

Standing Orders Relating to Contracts

Under Section 135, Local Government Act 1972

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Section A - Scope of Standing Orders and General Information

1. Principles

- 1.1 By law, the Council is required to make standing orders with respect to contracts for the supply of goods or materials or for the execution of works which provide for securing competition and regulation of the manner in which tenders are invited.
- 1.2 These Standing Orders set out the rules which must be followed by the Council when it procures goods, services or works (including disposal of the same). They should be read in conjunction with the Council's Procurement Policy and guidance within the Procurement Toolkit which must also be complied with. The purpose of these Standing Orders is to provide guidance and procedures to assist officers who deal with any form of procurement and are designed to obtain competition, ensure Best Value is achieved, ensure propriety, secure compliance with UK and European Law and serve to deter fraud and corruption. They also provide a framework within which the contracts process is accountable, transparent and auditable.
- 1.3 The Council is a contracting authority for the purposes of the EU Public Procurement and is thereby legally bound to comply with certain practices and procedures in the award of Contracts therefore every Contract made by the Council or on its behalf (irrespective of the source of funding) shall comply with the EC Treaty, the EU Public Procurement Directives, the Public Contract Regulations 2015 and all other applicable EU and domestic legal requirements. In the event that there is any conflict or inconsistency between the provisions of Standing Orders and any legal requirement, the legal requirement shall apply.
- 1.4 The EC Treaty provisions and Treaty-based principles, including non-discrimination and equal treatment, and transparency, apply generally in the award of public contracts – including those of a value below the EU Thresholds. Care must be taken at all times to ensure that nothing is done which is discriminatory, improper or which distorts competition.
- 1.5 These Standing Orders supplement the officers' code of conduct and a failure to comply will normally be regarded as a disciplinary offence. Where a person who is not a Council employee is contracted to a position where they are authorised to carry out purchasing functions, it is a condition of their contract that they comply with Standing Orders.

2. Extent and Application

- 2.1 These Contract Standing Orders are made under Section 135 of the Local Government Act 1972 and apply to all contracts for the procurement of all goods, services and works by the Council irrespective of the source of funding, including, ad hoc, one-off requirements, and they will be applied by any employee or agent of Swindon Borough Council undertaking any procurement (or disposal) activity on behalf of the Council.
- 2.2 Standing Orders must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for a particular contract.
- 2.3 These Standing orders **do not apply** to Contracts relating to:
 - a) the employment of staff;
 - b) the engagement of specialist legal advice (including Counsel); or
 - c) the acquisition, disposal, or transfer of land (as defined by Section 270 Local Government Act 1972); or
 - d) the contract entered into by a school under a scheme for the Local Management of Schools.

3. Officer Responsibilities

3.1 Officers

- 3.1.1 The Officer responsible for purchasing or disposal must comply with:

- these Contract Standing Orders including the relevant procurement processes
- the Officers Code of Conduct
- all UK and European Union binding legal requirements
- Ensuring that agents acting on his/her behalf also comply with these Standing Orders
- the requirement to take all necessary legal, financial, procurement and professional advice
- identifying the purchasing need, procurement methodology and criteria for selection and contract award in a proportionate manner
- Allowing sufficient time for submission of quotation/tender bids
- Safe receipt and storage of Tender documents
- Keeping quotations / tender bids confidential
- Ensuring preparation of a fit for purpose written specification
- Requirement to keep all written (electronic and paper-based) documentation relating to individual procurement should be retained within a dedicated Contract file, for example:
 - Invitations to quote/tender and the returned written quotations/tenders
 - Any written record of any exemption sought from Standing Orders
 - Any written records of a feasibility study or business case
 - Any written record of the specification and evaluation criteria
 - Any written record of the financial management of the contract
 - Any contract variations

3.1.2 The Officer must consult with the Head of IT (or his/her nominated representative) on the purchase of all ICT related equipment or services with the exception of approved ICT framework arrangements made corporately available for call off.

3.2 Senior Officers

3.2.1 Senior Officers must:

- a) ensure that their staff comply with Standing Order 3.1.
- b) ensure all Original contracts where the contract value exceeds £500,000 or are completed by the Council's seal should be passed to the Director of Law and Democratic Services for safekeeping.
- c) Senior Officers are responsible for the safekeeping of all other original contracts on Council premises.

3.3 Procurement

3.3.1 The Head of Procurement must:

- (a) Maintain a register of all contracts awarded in excess of £5,000 awarded by the Authorisation Document

3.4 Appointment of Agents to Act on Behalf of the Council

It is a condition of appointment that any consultant, architect, surveyor or any other external agent appointed to act on behalf of the Council and who is responsible for completion of a procurement process and / or the supervision of a contract on the Council's behalf will:

- a) Comply in full with the requirements of the Standing Orders, all relevant legislation and all Council policies.
- b) Ensure that any modification to the procedure for opening tenders is approved in advance by the Chief Legal Officer and with the Head of Procurement (or their representatives).

