

## **PART 7.5 CONTRACT STANDING ORDERS**

### **General**

#### **Introduction**

Procurement decisions are among the most important decisions an officer will make because the money involved is public money and the Council is concerned to ensure that high quality goods, works and services are provided. Efficient use of resources in order to achieve best value is therefore an imperative. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.

All staff are expected to comply with the Council's agreed procedures, and this includes Contract Standing Orders.

Failure to comply with Contract Standing Orders when letting contracts is a serious matter, and employees should report any actual or suspected breach of Contract Standing Orders to an appropriate senior manager and the Head of Audit.

#### **Contract Standing Order 1: Interpretation**

1.1 In these Contract Standing Orders, the following terms have the following meanings:

“Approved List”	a list of suitable Contractors drawn up for corporate use under CSO 6
“Budget Holder”	a Council Employee who is accountable for a defined budget, and is responsible for committing expenditure against that budget in accordance with the Council's Financial Standing Orders and Regulations
“Contract Consultant”	any person not being an employee of the Council who is acting for the Council in relation to a Contract or proposed Contract
“Contract”	any agreement: (i) for the supply of goods, services, or the execution of works to or for the Council including the use of consultants (ii) any Framework Agreement (iii) where no payment is made by the Council but which is of financial value

	to the Council (for example a concession agreement) but excluding:
	(i) the use of external solicitors and counsel instructed by the Head of <u>Law Legal and Democratic Services</u>
	(ii) a contract for the purchase or sale of land
	(iii) Grants
	(iv) individual employment contracts
“Contract Finder”	a centralised, Central Government run, online contract notice portal
“Contract Officer”	a Council Employee authorised to deal with Contracts in accordance with CSO 3.1
“Contracts Register”	the Council’s electronic register of Contracts
“Contractor”	the party or potential party to a Contract
“Council”	Brighton & Hove City Council
“Council Employee”	any person employed on a permanent, temporary or agency arrangement by the Council
“CSO”/ “CSOs”	Contract Standing Order/ Contract Standing Orders
“ <del>Executive Director</del> <u>Executive Director</u> ”	<u>Includes all Chief Officers including the Chief Executive, the Assistant Chief Executive, the Monitoring Officer, all <del>Executive Director</del> Executive Directors, as well as the Executive Director Executive Directors</u>
“DPS”	an electronic system used to purchase commonly used goods, works or services within a limited duration
“EU”	European Union
“EU Public Procurement Directives”	EU Directive 2014/24/EU (which consolidates all previous directives relating to public works, supplies (goods) and service contracts) and any Directives and Regulations by which it is applied,

extended, amended, consolidated or replaced and any re-enactment thereof

“EU Thresholds”

EU and Government Procurement Agreement thresholds for advertisement of goods, works and services contracts as advised by the Government (as of 1 January 2016 at £589,148 for services contracts listed in Schedule 3 of the UK Regulations, £164,176 ~~172,514~~ for all other supplies and services contracts; and £4,104,394 ~~322,012~~ for works contracts)

“EU Treaty”

the Treaty on the Functioning of the European Union and the Treaty on the European Union

“Framework Agreement”

An arrangement made in accordance with the UK Regulations between the council (or another Contracting Authority) and a provider or providers of goods, works or services specifying the terms under which contracts can be “called off” or entered into over the period during which it is in force

“Grants”

A grant is an arrangement where money is given for the benefit of all or for a section of the local community for a stated purpose other than for the procurement of services (whether the services are to be given to the Council or to third parties).

“Light Touch Regime”

A specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health, education and cultural services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015 (Annex A).

“Lots”

One of a number of categories of supplies or services which a single procurement process has been divided into. The use of Lots potentially allows for multiple providers to be appointed following one procurement process

“Most Economically Advantageous Tender”	A tender which has been selected by using weighted price and/or quality criteria. See CSO 9
“OJEU”	Official Journal of the European Union
“Procurement Guidance”	Corporate Procurement’s Codes of Practice (including the Procurement Toolkit), model contracts and other guidance which supplements these CSOs
“Procurement Strategy Manager”	The person appointed by the Council as the Procurement Strategy Manager or any Member of the Corporate Procurement Team authorised by him/her to act on his/her behalf
“Senior Officer”	All Heads of Service and any other officer who is a member of the Corporate Management Team.
“SME”	Small and medium-sized enterprises
“UK Regulations”	Public Contracts Regulations 2015 (SI 102/2015) and all subsequent regulations giving effect to the EU Public Procurement Directives
“works” “supplies” & “services”	as defined in the EU Public Procurement Directives (“supplies” are also referred to as “goods” in these CSOs)

- 1.2 The Chief Executive, after consultation with the Monitoring Officer and the Chief Finance Officer, may change the non-statutory thresholds in Contract Standing Orders annually (or as appropriate) to take account of changes in the retail price index and other factors so that the effectiveness and impact of the thresholds is maintained.

