.4. Strategic Directors have the power to sign contracts and agreements that are not required to be made by deed and, in accordance with their internal schemes of delegation, to authorise specified officers to sign such contracts on their behalf.

CHAPTER V CONTRACT MANAGEMENT

53. The role of Contract Manager

- 53.1. The arrangements for managing Council contracts should be in line with the National Audit Office's *Good Practice Contract Management Framework*.
- 53.2. For every contract the relevant Strategic Director shall appoint a suitably qualified, experienced and trained officer to be the Contract Manager.
- 53.3. The Contract Manager shall, as a minimum:
- 53.3.1. regularly review management information and supplier performance (as detailed in the tender and contract documentation);
 - 53.3.2. for contracts valued at £50,000 or more, use the YORtender to record key information about the contract throughout its lifetime;
 - 53.3.3. meet with the supplier at a frequency appropriate to the contract value (but no less frequent than annually) to discuss contract compliance, , performance, service development, innovation, etc.;
 - 53.3.4. deal with instances of off-contract and non-contract spend within the Council;
 - 53.3.5. benchmarking the contract to ensure it continues to be good value for money;
 - 53.3.6. monitoring any ongoing efficiency savings and reporting these to the Chief Procurement Officer;
 - 53.3.7. monitor that all promised outputs and outcomes, including social outcomes, are achieved;
 - 53.3.8. prepare a report for the Strategic Director at least annually on the supplier's performance, and the contract's value for money;
 - 53.3.9. make recommendations about options for future procurements/extensions to the contract.

54. Contract variations and modifications

- 54.1. During the term of a contract, variations or modifications may be proposed, which if adopted would result in changes to the volume and/or nature of the works, goods and/or services being supplied to the Council. To the extent that such changes were anticipated in the tendering process and a change mechanism exists in the contract then the relevant Strategic Director may approve the variation/modification subject to it being value for money and there being sufficient budget provision for it.
- 54.2. Where variations or modifications are proposed (either by the Council or the supplier) which were not considered when the original procurement took place then there are significant limitations upon the Council being able to make such modifications, When considering an un-anticipated variation/modification to an existing contract, advice must be sought from the Chief Procurement Officer and Monitoring Officer.

55. Contract extensions

- 55.1. An extension to a contract may only be permitted where the details of any extension provisions were included within terms and conditions of the contract, tender/quotations documents and OJEU notice (where relevant).
- 55.2. If there is not a provision in the contract for an extension an exception to these Standing Orders must be identified and dealt with in accordance with Standing Order [•].
- 55.3. Prior to extending a contract, the Authorised Officer must ensure that an options appraisal is undertaken to determine if it is in the best interest of the Council to extend the current arrangement and then seek approval of the recommended option from the appropriate Strategic Director and the Chief Finance Officer.
- 55.4. When negotiating the terms of a contract extension (if such terms are not set out in the contract documentation) the Authorised Officer must make every effort to negotiate improved contract terms with regards to cost and/or quality of the goods, services and/or works being delivered.
- 55.5. Once a contract extension has been agreed with the supplier the Authorised Officer shall update the details of the contract held in YORtender.

CHAPTER VI MISCELLANEOUS PROVISIONS

56. Community representatives

- 56.1. The Cabinet or the member of the Cabinet for the service area concerned may invite community representatives to appoint persons (who may not be members of the Council) to participate in the drawing up of specifications for council contracts, interviewing contractors and monitoring council contracts.
- 56.2. Community representatives are not Authorised Officers and, except where the law specifically allows, shall be observers with speaking rights at the discretion of the Authorised Officer.
- 56.3. Community representatives may advise Authorised Officers where appropriate, but all decisions must be taken within the framework of the Council's Delegation Scheme for Members and Officers.
- 56.4. Authorised Officers must ensure community representatives give a written undertaking to treat all information confidentially throughout the tender process and the life of the contract.