- c) Produce to the appropriate Council Officer upon request all relevant records and documentation related to the contracted service and / or contract being supervised on behalf of the Council.
- d) On completion of the contract service and / or contract, provide to the appropriate Council Officer all relevant records and documentation related to the contracted service and / or contract supervised on behalf of the Council.

3.5 Community Right to Challenge

3.5.1 The Community Right to Challenge means community organisations can submit to Local Authorities an Expression of Interest to run local services. This right is granted under the Localism Act 2011.

3.5.2 The Director of Finance in consultation with the Cabinet Member for Finance, the Chief Legal Officer and relevant Corporate Director and Head of Service must ensure that appropriate processes are in place for:

- a) where considered appropriate in respect of any relevant service, the publication of details of any specified period in which expressions of interest may be submitted, including publication on the Council's website;
- b) expressions of interest received to be acknowledged within the statutory time limits; and
- c) expressions of interest to be assessed and determined.

If an Expression Of Interest is accepted by Swindon Borough Council this will trigger a procurement exercise.

4. Exemptions

4.1 An exemption under this Standing Order 4 allows a contract to be placed by direct negotiation with one or more suppliers (rather than in accordance with Standing Order 10) provided it is satisfied that special, exceptional or emergency circumstances justify the exemption.

4.2 Before seeking an exemption the Officer must take any necessary advice from the Head of Procurement, Head of Finance, and Chief Legal Officer (or their nominated representatives).

4.3 Where contract limits dictate EU Law applies, exemptions cannot normally be made.

4.4 Senior Officers may propose exemptions in accordance with paragraph 4.4 for contracts below the relevant EU Procurement thresholds however these must be authorised by the Chief Legal Officer, Head of Procurement and Head of Finance (or their nominated representatives) and the reasons for the exemption recorded using the Authorisation Document.

- a) Where an exemption is necessary because of **unforeseen emergency** involving immediate risk to persons, property or serious disruption to Council services
- b) Where an exemption is necessary because the contract relates to Goods, work or services which in the opinion of the Head of Service is **considered urgent**. Exemptions will not be granted through lack of sufficient planning and / or internal process delays.
- c) Where an exemption is necessary because the goods, materials, works or services are of a **proprietary or very specialist nature** in respect of which there or which there is only a single source of supply e.g. patent, copyright or

other exclusive design rights exist or because a pilot project is being undertaken.

- d) Where compliance with Standing Orders would result in the Council having to forego a **clear financial or commercial benefit** such as purchase at a dispersal sale or purchase of second hand goods/equipment.
- e) Where an exemption is necessary because specific terms and conditions attached to a **third party funding** source sets out a legally compliant method for the way a contract is to be let.

All contracts entered into under this exemption shall fully comply with Standing Orders 19, 20,21,22,23,24,25,26, and 27.

- 4.5 A record of exemptions will be reported to the Cabinet Member with the responsibility for Procurement on a bi-annual basis.
- 4.6 The Council or the Cabinet have power to dispense with any provision of these Standing Orders.

Section B – Common Requirements

5. Prior to Purchase

- 5.1 Before beginning a purchase, the Officer responsible for it must: in a manner proportionate to the complexity and value of the purchase:
 - i. take into account the requirements of Best Value and any strategic commissioning review;
 - ii. define the objectives and outcomes of the purchase;
 - iii. have regard to the Council's Procurement Policy;
 - iv. consult with the Chief Legal Officer on contractual issues where appropriate;
 - v. appraise the need for the expenditure and its priority;
 - vi. assess the risks associated with the purchase and how to manage them;
 - vii. consider and select what procurement method is most likely to achieve the purchasing objectives, including market strategy and collaboration
 - viii. consult users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring;
 - ix. consider the potential for wider economic, environmental and social value created through procurement, including opportunities to benefit local employment and local businesses within the legal framework and where Best Value can be evidenced. If it is a service over the EU procurement threshold, Officers must take into account the potential for Social Value measures and evaluation and consult with the Head of Service responsible for the relevant service, the Chief Legal Officer and the Director of Finance;
 - x. take into account Community Right to Challenge considerations under Standing Order 3.5 and:-
 - a) consider possible community involvement, and where considered appropriate in respect of any relevant service, to publish details of any specified period in which expressions of interest may be submitted, including publication on the Council's website before commencing procurement;
 - b) consult with the Head of Procurement and the Head of Service responsible for the relevant Service Area in connection with any communication received which might constitute an expression of interest;

- c) consult with the Head of Procurement the Head of Service responsible for the relevant service and the Chief Legal Officer as to assessing, determining and responding to an expression of interest;

