

PART 4 – PROCEDURAL RULES

SECTION I

CONTRACT STANDING ORDERS

1. Introduction – Purpose of the Contract Standing Orders

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:
- a) Furthers its corporate objectives
 - b) Uses its resources efficiently
 - c) Purchases quality goods, services and works
 - d) Safeguards its reputation from any implication of dishonesty or corruption.
- 1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costing and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide that accompanies this document.

2. General Principles – Application and Compliance with Contract Standing Orders

- 2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.
- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3 These Contract Standing Orders do not apply to:
- a) Employment contracts
 - b) Contracts relating solely to the purchase or sale of interests in land
 - c) Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings
 - d) Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.
 - e) Post Entry Training Schemes
 - f) When for technical or artistic reasons connected with the protections of exclusive rights the goods services or works may be provided by only a particular service provider

3. General Principles Applying to All Contracts

- 3.1 There should be written evidence of all purchases.
- 3.2 Standard contract clauses shall be used in all contracts of a value of £5,000 or more. The standard contract clauses can be provided by Legal Services and are also available on the Intranet.
- 3.3 Each contract shall include standard clauses, or those indicated where applicable dependant on the nature of the contract, on
- Anti-Fraud and Corruption
 - Prevention of Assignment
 - Equal Opportunities
 - Health and Safety
 - Freedom of Information Act 2000
 - TUPE and workforce matters as applicable
 - Child Protection and Safeguarding Children where applicable
 - Liquidated Damages where applicable
 - Protocol for performance data sharing by contractors where applicable.
- 3.4 As a minimum, all contracts of a value of £5,000 or more shall include clauses which set out:
- a) The works, supplies (goods), services, material, matters or things to be carried out or supplied
 - b) The time within which the contract is to be performed
 - c) Quality requirements and/or standards which must be met
 - d) Requirements on the contractor to hold and maintain appropriate insurances
 - e) What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)
 - f) Requirements on the contractor to comply with all relevant equalities and health and safety legislation
 - g) That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or s117(2) Local Government Act 1972.
- 3.5 Written contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council. In this context, “non-commercial” means requirements unrelated to the actual performance of the contract.
- 3.6 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council’s Purchasing Guide.
- 3.7 All contracts of a value of £50,000 or more or which involve a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file held by the responsible officer.

4. Regulatory Context

- 4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:

- a) All relevant statutory provisions
- b) The relevant EU Rules and EC Treaty Principles which are defined in the Council's Purchasing Guide
- c) The Council's Constitution including these Contract Standing Orders, the Council's Financial Procedure Rules and Scheme of Delegation
- d) The Council's Purchasing Guide and other policies and procedures of the Council as appropriate.

4.2 In the event of conflict between the above, the EU Rules will take precedence, followed by UK legislation, then the Council's Constitution, the Council's Purchasing Guide and guidelines, policies and procedures.

5. Responsibilities of Executive Heads, Budget Managers and Responsible Officers

5.1 Each Executive Head shall have overall responsibility for the purchasing undertaken by his/her Service and take immediate action in the event of breach of these Contract Standing Orders

5.2 Each Budget Manager shall be responsible for the purchasing undertaken by his or her area and shall be:

- a) accountable to the Executive Head for the performance of his/her duties in relation to purchasing
- b) comply with the Council's decision making processes and scheme of delegation
- c) be the authorised signatory within the scheme of delegation

5.3 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.

5.4 A Responsible Officer's duties in respect of purchasing are to ensure:

- a) compliance with all Regulatory Provisions and integrity of the tender process
- b) compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process
- c) that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
- d) the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costing and cost savings
- e) compliance with the Council's decision making processes
- f) that all contracts of a value of £50,000 or more are included on the Council's Contract Register before contract signing/sealing
- g) that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £50,000 or more
- h) that value for money is achieved
- i) that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance.

5.5 In considering how best to procure works, supplies and services, Executive Heads, Budget Managers and/or Responsible Officers (as appropriate in the context), shall

take into account wider contractual delivery opportunities and purchasing methods such as the use of Framework agreements, joint procurement with other authorities and e-procurement methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.

- 5.6 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Section 151 Officer or the Monitoring Officer.
- 5.7 It is the responsibility of every officer or member engaged in awarding and assessing contracts and tenders to ensure that they have no potential conflict of interest with any of the potential tenderers for contracts with the Council. This includes any interests by their close associates or family members. If officers or members become aware of any such conflict of interest they should draw the matter to the attention of the Monitoring Officer immediately who will then decide whether the interest is prejudicial or not. Failure to declare an interest would be considered a disciplinary offence. If you are in any doubt about a potential conflict of interest speak to the Monitoring Officer first.
- 5.8 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must refer to the Council's Whistleblowing Code which can be found on the intranet and follow the guidance contained within.

6. Scheme of Delegation

- 6.1 Council purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Executive Head.
- 6.2 Each Executive Head shall inform officers, where appropriate, of the extent of any delegated authority and applicable financial thresholds.