## **Contract Standing Order 2: Compliance with Contract Standing Orders and Legislation**

- 2.1 The Monitoring Officer in consultation with the Procurement Strategy Manager shall compile and maintain CSOs and advise on their implementation and interpretation.
- 2.2 Every Contract made by the Council or on its behalf shall comply with the EU Treaty, the EU Public Procurement Directives and all relevant EU and domestic legislation, CSOs, and the Council’s Financial Regulations. EU and UK legislation will always override the provisions

of these CSOs.

- 2.3 Contractors, Contractors' employees, subcontractors and agents utilised by the Council shall be required to, at all times, comply with the requirements of the Health & Safety at Work etc Act 1974, all secondary legislation made under that Act and all other Acts, Regulations, Orders or Rules relating to Health & Safety. All contracts shall reflect these requirements and reference to the Council's Health & Safety Code of Practice should be made in this regard.
- 2.4 The Corporate Procurement Strategy and Procurement Guidance held and disseminated by the Procurement Strategy Manager, shall supplement these CSOs, but these CSOs will always take precedence over the provisions of such Procurement Guidance.
- 2.5 It shall be a condition of any Contract between the Council and anyone who is not a Council Employee, but who is authorised to carry out any of the Council's contracts functions, that they comply with CSOs, and the Financial Regulations of the Council as if they were Council Employees.

### **Contract Standing Order 3: Scheme of Delegation/Authorisation**

- 3.1 Each ~~Director~~Executive Director has unrestricted delegated power to agree to the Council entering into Contracts or joining existing Framework Agreements up to the sum of £500,000. Above this sum and before inviting expressions of interest from potential bidders, Council Employees must seek approval from the relevant Committee.  
~~All Budget Holders (in relation to expenditure within their allocated budgets), Senior Officers, and Contract Officers authorised by the relevant Director or Senior Officer may agree to the Council entering into Contracts of up to £250,000 in value. Such authorisation may be expressed or implied from the duties attached to the Contract Officer's post.~~
- ~~3.2.1~~  
3.2 Where an ~~an~~ Executive Director is unavailable or otherwise unable to act, his/her functions under these CSOs may be discharged by the relevant Senior Officer.
- 3.3 All Budget Holders (in relation to expenditure within their allocated budgets), Senior Officers, and Contract Officers authorised by the relevant ~~Director~~Executive Director or Senior Officer may agree to the Council entering into Contracts of up to £250,000 in value. Such authorisation may be expressed or implied from the duties attached to the ~~Contract~~ Officer's post.
- ~~3.3.4~~

### **Contract Standing Order 4: Declarations of Interest and Prevention of Corruption**

- 4.1 Members of staff must avoid any conflict between their own interests and the interests of the Council. At the beginning of any Contract process the following persons shall declare any interest, as defined in the Code of Conduct for Employees set out in the Council's constitution, which may affect the Contract process:
- 4.1.1 Council Employees involved in the procurement and management of a Contract
  - 4.1.2 Contractors
  - 4.1.3 Contract Consultants
  - 4.1.4 any other person involved in the Contract process
- 4.2 ~~Director~~Executive Directors and Senior Officers shall ensure that all Council Employees within the categories set out in CSO 4.1 and all Contract Consultants and Contractors appointed by them make written declarations of interest on their appointment and as required on any change in circumstances. Interests of Council Employees will be reviewed annually, either at the end or beginning of the financial year. The relevant ~~Director~~Executive Director or Senior Officer shall either certify interests as acceptable or take any necessary action in respect of potential conflicts of interest.
- 4.3 ~~Director~~Executive Directors and/or Senior Officers shall keep completed Council Employee declarations on the register of staff declarations indicating the names and grades of those declaring an interest and the nature of their interest.
- 4.4 ~~Director~~Executive Directors and/or Senior Officers shall keep completed Contract Consultants' and Contractors' declarations of interest and relevant Council Employees' declarations affecting the Contract on the contract file.
- 4.5 A Council Employee within the categories set out in CSO 4.1 has an interest in a Contract if he/she has or potentially has a pecuniary interest or has links, ( for example, a family member or close friend works for the organisation ), with an organisation or Contractor tendering or quoting for a Contract with the Council or already has a Contract with the Council. If it, and is not the subject of an existing declaration, he/she must immediately give written notice of his/her interest to the relevant ~~Director~~Executive Director or Senior Officer and in any event must take no part in the procurement process.
- 4.6 Council Employee must not invite or accept any gift or reward in respect of the award or performance of any Contract. It will be for the Council Employee to prove that anything received was not received corruptly. High standards of conduct are obligatory and corrupt behaviour will lead to dismissal.
- 4.7 The Contract process shall ensure that the Council will operate strict

separation of duties by ensuring that two authorised Council Employees are involved in the ordering, receiving and payment process.