6. Records

- 6.1 On completion of the Quotation or Tender process, all related documentation and written records (including correspondence with Suppliers and clarifications) must be filed in a master **Contract file** by the Officer and retained for a period appropriate to the contract.
- 6.2 The **Contract file** must be retained in hard copy format on the Council premises or via an approved electronic Contract storage system.
- 6.3 For all contracts in excess of the EU thresholds for Goods and Services, in excess of £500,000 for works or require Contract Sealing, the original tender document, the tender clarifications and any subsequent contract variations shall be passed to the to the Chief Legal Officer for safekeeping with copies kept by the officer for practical purposes.
- 6.4 For standard low risk goods and services the retention period will typically be the contract period plus one year, or the period of warranty cover, whichever is the greater. For more complex goods and services contracts and for works contracts, the retention period shall be six years (twelve years if under seal) after the end of the contract in order to deal with any long term contractual issues.
- 6.5 Records relating to unsuccessful Suppliers may be electronically scanned or stored by some other suitable method after 1 month from award of contract and retained for 12 months, provided there is no dispute about the award.
- 6.6 Disposal of any documents under these standing orders shall be in accordance with the Councils Retention and Disposal Policy.

7. Advertising

- 7.1 All contract opportunities exceeding the relevant EU thresholds are required to be advertised in the Official Journal of the European Journal (OJEU). Strict rules apply; Officers should refer to the Procurement Toolkit for more information.
- 7.2 It is recommended to consider proportionate advertising for contract opportunities below the relevant EU thresholds, in particular when;
 - a) The Senior Officer cannot clearly evidence suitable competition from a restricted list
 - b) There is no relevant benchmarking data with regard to pricing
 - c) Tendered prices from an initial restricted list exceeds pre tender estimates
 - d) Qualitative responses from an initial restricted list are not considered adequate
 - e) Best Value cannot be clearly evidenced

The relevant Senior Officer will be responsible for ensuring Best Value is achieved through non advertised contract opportunities. The reasons for not advertising a contract opportunity in excess of £25,000 must be recorded on the Authorisation Document.

7.3 Contracts Finder

Contracts Finder is the Government's online portal for Suppliers to find new procurement opportunities.

All contract opportunities in excess of £25,000 advertised through **any other means** (e.g. Local press, regional tender portals, OJEU etc.) must also be replicated on Contract Finder.

Contract award notices for all contract awards exceeding £25,000 (including single source awards, framework call offs and mini competitions) must also be placed on Contracts Finder

no later than 90 days after the contract award date regardless if the original contract opportunity was advertised.

8. Contract Value and Aggregation

Contract value is calculated as the Total Aggregated Value of the requirement across the Council over the contract term (including any potential contract extension periods), exclusive of VAT. When determining if EU procurement procedures apply to recurrent purchases, the contract value should be measured over a 4 year period. Officers are required to consider and include the value of similar requirements in other parts of the Council when calculating a contract value. There are no exceptions to the application of the aggregation rule.

Section C – Conducting a Purchase and Disposal

9. Preliminary Market Consultations (Soft Market Testing)

- 9.1 Before commencing a procurement procedure the Officer responsible for the purchase may conduct market consultations with a view to preparing the procurement and informing suppliers of their procurement plans and requirements.
- 9.2 For this purpose, the Officer may, for example, seek or accept advice from independent experts or authorities or from suppliers.
- 9.3 Such advice may be used in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency. All relevant information provided to suppliers during preliminary market consultation shall also be provided to all tenderers to ensure equal treatment.
- 9.4 For more information on preliminary market consultations Officers should refer to the Procurement Toolkit or seek advice from the procurement team.

10. Minimum Competition Thresholds

- 10.1 See the table below for the processes to be adopted according to the value of the contract:

Procurement Requirement	Value	Procurement Process
All requirements	Up to £25,000	Under £1,000 - at least one verbal quotation Over £1,000 - at least one written quotation obtained. All requirements in excess of £5,000 must be recorded using the Authorisation Document. Best Value <u>must be evidenced</u> if only one quotation sought or received and the reasons recorded on the self-certified Authorisation Document.
Goods and Services	Between £25,000 and *EU Procurement Thresholds	Invite at least three written quotations from the relevant industry (one if 'direct call off' only from an approved framework agreement). Recommend advertising to ensure suitable competition. Best Value must be evidenced if only one quotation/tender received or advertising is not applied and the reasons recorded on self-certified Authorisation Document.
Works	Between £25,000 and £500,000	Invite at least three written quotations from relevant industry (one if 'direct call off' from an approved framework agreement).