7. Financial Thresholds, Key Decisions and Procedures

- 7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.
- 7.2 There is a general presumption in favour of competition. Wherever possible contract opportunities over £50,000 should be advertised by way of a public notice using the Council's contract portal.
- 7.3 The public notice referred to at 7.2 will usually be via the Council's electronic tendering portal but it may also be appropriate to advertise on the Council's or other websites or in the press and/or trade publications..

8. Table setting out financial thresholds and procedures

Total Value £	Type of Contract	Procedure to be used
Up to £4,999	Works, supplies and services	At least one quote in advance
£5,000 to £49,999	Works, supplies and services	At least 3 written quotes in advance
Over £50,000*	Works, supplies and services	Contract Number required At least 3 written tenders in

		processed through the Council's tender portal Key decision is > £100,000
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8.1 Where contracts are of a type and value that mean the EU Rules apply to them then there are four main types of EU procedures available. These are the open, restricted, competitive dialogue and competitive negotiated procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of EU procedure should be sought from Procurement.

8.2 The Council has determined that any decision which involves income or expenditure over £100,000 (or £100 million if it relates to treasury management matters) is a key decision. Therefore a decision by the Leader/Executive to commit the Council to expenditure (e.g. to agree to enter a contract or delegate such authority to an officer) of £100,000 or more over the whole length of the contract (including any options to extend) is a key decision and the steps set out in the Access to Information Procedure Rules (Part 4, Section F of the Constitution) must be followed. Notice of the intention to take a key decision must be published in the Schedule of Key Decisions at least 28 clear days before that decision is taken.

8.3 A key decision taken by an officer or any decision (regardless of the amount of the contract) taken by the Leader/Executive cannot be implemented until the end of the call-in period or the scrutiny of that decision has been completed (as set out in the Leader and Executive Procedure Rules (Part 4, Section B of the Constitution refers). Accordingly, in determining a timetable for the commencement of any contract, officers should take in account provision for scrutiny.

9. Financial Thresholds and Processes Applying to Approval and Execution of Contracts

9.1 For contracts over the relevant EU threshold (in force at the time), you must consult with procurement and legal at the earliest opportunity and in any event before deciding on the purchasing procedure or going to advert.

9.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:

- a) the appropriate approvals have been obtained to authorise that decision; and
- b) where appropriate, a standstill period complying with the EU Rules is incorporated into the final award process.

9.3 Any contracts valued at £50,000 or above shall be executed as a deed under the Council's common seal. Officers with appropriate delegated authority may sign all other lower value contracts.

10. Calculating the Contract Value

10.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).

10.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the EU Rules and/or these Contract Standing Orders.

10.3 The EU Rules can cover contracts, which are below the stated EU threshold, where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the EU Rules where they envisage that they may require making such purchases.

11. Principles Underlying Tendering Processes and Tender Evaluation

11.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:

- a) Sufficient time is given to plan and run the process
- b) Equal opportunity and equal treatment
- c) Openness and transparency
- d) Probity
- e) Outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

12. Submission and Opening of Tenders

12.1 An Invitation to Tender shall be issued by the Council for all contracts over £50,000 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.

12.2 It is assumed that all tenders over £50,000 shall use the Council's electronic tendering portal.

12.3 If the portal cannot be used then all tenders received shall be:

- a) addressed to the Executive Head of Finance
- b) in a sealed envelope marked "Tender" followed by the contract number and name to which it relates
- c) kept in a locked cabinet by the Executive Head of Finance or his/her nominee
- d) retained unopened until the date and time specified for its opening.

12.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the relevant Budget Manager is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply and the other tenders have not been opened.

12.5 Where Tenders are expected to have a value in excess of £100,000, and the electronic tendering portal has NOT been used then they shall be opened in the presence of the appropriate Portfolio Holder or another Executive Member, a member of Internal audit or the Executive Head of Finance or his/her nominee and the Responsible Officer nominated by the relevant Budget Manager.

12.6 The Executive Head of finance or the member of internal audit shall undertake the completion of the Record of Receipt of Tender Documents book including names and addresses, date and time of opening and value. All taking part in the opening shall sign the book

12.7 The tender opening process for physical tenders is set out in detail at Appendix 1 to these contract standing orders.

13. Evaluation of Quotes and Tender

13.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria which was included with the original tender pack to tenderers. Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules.

13.2 Save in exceptional circumstances approved in advance by the relevant Service Manager, all contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price.

14. Waivers

14.1 The requirement for the Council to follow these standing orders may be waived in the following circumstances:

- a) For contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
- b) Where it can be demonstrated that there is a genuine single source of supply for the goods/service required
- c) the circumstances set out in the Public Contract Regulations 2006 Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or
- d) the contract is awarded under a framework agreement of a type where a competition has already been undertaken on behalf of the Council; or
- e) at the discretion of Management Board who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.