- 4.8 The following clause, (or an equivalent clause in standard forms of contract or other wording as approved by the Monitoring Officer) must be appear in every written Council Contract:

*“The Council may terminate this Contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:*

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council Contract (even if the Contractor does not know what has been done); or
- (b) commit an offence under the Bribery Act 2010; or
- (c) commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Council Members or Employees.

*Any clause limiting the Contractor’s liability shall not apply to this provision.”*

- 4.9 A register of interests under CSO 4 may be a separate register or [it may](#) form part of a general register of declarations of interest as the ~~Director~~[Executive Director](#) or Senior Officer considers appropriate.

## Contract Standing Order 5: Public Notices

5.1 Where, by virtue of these CSOs or by some other authority, public notices or advertisements are required, they shall be placed in at least one relevant local publication and on the Council website ten days or more before expressions of interest are required by the Council. Where the estimated total value of the Contract exceeds £100,000, the notice or advertisement shall be placed in at least one newspaper or journal circulating among such persons or bodies who undertake such Contracts. The requirement to give notice in a local newspaper may be dispensed with if the relevant ~~Director~~Executive Director or Senior Officer certifies that there are insufficient Contractors in the locality.

5.2 All Contracts whose value exceeds the relevant threshold of the EU Public Procurement Directives and which ~~-~~ if below the threshold ~~-~~ may be of interest to both local suppliers and more widely including suppliers in EU member states (cross border interest) shall be advertised in the ~~-~~OJEU and on Contracts Finder. Contract Officers are required to keep a record of their consideration of and decision in respect of the potential for cross border interest in a Council Contract.

~~5.3 As outlined in CSO 13, Certain services (including but not only public health, health and social services) may be procured under a "light touch" regime. Where the value of the services is above the relevant threshold (currently £589,148), the procurement must be advertised in accordance with para 5.2 above but may also be used to call for expressions of interest as long as the Council's intention to proceed to award of contract without further advertising is made clear in the Notice. Where the value of the services is below the threshold, it need not be advertised although the requirement to ensure that transparency and equal treatment are achieved still applies.~~

## Approved Lists and Framework Agreements

### Contract Standing Order 6: Approved Lists

6.1 The Head of Property and Design may compile and maintain Approved Lists of Contractors for construction related Contracts, for Contracts below the relevant EU threshold. The Procurement Strategy Manager may compile Approved Lists for Contractors for the supply of goods and other services for Contracts below the relevant EU Threshold as appropriate.

6.2 Where compiled pursuant to CSO 6.1, Approved Lists—

- (a) shall, in the case of internally managed Approved Lists, be established by advertised competition (subject to CSO 6.3).
- (b) shall contain the names and addresses of all Contractors who meet the Approved List criteria.



- (c) shall indicate the nature and value of Contracts for which the Contractors listed may be used. The value may not exceed the relevant EU threshold.
  - (d) where maintained internally by the council shall be reviewed in full at least every three years in addition to a review of the use of external providers from such Approved Lists.
- 6.3 Construction Line and standing lists of providers maintained by other public sector bodies compiled following responses to a public advertisement shall be deemed to be Approved Lists for the purpose of these CSOs.
- 6.4 In addition ~~Director~~Executive Directors with the assistance of the Procurement Strategy Manager may set up Framework Agreements in line with EU Public Procurement Directives with one or more suppliers of particular types of goods or services.
- 6.5 The criteria for admission to and suspension and exclusion from internally managed Approved Lists shall be specified in writing by: -
  - (a) the Procurement Strategy Manager, for goods and services and non-construction works
  - (b) the Head of Property and Design, for works and works related services
- 6.6 Any Contractor may, by giving written notice to the Council, withdraw from any internally managed Approved List.
- 6.7 Where there is no Approved List or Framework Agreement, ~~Director~~Executive Directors and Senior Officers shall use an approved quotation or tender procedure in accordance with Procurement Guidance.

## **Contract Standing Order 7: Framework Agreements**

- 7.1 Prior to accessing any Framework Agreement the relevant ~~Director~~Executive Director or Senior Officer must firstly determine that the Framework Agreement is available for legitimate use by the Council in accordance with Regulation 33 of the UK Regulations.
- 7.2 Where two or more Framework Agreements exist which are capable of fulfilling the Council's requirements, the relevant ~~Director~~Executive Director or Senior Officer shall select the one they consider (a) to represent the best value for money and (b) best meets any other relevant criteria; and shall keep a written record of the reasons justifying the selection.
- 7.3 Prior to the procurement of a new, or joining a pre-existing, Framework Agreement, the Procurement Strategy Manager must be satisfied that such an approach represents the most economically advantageous solution for a service, work, or supply provision.