		Recommend advertising to ensure suitable competition. Best Value must be evidenced if only one quotation/tender received or advertising is not applied and the reasons clearly recorded on self-certified Authorisation Document.
Goods and Services	Above *EU Threshold	EU Compliant Tender process, procurement strategy must be approved through Gateway Procedure prior to tender. Authorisation Document must also be completed.
Works	Between £500,000 and *EU Works threshold	Advertising is strongly advised. Alternatively, and if justification to not advertise can be evidenced, invite at least five written quotations from relevant industry. Best Value must be evidenced and the reasons recorded on self-certified Authorisation Document if advertising not undertaken. For all works contracts in excess of £500,000 Procurement strategy must be approved through Gateway Procedure prior to tender.
Works	Above *EU Threshold	EU Compliant Tender process, procurement strategy must be approved through Gateway Procedure prior to tender. Authorisation Document must also be completed.

** For the latest EU procurement thresholds please refer to the Procurement Toolkit*

- 10.2 The authorising Officer is responsible for the obligation to conclusively prove Best Value for below EU threshold purchases.
- 10.3 Assets for disposal must be sent to public auction except where an agreed alternative procedure is in place or where Best Value is likely to be obtained by inviting Quotations and Tenders. In the latter event, the method of disposal of assets other than land must be formally agreed with the Head of Procurement and Senior Finance Manager.
- 10.4 All disposals of ICT equipment must also formally consult with the Head of ICT (or his/her nominated representative) to agree the method for disposal.

11. Authorisation Document

- 11.1 The Authorisation Document is an electronic authority document, in a form to be approved by the Chief Legal Officer, that requires mandatory completion for all contract expenditure in excess of £5,000 (including framework call offs and mini competition) and must be completed by the responsible Officer, and forwarded to the Procurement team within 10 calendar days of the contract award decision to ensure compliance with legislative requirements relating to the publication of Contract award decisions.
- 11.2 The Authorisation Document must be self-certified by Officers and Senior Officers in line with their **authorised budget permission**, as documented by the Authorised Signatory List, up to the relevant EU thresholds for Goods and Services and £500,000 for works contracts.
- 11.3 For all other Contracting decisions, including EU procedures, the Gateway process will apply (in addition to the Authorisation Document) which includes a requirement for formal consultation with the Head of Procurement, Head of Finance and the Chief Legal Officer (or their nominated representatives) before deciding the method of conducting the purchase.

11.4 The Authorisation Document must record all supporting evidence on achieving Best Value particularly in restricted tender lists, single source tenders and application of exemptions and must include (but not limited) to the following;

- Confirmation of budget availability
- Tender Cost has been adequately benchmarked
- Evidence of market stimulation, where appropriate
- Evidence of Best Value

12. **Gateway Process**

The Gateway process is a mandatory scrutiny process for all major procurement exercises undertaken by or on behalf of the Council that exceed the following thresholds;

- a) The relevant EU threshold for Goods and Services
- b) £500,000 for Works contracts

The Head of Procurement, Chief Legal Officer and the Head of Finance collectively reserve the right to waive the Gateway process in exceptional circumstances only. For more information on the Gateway process, please refer to the procurement toolkit.

13. **Framework Agreements**

13.1 Where there is a benefit to the Council from using another public sector organisation's framework agreement then a due diligence exercise must be undertaken to ensure the suitability of non-standard agreement terms, the Framework has been procured in accordance with the relevant legislation and reference to the ability of the Council to join the Framework under the terms of the original advertisement. The Chief Legal Officer must, in consultation with the Head of Procurement (or their respective nominated representatives) must approve the use of framework agreements.

13.2 When the use of an approved framework agreement allows for 'Direct call off' with a single supplier then minimum competition requirements under the EU threshold will be deemed to have been satisfied however the Best Value rationale for using a specified framework shall be clearly set out within the Authorisation Document.

13.3 The proposed use of Framework agreements in excess of the EU threshold for goods and services and £500,000 for works will be assessed as part of the Gateway process.

13.3 For all other frameworks where a mini competition must be held the results of the mini competition must be recorded using the Authorisation Document.

14. **Evaluation Criteria**

14.1 **Principles of Evaluation**

14.1 The Senior Officer shall be responsible for ensuring that all persons or bodies invited to quote or tender for the supply of goods, services or works to the Council are suitably and proportionately assessed including (but not limited to) assessment of health and safety and financial standing.

14.2 Evaluation of proposals should be based on the "Most Economically Advantageous Tender" and may take account of the best price-quality ratio quality and whole life cost (or simply total acquisition cost), and must be objective, non-discriminatory and proportionate to the subject-matter of the contract.

14.3 Therefore for low value or low risk procurement exercises where the specification can be easily defined and assessed it may be suitable to use 'cost' award criteria only.

