

# **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.
- 1.5 References to "Regulations" means the Public Contracts Regulations 2015 and references to the "Transparency Code" mean the Transparency Code 2015.

#### **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. Concession contracts must follow the requirements under the Concession Contracts Regulations 2016 and the Transparency Code. Identifying and awarding concession contracts are uncommon and Responsible Officers should take advice from legal services.
- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders 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
- g) Contract modifications permitted by law under section 72 of the Public Contracts Regulations 2015.
- h) Contracts providing for the delegation of the Council's functions.
- i) Contracts providing for cooperation between the Council and other public sector bodies where the structure of cooperation is exempt from the Public Contracts Regulations 2015 and any other applicable laws.
- j) Contracts awarded under a framework agreement or dynamic purchasing system. Responsible Officers must follow the rules and requirements of using frameworks or dynamic purchasing systems.

**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 may also be available on the Intranet. Contracts may be awarded based on a supplier's standard terms of conditions subject to any modifications requested by legal services.**

**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) Mechanisms for variation and extension
- d) Clarity on the balance of risk
- e) Clear payment mechanism and price schedule or clause.
- f) Quality requirements and/or standards which must be met
- g) Requirements on the contractor to hold and maintain appropriate insurances
- h) What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)
- i) Requirements on the contractor to comply with all relevant equalities and health and safety legislation
- j) 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 offences under the Bribery Act 2010, Modern Slavery Act 2015 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. A more detailed list of non commercial consideration is contained in section 17 of the Local Government Act 1988.

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) Relevant Statutory guidance
- c) Any EU Rules and EC Treaty Principles which are adopted and reflected in UK legislation.
- d) The Council’s Constitution including these Contract Standing Orders, the Council’s Financial Procedure Rules and Scheme of Delegation

- e) 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 UK Legislation will take precedence, followed by Statutory guidance, then the Council's Constitution, the Council's Purchasing Guide and guidelines, policies and procedures.
- 5. Responsibilities of Strategic Directors, Head of Service, Budget Managers and Responsible Officers**
- 5.1 Each Strategic Director and Head of Service 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 relevant Strategic Director or Head of Service 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) the authorised signatory within the scheme of delegation or by sub-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 £5,000 or more are included on the Council's Contract Register after 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 £5,000 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.

- j) Contract award notices are published for all contracts of a value greater than £25,000 and for all contracts awarded pursuant to framework agreements or dynamic purchasing systems regardless of value.
- k) For all contracts over £5,000, that new suppliers can demonstrate satisfactory trading history with reference to accounts or references from previous employers.

5.5 In considering how best to procure works, supplies and services, Strategic Directors, Heads of Service, 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 Strategic Director and Head of Service..

6.2 Each Strategic Director and Head of Service 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 £5,000 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.
- 7.4 The award of any contract which is a key decision is also an Executive function. Strategic Directors and Heads of Service are authorised to award contracts that are not key decisions.

## 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	Contract Number required At least 3 written quotes requested in advance
Over £50,000*	Works, supplies and services	Contract Number required At least 3 written tenders received and processed through the Council's tender portal. Key decisions are contracts with a total value of more than £100,000 or for any contract for a terms of years with a value greater than £25,000 per annum and total contract value over £100,000 exclusive of indexation. The mean average to be used where annual payments are uneven.

- 8.1 Where contracts are of a type and value that mean the Public Contracts Regulations 2015 apply care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of 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) or greater than £25,000 per annum for a contract with a

term of years and total contract value over £100,000 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 or more than £25,000 per annum 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.
- 8.4 Regarding any process to request quotes, Responsible Officers must ensure that they consider the best means to access the widest market for works, goods or services. Officers should also be mindful to be as inclusive as possible when requesting quotes and this may be achieved by requesting more than 3 quotes and rotating between suppliers for subsequent procurements. Responsible Officers must also be mindful on how they can promote the inclusion of local suppliers in all procurements to enhance social value and achieve best value.

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

- 9.1 For contracts over the relevant threshold in the Public Contracts Regulations 2015 (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 Rules in the Regulations is incorporated into the final award process.
- 9.3 Any contracts valued at £50,000 or above may be executed as a deed under the Council's common seal. Officers authorised to seal contracts may determine whether or not it is appropriate to execute contracts under the Council's common seal. For example, for construction contracts such officers may consider a 12 year limitation period (*as opposed to the standard 6 year period*) is beneficial to cover latent defects. This benefit is only available if

contracts are sealed. Officers with appropriate delegated authority may sign contracts which are not required to be sealed. .

## **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, options and any ongoing revenue costs).
- 10.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the Regulations and/or these Contract Standing Orders.
- 10.3 Where Responsible Officers are considering repeat orders with a particular contractor, they must ensure that the cumulative value of the contract remains below the threshold used for the original contract award. If it is likely that the cumulative value of the contract would exceed such threshold, Responsible Officers should seek advice from legal or procurement on the options to ensure compliance with these Contract Standings Orders and Regulations.

## **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 a requirement that all tenders over £50,000 shall use the Council's electronic tendering portal unless the portal is not available.
- 12.3 If the portal cannot be used then all tenders received shall be:
  - a) addressed to the Strategic Director of Finance and Customer Services
  - 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 Strategic Director of Finance and Customer Services 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 Strategic Director of Finance and Customer Services or his/her nominee and the Responsible Officer nominated by the relevant Budget Manager.
- 12.6 The Strategic Director of Finance and Customer Services 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 Regulations shall be evaluated in accordance with the Regulations.
- 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.
- 13.3 The procurement documents must set out a clear and robust evaluation methodology and Responsible Officers must investigate any Tenders or Quotes which appear abnormally low.

### **14. Waivers**

- 14.1 The requirement for the Council to follow these standing orders may be waived in the following circumstances except requirements to comply with the Transparency Code and post contract award procedures still apply:
  - a) For contracts which are not subject to the Public Contracts Regulations 2015 for which 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 works/goods/service required
  - c) the circumstances set out in the Public Contract Regulations 2015 Regulation 32 apply (whether or not the contract is of a type which is subject to the application of the Regulations); 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 the Monitoring Officer and Section 151 Officer 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 the completion of the Council's standard waiver request form to be submitted in advance to the Monitoring Officer and Section 151 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 Regulations, any waiver from the requirement for competition must meet the conditions set out in the Regulations 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 or modification permitted by the Public Contracts

Regulations 2015 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 Regulations (where they apply) and meets the Council's own requirements

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 the Regulations 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.

## **18. Transparency Code**

18.1 For all contracts over £5,000 the following details must be published on the Council's Contracts Register. Responsible Officer must liaise with the Council's Procurement Officer regarding updating the Contracts Register.

- (a) reference number
- (b) title of agreement
- (c) local authority department responsible
- (d) description of the goods and/or services being provided
- (e) supplier name and details
- (f) sum to be paid over the length of the contract or the estimated annual spending or budget for the contract
- (g) Value Added Tax that cannot be recovered
- (h) start, end and review dates
- (i) whether or not the contract was the result of an invitation to quote or a published invitation to tender
- (j) whether or not the supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number

## **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.