- 7.4 When setting up a Framework Agreement for the Council, the relevant ~~Director~~Executive Director or Senior Manager shall use the most appropriate procurement procedure permitted by the UK Regulations.
- 7.5 When procuring goods or services from an existing Framework Agreement, the relevant ~~Director~~Executive Director or Senior Manager may –
- (i) where there is only one supplier capable of fulfilling the requirement, select that supplier;
  - (ii) where there is more than one supplier capable of fulfilling the requirement listed on the Framework Agreement and the terms and conditions and requirements of the Framework Agreement are sufficiently specific without change as to allow award to any one of the suppliers, select one of the suppliers without the need for further competition subject to demonstrating value for money.
- 7.6 When procuring goods or services from an existing Framework Agreement and there is a need to refine or supplement any of the requirements referred to in 7.5(ii) above, a mini-competition inviting all those persons on the Framework who are capable of providing the goods and services must be held, such mini-competition to be held in accordance with the Framework Agreement provisions and CSOs 9, 10, 11 or 12 as appropriate.
- 7.7 All tenders from potential suppliers on Framework Agreements must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Procurement Strategy Manager as for example in the case of incompatibility with the particular Framework Agreement requirements. .
- 7.8 Before establishing a Framework Agreement, the relevant ~~Director~~Executive Director or Senior Manager shall be satisfied that:
- (i) the term of the arrangement shall be for a period of no longer than four years;
  - (ii) the terms and conditions of the Framework Agreement do not compromise the Councils' contractual requirements;
  - (iii) full, open, and proper competition in respect of the creation of the framework has taken place.
  - (iv) consideration is given to making the Framework Agreement available to other public bodies where appropriate.

### **Contract Standing Order 8: Contract Value and Aggregation**

- 8.1 Council Employees shall estimate and record the total value of a proposed Contract net of VAT.
- 8.2 Contracts must not be artificially separated so as to circumvent the application of any CSO or of the EU Public Procurement Directives or UK Regulations.

- 8.3 The total value of a Contract for works, services or supply of goods is estimated to be the same as the total consideration to be payable over the term of the Contract by the Council to the Contractor. Where the Contract period is indefinite or uncertain then the estimated total value is calculated by assuming a four-year term. If the Council has an option to extend the Contract, the value is the value of the Contract including the period of the extension.

## **Requirement to Obtain Tenders**

### **Contract Standing Order 9: Tendering Procedures**

- 9.1 At the outset of each procurement the Contract Officer must:
- (i) assess the business need;
  - (ii) ensure the procurement complies with corporate policies and priorities;
  - (iii) when appropriate undertake a premarket testing exercise;
  - (iv) ensure the necessary authority is in place to undertake the procurement; and
  - (v) ensure that adequate provision is made within the Council's capital or revenue estimates and that proper technical and financial appraisals have been carried out in accordance with the Council's Financial Procedure Rules.
- 9.2 Where procurement of goods, services or works is required and the estimated total value of the Contract is in excess of the relevant EU threshold, EU public procurement procedures shall be followed as set out in the UK Regulations and these shall prevail over the tendering procedures set out in these CSOs.
- 9.3 For most goods, services and works Contracts the restricted, open, or competitive dialogue procedure will be appropriate. Enquiries should be made of the Procurement Strategy Manager or Legal Services if it is proposed to use an innovation partnership or a competitive procedure with dialogue or negotiation.
- 9.4 For Private Finance Initiative, Public Private Partnership and similar procurement arrangements introduced by the Government, where the total Contract value is in excess of the relevant EU threshold, the restricted or competitive dialogue procedure will be used.
- 9.5 The Council may procure goods, services or works to any value in collaboration with other local authorities or other public or voluntary sector bodies. Where the Council is the lead buyer within the consortium, these CSOs shall apply. Where the Council is not the lead buyer, procurement procedures shall follow the CSOs of the lead buyer.
- 9.6 When determining a suitable procurement route, consideration will be given to all tenders with respect to:-

- (i) Separating the Contract into Lots in order to promote SME engagement;
- (ii) ~~engagement~~; Sustainability issues in accordance with the Council's Sustainability Policy and Sustainable Procurement Policy;
- (iii) In the case of service contracts the provisions of the Public Services (Social Value) Act 2012.

9.7 The procedure must be both appropriate and proportionate to the value of the contract. It must ensure that the Council achieves best value which is to be assessed by an evaluation of both the price and quality of bids received so as to determine the Most Economically Advantageous Tender over the life of the contract. Price shall be the sole criterion only where the ~~Director~~Executive Director, Senior Officer or the Council Employee preparing the Contract for him/her considers this to be appropriate.