- 14.4 Evaluation of proposals must be strictly adhered to using the individual evaluation criteria weightings and scorings agreed during the planning stage. The criteria, Sub Criteria and weightings must be agreed prior to the commencement of the process and detailed in any contract advertisements and tender documentation.
- 14.5 All criteria (including minimum suitability/selection criteria), Sub-Criteria and scoring must be detailed individually so that all suppliers / applicants know what scores are attached to each criteria area.
- 14.6 Weighting and criteria must not be changed once agreed and published and must be applied consistently across all proposals.
- 14.7 Where suitability/selection criteria or a separate Pre-Qualification process are to be applied, the evaluation criteria used to select applicants must not be used again in the final evaluation of proposals. Please note that a separate pre-qualification process is only permitted for tenders in excess of the relevant EU threshold.
- 14.8 In an open tender process, all proposals that pass the minimum selection/suitability criteria shall have their tender assessed against the award criteria.
- 14.9 Records are to be kept of positive and negative reasons for scores, and a record made of the relative characteristics of each bid, as agreed by the Evaluation Panel. The Officer should notify in writing all those Suppliers who submitted a tender or quotation about the reasons why their bid was unsuccessful.
- 14.10 Please note for procurement projects exceeding the relevant EU thresholds strict evaluation rules apply, for more information please refer to the Procurement Toolkit.

15. Invitations to Tender/Quotations

15.1 The Use of Standard Documents

Standard Invitation to tender, quote and pre-qualification questionnaire documents are maintained and Officers are required to use the current versions of standard documents available on the Procurement Toolkit

On occasion, amendment may be required to contract terms within the standard documentation to reflect a particular procurement exercise. Advice must be sought from the Chief Legal Officer and Head of Procurement prior to any amendment being made.

The Invitation to Tender or quote shall state that no tender or quotation will be considered unless it is received by the date and time stipulated in the invitation to tender.

15.2 All Invitations to Tender and Quotations exceeding £25,000 shall include the following:

- Instructions to Tenderers
- Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense
- SBC Terms and Conditions
- Form of Tender
- Certificate of Bona Fide
- Freedom of Information Act 2000 Exemption Form
- Evaluation Criteria and weightings to include Sub Criteria.
- Specification
- Delivery Schedules

- Pricing Schedules

Where an Open Procedure is being conducted, a Tender Questionnaire is also to be included.

15.3 The Invitation to Tender or Quotation must also state that the Council is not bound to accept any Quotation or Tender.

16. Submission, Receipt and Opening of Tenders and Quotations

16.1 Suppliers invited to respond must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the urgency and complexity of the contract requirement. The time periods laid down in the EU Procedures must be followed when they apply.

16.2 Tender opening procedures are set out below:

Type of purchase	Value	Acceptable format for receipt	Officers present at opening
Goods & Services or Works	Under £25,000	Approved E-tender system or Secure Electronic e-mail account or Hard copy paper format	One officer
Goods & Services	Over £25,000 but under the relevant EU threshold	Approved E-tender system or Secure Electronic e-mail account or Hard copy paper format	Minimum two officers
Goods & Services	EU threshold and above	Approved E-tender system or Hard copy paper format which must be returned to the Chief Legal Officer	Minimum two officers, one of whom must be a Senior Officer
Works	£25,001 - £500,000	Approved E-tender system or Secure Electronic e-mail account or Hard copy paper format	Minimum two officers
Works	£500,000 and above	Approved E-tender system or Hard copy paper format which must be returned to the Chief Legal Officer	Minimum two officers, one of whom must be a Senior Officer

16.3 Tenders must not be opened prior to the stipulated closing date.

16.4 Tenders required to be submitted in hard copy paper format must be date stamped, initialled on the tender envelopes and stored safely by the receiving Officer upon receipt.

- 16.5 Upon opening, tenders or quotations must be logged immediately on the Authorisation Document.
- 16.6 For e-mail submissions, the procuring officer must ensure that tenderers limit the file size of their submission into a dedicated mailbox that is made available for receipt of tenders/quotations. The Officer must ensure that the mailbox has sufficient storage capacity to receive tenders and monitor the mailbox on a regular basis during the tendering period.
- 16.7 Any tender or quotation received after the closing date must be rejected unless the Head of Procurement (or his/her representatives) is satisfied that it would not distort competition and it was submitted to the Council in adequate time but for technical reasons was not received (e.g. sent electronically by the Supplier prior to the closing date).