14.2 A Responsible Officer, who seeks a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Purchasing Guide.

14.3 All waivers from these Contract Standing Orders must be:

- a) Fully documented
- b) Subject to a written report to be submitted in advance to the Monitoring Officer which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
- c) Applications for waivers which are a result of poor contract planning will rarely be considered genuinely exceptional.

14.4 All decisions on waivers must take into account:

- a) Probity
- b) Best value for money principles.

14.5 For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.

14.6 The Monitoring Officer will inform the relevant Portfolio Holder when a waiver is granted and these will be reported to the Performance and Audit Scrutiny Committee on an annual basis.

15. Extensions to Existing Contracts

15.1 Contracts can be extended where this was an option contained within the original tender notice. Any extension on these grounds must be notified to finance so they can update the contract register

15.2 Any other request for an extension will be considered as a request for a waiver of procurement rules and as such will only be granted in exceptional circumstances.

16. Purchasing Schemes

16.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.

16.2 Responsible Officers must check in advance that:

- a) The Council is legally entitled to use the Purchasing Scheme
- b) The purchases to be made do properly fall within the coverage of the Purchasing Scheme
- c) The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements
- d)

16.3 A "Purchasing Scheme" may include:

- a) Contractor prequalification lists such as "Constructionline"
- b) Framework arrangements
- c) Purchasing arrangements set up by central purchasing bodies and commercial organisations
- d) Consortium purchasing
- e) Collaborative working arrangements

16.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.

16.5 Where tenders have been invited on behalf of any consortium or collaboration of which the Council is a member, then the Procurement Rules adopted by that body, provided they are the lead organisation, may be observed if they differ from these rules. The responsible officer must satisfy himself that the organisation concerned has complied with EU rules if applicable.

17. Review and Changes to these Contract Standing Orders

17.1 These Contract Standing Orders shall be reviewed and updated on a regular basis.

**Tender opening
Instructions to opening officers**

Present: Appropriate Portfolio Holder or another Executive Member
Internal Audit Manager or Sec 151 Officer
Responsible Officer

Requirements: Unopened tenders
Tender Book

1. General

- 1.1 Before opening the tenders the Internal Audit manager or Sec 151 Officer shall check with the Post room that there are no tenders in the safe or at main reception or in the post box at the designated time for receipt; and that all tenders received up to that date are in his possession.
- 1.2 All tenders given to the member of internal audit should be properly sealed, dated and timed on receipt and show no signs of being tampered with. Where there is evidence of tampering the tender may still be opened but the member of internal audit shall make a statement to that effect in the tender book
- 1.3 The Member of Internal audit shall ensure prior to opening that each set of tenders to be opened are identifiable as relating to the same scheme. At this stage the internal audit manager should ascertain whether any late tenders have arrived (see Note 2 below).
- 1.4 Tenders should be opened as soon as possible and arrangements should be made in advance of that time with both Council Officers and Councillor to facilitate the procedure.
- 1.5 The Internal audit manager shall not destroy any of the tender envelopes but shall return them to the department who invited the tenders who shall consider their future retention. All envelopes relating to opened late tenders shall be kept.
- 1.6 If due to unusual circumstances a problem arises which is not covered by this code and cannot be resolved advice should be immediately sought from the Head of Legal Services.
- 1.7 The details of each tenderer and the value shall be recorded in the Tender register. The register shall be signed by all present to indicate that it represents a true record.

2. Late tenders

- 2.1 A late tender is any tender arriving after the designated time on or after the appointed day.
- 2.2 In respect of all such tenders the envelopes shall be endorsed "late tender" and shall specify the time and date received together with the signature of the receiving officer.

**E-Tender opening
Instructions to opening officers**

Present: Responsible Officer

Requirements: Unopened E-tenders

3. General

3.1 The Responsible Officer shall set the date and time of automated Tenderbox Closure on the Delta E-Sourcing portal.

3.2 The Responsible Officer shall ensure that E-Tenders are opened, viewed and stored in accordance with Data Protection Act Principles and associated Council policies. Furthermore the Responsible Officer will ensure that E-Tenders are only accepted if submitted through the Delta E-Sourcing portal.

3.3 E-Tenders shall be made available for the viewing of the Appropriate Portfolio Holder or another Member of the Executive, Internal Audit Manager or Section 151 Officer should they request this.

3.4 If due to unusual circumstances a problem arises which is not covered by this code and cannot be resolved advice should be immediately sought from the Head of Legal Services.

3.5 The Responsible Officer shall ensure that the documents comprising each E-Tender shall be retained in the corresponding Tenderbox on the Delta E-Sourcing portal in line with the Council's document retention policies.

4. Late E-Tenders

4.1 A late E-Tender is any tender not submitted at the point of Tender Closure on the Delta E-Sourcing portal. It is not possible for E-Tenders to be received in this scenario and it is not acceptable to receive late E-Tenders through any other channel.