9.8 Evaluation criteria and weightings for each procurement shall be determined in advance and included in the invitation to tender. Determination of criteria at all stages shall be undertaken in accordance with Procurement Guidance.

#### **Contract Standing Order 10: Contracts Not Exceeding £25,000**

10.1 Where the appropriate ~~Director~~Executive Director or Senior Officer estimates the total Contract value for goods, services or works is unlikely to exceed £25,000 (in the case of Consultants is unlikely to exceed £10,000) and there is a suitable Framework Agreement available, that Framework Agreement shall be used. Where no Framework Agreement is available competitive quotations in writing shall be requested or a commercial negotiation with one preferred Contractor may take place. In the latter case the ~~Director~~Executive Director or Senior Officer shall certify that Procurement Guidance has been followed and that the Council shall receive value for money.

10.2 Contracts with an estimated total value not exceeding £25,000 shall be evidenced in writing in simple cases by way of letter or the issue of an order. In the case of consultants (whatever the value) and in all other cases formal written Contracts shall be completed.

10.3 Although the competitive process for ensuring Contracts not exceeding a total value of £25,000 is less formal than for Contracts of greater amounts, Officers should at all times bear in mind the need to seek value for money and be able to demonstrate that they have obtained it.

#### **Contract Standing Order 11: Contracts Exceeding £25,000 and Not Exceeding £75,000**

- 11.1 Where the Contract Officer estimates the total Contract value is likely to be greater than £25,000 (in the case of Consultants greater than £10,000) ~~but~~ not exceeding £75,000 and an Approved List or Framework Agreement is available then at least four competitive tenders in writing shall be sought from Contractors on the relevant Approved List or Framework Agreement.
- 11.2 In the absence of an Approved List or Framework Agreement being available an approved tender procedure shall be used in accordance with Procurement Guidance.
- 11.3 In either case, if less than four suitably qualified tenders are available, the Contract Officer must consult with the Procurement Strategy Manager.
- 11.4 Where criteria additional to price are to be used in evaluation, these must be set out in the invitation to tender. At least two bona fide tenders must be received and the Most Economically Advantageous Tender accepted.
- 11.5 If only one compliant tender is received, the Contract Officer must consult with the Procurement Strategy Manager and provide evidence to show that the Council can obtain value for money.
- 11.6 Contracts with an estimated total value greater than £25,000 and not exceeding £75,000 shall be evidenced in writing in simple cases by the receipt of a written quotation and the delivery of an official order form. ~~In all other cases, including consultancy arrangements, in the case of consultants and in all other cases~~ a formal written Contract must be entered into.

## **Contract Standing Order 12: Contracts Exceeding £75,000**

- 12.1 Where the Contract Officer estimates that the total value of a Contract is likely to exceed £75,000 and either a Framework Agreement or Approved List is available, then at least five tenders will be sought from Contractors on the relevant Framework Agreement or Approved List.
- 12.2 In the absence of a Framework Agreement or Approved List being available an approved tender procedure shall be used in accordance with Procurement Guidance and, where applicable, in accordance with the EU Public Procurement Directives and UK Regulations and at least five tenders must be sought.
- 12.3 If less than five suitably qualified tenders are available, the Contract Officer must consult with the Procurement Strategy Manager.
- 12.4 At least two compliant tenders must be received and the Most Economically Advantageous Tender must be accepted. Notwithstanding this, if only one compliant tender is received, the

Contract Officer must consult with the Procurement Strategy Manager and provide evidence to show that the Council can obtain value for money.

- 12.5 Where the estimated total value of the Contract is such that the Council is required by law to comply with the EU Public Procurement Directives the requirements thereof shall be complied with and the tender procedures set out in these CSOs shall be deemed to be satisfied by such compliance.
- 12.6 Decisions relating to the Contract process for Contracts exceeding the thresholds for the EU Public Procurement Directives shall be made by the ~~Director~~Executive Director or Senior Officer in consultation with either:
- (a) the Procurement Strategy Manager, for goods and services Contracts; or
  - (b) the Head of Property and Design for works Contracts.