17. Clarification Procedures and Post-Tender Negotiation

- 17.1 Providing clarification of an Invitation to Tender to potential Suppliers or seeking clarification of a specification in writing is permitted.
- 17.2 Clarifications responses prepared by the Council in response to a supplier enquiry during a tender process should be communicated to all prospective bidders in writing to ensure equal treatment.
- 17.3 Officers may conduct post tender clarifications with suppliers regarding their tender submissions however this process must be done in compliance with the legislation and must not distort competition.
- 17.4 The officer must maintain a record of all clarifications conducted during the bidding process and a record kept with the Contract File. All clarifications shall also form part of the contract award documentation.
- 17.5 Post-tender negotiation means negotiations with any tenderer after submission of a Tender and before the award of the contract with a view to obtaining an adjustment in price, delivery or content. However it must not distort competition particularly with regard to price. It must not be conducted in an EU Procedure unless the legislation permits this.
- 17.6 Where post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.
- 17.7 If post tender negotiations after a single stage tender or after the second stage of a two stage tender and permitted under the legislation, then such negotiations shall only be undertaken with the tenderer who has previously been identified as submitting the best tender and must not distort competition.
- 17.8 The Head of Procurement (or his/her representatives) must be consulted wherever it is proposed to enter into post-tender negotiation
- 17.9 Negotiations must be conducted by a team of at least two Officers.
- 17.10 Officers appointed by the Senior Officer to carry out post tender negotiations must ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions and clarifications in writing.

18. Award of Contract

- 18.1 Contracts must be evaluated and awarded in accordance with the Award evaluation criteria.
- 18.2 Every Contract with a value in excess of £25,000 shall be signed on behalf of the Council by two officers one of whom shall be the Senior Officer.
- 18.3 Every works Contract which exceeds £500,000 in value shall be sealed with the Common Seal of the Council by the office of Law and Democratic Services.

- 18.4 Where a contract is awarded pursuant to delegated powers the Senior Officer shall ensure that an officer decision notice in the form approved by the Chief Legal Officer is completed and published, **including details of exemptions applied**, in respect of contracts for goods and services above the EU threshold and above £500,000 for works

19. Debriefing Suppliers

- 19.1 Suppliers must be notified simultaneously and as soon as possible of any Contracting decision including information with respect to the evaluation scoring for the supplier being notified and the successful suppliers scoring.
- 19.2 The notification must be in writing by email where possible.
- 19.3 For contracts where the Total Value is above the EU thresholds for goods and services, a formal 'standstill' process will be entered into prior to the award of contract, therefore notification should be accompanied by detailed reasons for the Contracting Decision given in accordance with European Union Procurement legislation, for more information see the Procurement Toolkit.

Section D – Contract Formalities

20. Contract Documents

- 20.1 All Relevant Contracts/orders shall be in writing using the Council's Standard Terms and Conditions contained within the Procurement Toolkit as determined by the value and risk of the individual procurement. These may require the addition of those issued by a relevant professional body (e.g. JCT). Any other proposed contract documents must be in a form agreed by the Chief Legal Officer.

21. Mandatory Clauses

- 21.1 Every Relevant Contract over £25,000 must include clauses on the following:
- a) that the Contractor may not assign or sub-contract without prior written consent
 - b) any insurance requirements
 - c) health and safety requirements
 - d) ombudsman requirements
 - e) data protection requirements if relevant
 - f) that standards are to be met if relevant
 - g) Equalities and equal opportunities requirements
 - h) (where agents are used to let contracts) that agents must comply with the Council's contract Standing Orders relating to contracts
 - i) a right of access to relevant documentation and records of the Contractor for monitoring and audit purposes (if relevant).
 - j) Whistleblowing policy
 - k) Freedom of Information requirements
 - l) Prevention of Bribery, Fraud and Corruption.
- 21.2 The advice of the Chief Legal Officer must be sought for any of the following contracts:
- Those involving asset leasing arrangements
 - Those which are complex in any other way e.g. the purchase of complex software
 - Where it is proposed to use a supplier's own terms where the Total Value exceeds £25,000
 - Where there are intellectual property rights assigned to the Council.

22. **Contract formalities**

- 22.1 Agreements shall be completed as follows (subject to delegated financial limits or as otherwise advised by the Chief Legal Officer):

Total Value	Method of Completion By:
From £5,000 to £25,000	signature by two Officers
£25,001 to £500,000	signature by two Officers including Senior Officer
Above EU Thresholds for Goods and Services	sealing by Chief Legal Officer
Above £500,000 for Works	sealing by Chief Legal Officer.

In all contracts where a Deed is required (including where Parent Company Guarantees are sought) the contract must be completed by sealing.

All contracts must be concluded before the supply of goods, provision of services or construction work begins, except in exceptional circumstances, and then only with the written consent of the Senior Officer. An award letter is insufficient.

- 22.2 The Officer responsible for securing the suppliers signature to the contract must ensure that the person signing for the other contracting party has authority to bind it.

23. **Sureties**

- 23.1 Sureties for the due performance of a works contract shall be required in all cases where the contract sum is estimated to exceed £500,000 or where the risk of supplier failure and/or the costs to re-procure are high, unless the Head of Finance and the appropriate Senior Officer otherwise decide. Where a surety is required, this must be stated in the Invitation to Tender so that all tenderers are aware of the requirement at this stage.
- 23.2 The Head of Finance and the officer may require the provision of sureties in respect of any other contract.
- 23.3 Where sureties are required, the tender form shall require sureties to the extent or value of 10 per cent at least of the net cost of the works, (or at least 10% of annual expenditure for goods or services) shall be provided, either way of:-
- a) a deposit with the Council or their bankers of a sum of money (or approved securities); or
 - b) a Parent Company Guarantee, Bond or Guarantee in a form approved by the Director of Law and Democratic Services and acceptable to the Head of Finance or Financial Officer; or
 - c) the joint and several guarantee of personal sureties approved by the Head of Finance or Financial Officer.