**Contract Standing Order 13: Contracts procured under the 'Light Touch Regime' Procedures for procuring contracts for Public Health, Health and Social Care Services**

- 13.1 Certain services as listed in Schedule 3 of the UK Regulations (including but not limited to health, healthcare, social, educational, and cultural services) must be procured in accordance with the UK Regulations under a 'Light Touch Regime' where the value of those services is above the relevant EU Threshold. Public Health, Health and Social Care Services must be procured in accordance with the EU Public Procurement Directives and UK Regulations, to the extent that those rules apply.
- 13.2 The Council recognises that ~~(as noted in para 5.3 above)~~, whilst the full requirements of the UK Regulations including the requirement for advertising in the Official Journal of the European Union (OJEU) do not apply to contracts for services which are subject to the Light Touch Regime ~~public health, health and social care services~~, they are nevertheless subject to EU Treaty principles of transparency and fairness that are designed to facilitate the functioning of the EU.
- 13.35 The Council recognises that the Care Act 2014 introduces and consolidates a number of duties which must be taken into account ~~in~~ when commissioning services.
- 13.4 Contracts for services which are subject to the Light Touch Regime where the value of such services is above the relevant EU Threshold must be advertised in the OJEU by publication of a Contract Notice or Prior Information Notice ('PIN') except where the grounds for using the negotiated procedure without a call for competition can be used, for



example where there is only one provider capable of supplying the services required.

~~In each case of procuring a contract for public health, health or social care services where the contract value exceeds the EU Thresholds,~~

13.5 The procurement process for Contracts which are subject to the Light Touch Regime must comply with the Treaty principles of transparency and equal treatment and the relevant ~~Director~~Executive Director in consultation with the Procurement Strategy Manager and the Head of Legal and Democratic Services~~Law~~ shall be responsible for deciding the process to be followed to ensure that these principles are complied with and that the Contract represents value for money.

~~13.65~~ In making this assessment the Executive Director~~Executive Director~~ shall take account of the individual circumstances of the Contract, including the subject matter and estimated value of the Contract, the specifics of the service sector concerned and the geographic location of the place of performance of the Contract.

~~13.6 The Director following consultation with the Procurement Strategy Manager, may determine subject to any applicable notice provisions that it is not necessary to seek offers in relation to the Contract via an OJEU notice, and that competition for a Contract may be limited if any of the following apply:~~

- ~~a. It can be demonstrated that the Contract is of no interest to service providers in other EU member states; and/ or~~
- ~~b. The total sum to be paid under the Contract is so low that service providers located in other EU member states would not be interested in bidding for the Contract; and/ or~~
- ~~c. The service is of such a specialised nature that no cross-border market of suitable service providers exists; and/ or~~
- ~~d. Advertising the Contract would result in the loss of a linked service; and/ or~~
- ~~e. The existing service provider(s) are the only service provider(s) capable of delivering the service to meet the needs of the individual(s) concerned; and/ or~~
- ~~f. The nature of the service is such that it should not or cannot be adequately specified in advance because of the nature of the social care needs of the service user(s) concerned; and/ or~~
- ~~g. There are special circumstances such as ownership of land or property, geographic locations or particular skills or experience of service providers of social care which limit the choice to one service provider; and/ or~~
- ~~h. There are reasons of extreme urgency, brought about by unforeseen events which are not attributable to the Council.~~

- ~~13.7 The Director shall be required to maintain a list of all Contracts which he/ she decides do not require to be advertised on the basis of the determinations made under the above.~~
- ~~13.8 The decisions will all be fully documented. Any reasons for deciding that a proposed Contract will not be advertised (including evidence as to how Best Value will have been achieved) must be recorded and included on the list which is to be published/go to the elected members under paragraph 13.7 above.~~
- ~~13.9 Best Value can be achieved by:~~
- ~~Understanding and testing the unit costs associated with a particular service (benchmarking);~~
- ~~Making sure that decisions are based on up to date data;~~
- ~~The use of locally or nationally agreed set rates based on an agreed formula;~~
- ~~Ensuring high cost services are regularly reviewed;~~
- ~~Joint purchasing where possible.~~

#### **Contract Standing Order 14: Contract Formation and Threshold for Sealing**

- 14.1 All Contracts should be formed using the Council's standard terms and conditions applicable to the type of contract in question, as issued from time to time by Legal Services.
- 14.2 Electronic signatures may be used provided that the sufficiency of security arrangements has been approved by the relevant Executive Director.
- 14.32 Any Contract with an estimated value of £100,000 or less which does not use the Council's standard terms and conditions (as referred to in paragraph 14.1) must be referred to the Procurement Strategy Manager for advice prior to the issue of the tender or quotation documents.
- 14.34 Any Contract with an estimated value of £100,000 or less which does not use the Council's standard terms and conditions (as referred to in CSO 14.1) must be referred to Corporate Procurement for advice before executing the Contract.
- 14.45 Any Contract with an estimated value over £100,000 which does not use the Council's standard terms and conditions (as referred to in CSO 14.1) must be forwarded to Legal Services prior to the issue of a tender, for advice as to whether the proposed Contract adequately protects the Council's interests.



14.56 Without prejudice to paragraph CSO 14.1 the Head of Legal and Democratic Services Law may approve other terms and conditions to be used in respect of a particular Contract or type of Contracts when appropriate to protect the Council's interests.

14.67 Subject to paragraph 14.8 below:-

- (i) Contracts with an estimated value over £250,000 shall be executed as a deed using the Common Seal of the Council;
- (ii) Contracts with an estimated value of £250,000 or less may be executed as a simple contract and signed by an officer duly authorised for that purpose in accordance with CSO 3.1.

14.78 The Head of Legal and Democratic Services Law may, on a case by case basis or in relation to a particular class of contracts and taking all relevant circumstances into account, stipulate the method by which a particular contract or class of contracts is to be executed, irrespective of the overall estimated value of the Contract.

## **Tendering Process**

### **Contract Standing Order 15: Delivery, Opening and Evaluation of Tenders**

15.1 Tenders for Contracts must be submitted by entirely electronic means using the Council's corporate e-tendering system.

15.2 Alternative methods of submission, including postal submissions, may be permitted in exceptional circumstances and only with the express written authorisation from the Procurement Strategy Manager.

15.3 Any form of electronic submission (including e-mail) that does not form part of the corporate e-tendering system shall not be permitted, and tenders submitted in such a way shall be treated as invalid.

15.4 Where tenders are to be submitted electronically, paragraphs 15.4.1 and 15.4.2 shall apply:

15.4.1 All tenders for any Contract shall be returned via the e-tendering system.

15.4.2 A tender box shall be used and all tenders shall be opened at the same time by a minimum of two authorised procurement officers. Any tender received after the specified time shall not be considered for evaluation.

15.5 Where tenders are to be submitted by post, paragraphs 15.5.1 to 15.5.3 shall apply:

- 15.5.1 All tenders for any Contract estimated to be under a total of £75,000 in value shall be returned to the ~~Director~~Executive Director or Senior Officer inviting the tender (or his/her nominee), or as otherwise indicated in CSOs, in envelopes which shall bear no mark to identify the sender. The Officer shall be responsible for ensuring that a record of all such tenders received is kept.
- 15.5.2 For Contracts with an estimated total value exceeding £75,000 all tenders shall be returned as appropriate to the Head of Property and Design or the Procurement Strategy Manager in envelopes, which shall bear no mark to identify the sender and shall be opened by him/her at the same time in the presence of a Council Employee designated by the relevant ~~Director~~Executive Director or Senior Officer. The Head of Property and Design and the Procurement Strategy Manager shall each maintain a record of all such tenders received by him/her.
- 15.5.3 All tenders shall be opened at the same time, as soon as is reasonably practicable after the closing date, normally on the closing date. On receipt, all tender envelopes shall be endorsed with the time and date of receipt and kept secure until the time specified for tender opening. Any tender received after the specified time shall not be considered for evaluation and shall be returned promptly to the tenderer. A late tender may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.

#### **Contract Standing Order 16: Contract Award**

- 16.1 No Contract may be awarded unless the expenditure involved has been included in approved estimates or on capital or revenue accounts, or has been otherwise approved by, or on behalf, of the Council. The ~~Director~~Executive Director or Senior Officer shall ensure that evidence of authority to spend, and the budget code to be used, is recorded on the Contract file.
- 16.2 Each Contract shall be awarded in accordance with evaluation criteria that have been adopted for the Contract.
- 16.3 Contract Officers shall arrange for formal management reviews of high value and/or high risk contracts to be put in place by Executive ~~Director~~Executive Directors and shall have regard to Procurement Guidance issued on the management of Contracts.

#### **Contract Standing Order 17: Contracts Register and Records**

- 17.1 The Contracts Register shall be kept centrally and maintained by the Procurement Strategy Manager. The Contracts Register is a public document which shall be available for inspection on the Council's website.
- 17.2 Each Contract Officer shall be responsible for providing the information set out in CSO 17.3 below to the Head of Procurement for inclusion in the Contracts Register within 5 working days of the Contract signature completion.
- 17.3 The Contracts Register shall specify for each Contract
- (i) the Contract number,
  - (ii) the name of the Contractor,
  - (iii) a summary of the works to be executed or the goods and services supplied,
  - (iv) the Contract duration and value or estimated value.
  - (v) Whether any extension is permitted.
- 17.4 The Contract Officer responsible for procuring a Contract, Framework Agreement or DPS whose value is estimated to exceed the applicable threshold published from time to time in the Official Journal shall maintain a record of each procurement and shall draw up a written report complying with the provisions of Regulation 84(1-5) of the UK Regulations.
- 17.5 All procurement procedures shall be documented regardless of value and the documentation retained for 3 years from the date of award of contract.