24. **Prevention of Corruption**

- 24.1 The Officer must comply with the Bribery Act 2010, the Council's Anti-Fraud & Corruption Strategy Policy Statement together with any relevant Code of Conduct and must not invite or accept any gift, fee or reward in respect of the award or performance of any contract.
- 24.2 High standards of conduct are obligatory. Corrupt behaviour will lead to disciplinary action.

25. **Declaration of Interests**

- 25.1 If it comes to the knowledge of a member or an employee of the Council that a contract in

which he or she has a pecuniary/prejudicial interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Chief Legal Officer. The Chief Legal Officer shall report such declarations to the Standards Committee.

- 25.2 Members should at all times comply with the relevant legislation and the Members Code of Conduct.
- 25.3 The Chief Legal Officer shall maintain a record of all declarations of interests notified by Members and Officers.
- 25.4 The Chief Legal Officer shall ensure that the attention of all Members is drawn to the Council's Members code of conduct.

SECTION E - CONTRACT MANAGEMENT

26. Contracts Register

- 26.1 A Council Contracts Register will be maintained by the Head of Procurement that provides a central point for contract data and information.
- 26.2 All contracts awarded on behalf of the Council that have a total aggregated value in excess of £5,000 must be recorded in the Council Contracts Register, using information contained in the Authorisation Document.
- 26.3 Officers responsible for completion of the Request for Quotation or tender will be responsible for ensuring recording, authorisation and submission of the Authorisation Document to the Head of Procurement within 10 days of Contract Award.

27. Contract Monitoring and Management

- 27.1 Contracts awarded by or on behalf of the Council must be monitored and managed throughout the contract term to ensure the Best Value delivery of the contracted goods, services or works in accordance with the contract requirement and standard.
- 27.2 Contract monitoring and management arrangements agreed during the procurement process will be determined by the complexity and risk associated with the contract, conditions in the relevant market and must consider both financial and quality aspects.
- 27.3 During the life of a Relevant Contract the Officer or other person appointed for that purpose must monitor its operation in respect of;
 - performance
 - cost
 - compliance with specification and contract
 - any Best Value requirements
 - user satisfaction and risk management

At the request of the Head of Procurement, the Officer must make a written report evaluating the extent to which the purchasing need and the contract objectives were met by the contract.

28. Contract Variations

- 28.1 During the course of a contract, factors may arise that may result in the need to vary a contract. Senior Officers are empowered to investigate and negotiate potential variations to a contract after contract award, subject to the provisions of the Public Contracts Regulations 2015.
- 28.2 Contract variations can be made by Senior Officers, subject to formal budget approval, in accordance with the scope of the original Contract as follows;

- i) Goods and services up to 10% of the original total contract value
- ii) Works up to 15% of the original total contract value

- 28.3 All contract variations proposed to be in excess of the quoted percentages in 28.2 above, must formally consult with the Chief Legal Officer and the Head of Procurement as EU laws may apply.
- 28.4 Any changes deemed to be “substantial” will require a tender process for a new Contract.
- 28.5 All variations or changes that are agreed will need to comply with the Council and Cabinet Schemes of Delegation and these Contract Standing Orders.
- 28.6 Subject to the original provisions of the contract, every extra or variation must be evidenced and authorised in writing by the Council Officer responsible for the contract (or the agent acting on behalf of the Council) and a copy kept with the Contract File. For all contracts exceeding £100,000, a copy of the variation must be forwarded to the Chief Legal Officer for filing with the original contract.

Section F – Extensions to Contract

29. Extensions to Contract

- 29.1 When extending a contract through an extension clause that is specifically allowed for in the original contract, reasons for the extension must be recorded and kept with the Contract file and this must include a justification clearly setting out how the extension is securing best value for the Council, referencing cost, benchmarking, market information and performance and any other relevant factors. The Head of Procurement or Cabinet Member for this Service Area may from time to time require a report detailing the reasons for the proposed extension.
- 29.2 The maximum length of the extension should be explicitly stated in the original contract.
- 29.3 No other extensions to contract period may be made to contracts except when:-
A Senior Officer in consultation the Head of Procurement, Chief Legal Officer and Head of Finance agree the extension to secure Best Value. The reasons for the extension must be set out by the Senior Officer via the Authorisation Document and must include a justification for achieving Best Value with reference to cost, benchmarking, market information and performance and any other relevant factors.
- 29.4 No extensions to contract shall exceed the relevant EU thresholds

Section G – Technical Amendments

30. Technical Amendments

- 30.1 The Chief Legal Officer shall have the power to make technical amendments from time to time to make these Standing Orders consistent with legal requirements, Ministerial Guidance on Procurement matters, Government Directives, changes in Council structures and personnel and best practice after consultation with the Head of Finance, Head of Procurement and the Cabinet Member with portfolio responsibility for Procurement.