### **Contract Standing Order 18: Termination**

- 18.1 Contracts regulated by the UK Regulations shall incorporate the right to terminate the Contract where:
- (i) the Contract has been subject to a substantial modification which would have required a new procurement procedure under Regulation 72 of the UK Regulations;
  - (ii) the Contractor has, at the time of the Contract award, been in one of the situations referred to in Regulation 57 of the UK Regulations (mandatory exclusions) and should have been excluded from the procurement procedure;
  - (iii) the EU Court of Justice has declared that the Contract should not have been awarded to the Contractor in view of a serious breach of the EU Treaties and the EU Public Procurement Directives; and
  - (iv) where the Contractor (or his employees) is in breach of the provisions of the Bribery Act 2010.

## Operation of Contract

### Contract Standing Order 19: Contract Modification (Variation)

- 19.1 Funding must be identified before any variation of an existing Contract which will require the Council to provide additional funding is approved in accordance with the Council's Financial Regulations. See Financial Regulation D.2.2.17.
- 19.2 Contract Officers should state in the initial procurement documents and incorporate in Contract provisions as far as possible clear, precise and unequivocal review clauses stating the scope and nature of possible variations.
- 19.3 If modifications are required to a Contract and a change of contractor cannot be made for technical or economic reasons which were not provided for in the initial procurement documents, such modifications shall be permitted when the value of the modification does not exceed 50% of the value of the original Contract and the revised value of the Contract does not exceed the relevant EU Threshold .
- 19.4 Modifications which are defined as substantial in accordance with the UK Regulations are not permitted.

### Contract Standing Order 20: Waivers of Contract Standing Orders

- 20.1 Special procedural exemptions or waivers may from time to time be given by the relevant Committee to particular classes of Contracts in line with the Council's procurement strategy, as specified in Committee reports.
- 20.2 Subject to CSO 20.6, in relation to Contracts estimated to not exceed a total value of £75,000, a ~~Director~~Executive Director may waive the requirements of any CSO, as long as:
  - (a) the Procurement Strategy Manager is notified as soon as possible.
  - (b) the ~~Director~~Executive Director certifies in writing to the Procurement Strategy Manager the CSO being waived and the reasons for doing so.
- 20.3 Subject to CSO 20.6, in relation to Contracts estimated to exceed a total value of £75,000, a ~~Director~~Executive Director may, after consultation with the Chair of the relevant Committee and the Procurement Strategy Manager, waive the requirements of CSOs as long as:
  - (a) the waiver report (the Report) is compiled after consulting with the Procurement Strategy Manager;

- (b) the Report is issued setting out the CSO being waived and the reasons for the waiver;
- (c) the Report includes legal and financial comments and highlights, as necessary, any future commitment (whether of a financial character or not) which the Contract may entail; and
- (d) the Report justifies the method of Contractor selection so that value for money and compliance with EU and domestic law can be demonstrated.

20.4 If an emergency has been declared under the Council's emergency planning or business continuity procedures and it is not possible or practicable for a Council Employee who would normally exercise the powers of waiver under CSO 20.2 and CSO 20.3 to do so, the powers may be exercised by:

- (i) ~~(i)~~ the Council Employee who is designated to be in charge, under those procedures or
- (ii) ~~(ii)~~ any Council Employee appointed by him / her to act on his / her behalf.

Further, if it is not possible or practicable for that Council Employee, before exercising the powers under CSO 20.3, to consult the Chair of the relevant Committee or the Procurement Strategy Manager or to issue the necessary Report, the Council Employee may exercise the powers without doing so but shall take such steps as appear appropriate at the time to keep the Chair of the relevant Committee and the Procurement Strategy Manager informed and shall issue the Report as soon as is reasonably practicable.

20.5 A report for information giving a digest of all waivers under CSO 20.2, 20.3 and 20.4 shall be made by the Procurement Strategy Manager covering the previous financial year annually to the Policy and Resources Committee.

20.6 For the avoidance of doubt, no waivers may be made so as to alter the full application of CSO 4 (Declarations of Interest), CSO 17 (Contract Registers), of CSO 4 (Declarations of Interest and Prevention of Corruption), CSO 16 (Contracts Awards), CSO 17 (Contract Registers and Records), CSO 19.3 and 19.4 (Contract Modification ), or if such waiver would result in a breach of EU or domestic law, provided that in exceptional circumstances where the ~~Director~~Executive Director is satisfied that a waiver of CSO 19.3 and/or 19.4 is necessary to ensure the continuity of services, works and/or supplies which would otherwise cease, a waiver of CSO 19.3 and/or may be made so as to permit the continuation of the services, works and/or supplies until a new contract has been let.

- 20.7 A register of all waivers will be maintained by Property and Design and kept available for inspection by the public with reasonable notice during working hours.