Glossary of Defined Terms

“Authorisation Document”	- the form issued by the Chief Legal Officer in consultation with the Head of Procurement on which records of quotations or tenders should be kept
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"Award Criteria"	- the criteria by which the successful Quotation or Tender is to be selected (see further Standing Order 14).
"Best Value"	- the duty on local authorities to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council and including any Council policies regarding Value for Money.
"Bond"	- An agreement to underwrite loss resulting from a Contractors failure: if the Contractor does not do what it has promised under a contract with the Council, the Council can claim from the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the Contractor's failure.
"Candidate"	- any person who asks to, or is invited to submit a Quotation or Tender.
"Code of Conduct"	- any code regulating conduct of Officers as approved by Standards Committee
"Community Right to Challenge"	- the rights contained in the Localism Act 2011 (Part 5, Chapter 2, sections 81-84) that allow communities to request that they deliver certain services currently provided by, or on behalf of, the Council.
"Contracting Decision"	- any of the following decisions: <ul style="list-style-type: none"> • withdrawal of Invitation to Tender • whom to invite to submit a Quotation or Tender • Shortlisting • award of contract • any decision to terminate a contract
"Contractor"	- any company firm or person who has been awarded a contract or from whom a quotation/tender has been accepted.
"EU Procedure"	- the procedure required by the EU where the Total Value exceeds the EU Threshold
"EU Threshold"	- the threshold at which EU public procurement directives must be applied if expected to be exceeded by the Total Value. The current thresholds for works, services and goods are contained in the Procurement Toolkit.
"European Economic Area"	- the Members of the European Union, and Norway, Iceland and Liechtenstein.
"Financial Officer"	- the most Senior Officer representing the Head of Finance or designated by him/her to provide financial advice to the Senior Officer.
"Government Procurement Agreement"	- an international agreement which became effective 1 January 1996 which prescribes open procedures for submitting bids and improved transparency in national procurement procedures.
"Head of Finance"	- persons nominated and acting validly with delegated authority on behalf of the Finance Director who is responsible for the administration of the Council's financial affairs under S.151 Local Government Act 1972.
"Head of IT"	- The officer appointed to coordinate information technology activities

across the Council or an officer designated by him / her to undertake this function.

"Head of Procurement"	- The officer appointed to coordinate procurement activities across the Council or an officer designated by him / her to undertake this function.
"Invitation to Tender/Quote"	- document sent to suppliers inviting them to tender or quote for a particular contract.
"Nominated Suppliers and Sub-contractors"	- those persons specified in a main contract for the discharge of any part of that contract.
"Officer"	- the officer designated by the Senior Officer to deal with the contract in question.
"Open Procedure"	- all Candidates are invited to bid in response to advertisement.
"Parent Company Guarantee"	- a contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, they can require the parent company to do so instead.
"Procurement Toolkit"	- provides guidance of procurement processes and is located in the Procurement Section of the Council's Intranet.
"Procurement Policy"	- the Council's policy setting out the principles which guides and direct decisions for its procurement activities and is located on the Procurement Section of the Council's Intranet.
"Quotation"	- a quotation of price.
"Relevant Contract"	- contracts to which these Standing Orders apply
"Senior Officer"	- a 'Senior Officer' is defined as Chief Executive, Corporate Directors, Directors and Heads of Service.
"Service Area"	- means a unit for the sole use of whom the purchase is intended
"Shortlisting"	- where Candidates are selected <ul style="list-style-type: none">• to quote or bid or• to proceed to final evaluation.
"Social Value"	- the duty to consider economic, social and environmental wellbeing and to consider whether to undertake any consultation under The Public Services (Social Value) Act 2012 in accordance with Council policy and guidance.
"Sub-Criteria"	- means any sub categories of the Award Criteria.
"Tender"	- a Candidate's proposal submitted in response to an Invitation to Tender.
"Total Value"	- the whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal <ul style="list-style-type: none">• whether or not it comprises several lots or stages• to be paid or received by the Council.

The Total Value shall be calculated as follows:

(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;

- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
- (c) where the contract is for an uncertain duration by multiplying the monthly payment by 48;
- (d) for feasibility studies: the value of the scheme or contracts which may be awarded as a result;
- (e) for nominated suppliers and sub-contractors: the Total Value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.
- (f) where an in house service provider is involved, by taking into account redundancy and similar/associated costs

Latest version: May 2019