

Standing Orders Relating to Contracts
Under Section 135, Local Government Act 1972

Glossary of Defined Terms

"Award Criteria"	- the criteria by which the successful <i>Quotation</i> or <i>Tender</i> is to be selected (see further Standing Order 10).
"Award Procedure"	- the procedure for awarding a contract as specified in Contract Standing Order 8.
"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.
"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 <i>Quotation</i> or <i>Tender</i> .
"Code of Conduct"	- any code regulating conduct of <i>Officers</i> 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 <i>Invitation to Tender</i> • whom to invite to submit a <i>Quotation</i> or <i>Tender</i> • <i>Shortlisting</i> • 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.
"Finance Director"	The person responsible for the administration of the Council's financial affairs under S.151 Local Government Act 1972 and anyone acting validly on behalf of him/her in accordance with authority delegated to them.
"Head of Commercial Services"	- The officer appointed to coordinate procurement activities across the Council or an officer designated by him / her to undertake this function.
"EU Procedure"	- the procedure required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i>

"EU Threshold"	- the threshold at which EU public procurement directives must be applied if expected to be exceeded by the <i>Total Value</i> . The current thresholds for works, services and goods are contained in the <i>Procurement Toolkit</i> .
"European Economic Area"	- the Members of the European Union, and Norway, Iceland and Liechtenstein.
"Financial Officer"	- the most senior <i>Officer</i> representing the Finance Director or designated by him to provide financial advice to the <i>Senior Officer</i> .
"Form C"	The form issued by the <i>Director of Law and Democratic Services</i> on which records of quotations or tenders should be kept.
"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.
"Line Manager"	- the <i>Officer's</i> immediate superior or the <i>Officer</i> designated by the <i>Senior Officer</i> to exercise the role reserved to the <i>Line Manager</i> by these Standing Orders.
"Nominated Suppliers and Sub-contractors"	- those persons specified in a main contract for the discharge of any part of that contract.
"Non-Commercial Considerations":	Those matters defined in Section 17(5) of the Local Government Act 1988 as amended that cannot be taken into account when awarding a contract.
"Officer"	- the officer designated by the <i>Senior Officer</i> to deal with the contract in question.
"Open Procedure"	- all <i>Candidates</i> 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 Business Support /Procurement Section of the Council's Intranet (One Swindon Site).
"Procurement Strategy"	- the Council's strategy setting out the strategic aims which direct and governs its procurement activities and is located on the Procurement Section of the Council's Intranet.

"Invitation to Tender/Quote"	- Document sent to suppliers inviting them to tender or quote for a particular contract.
"Quotation"	- a quotation of price.
"Relevant Contract"	- contracts to which these Standing Orders apply (see Standing Order 4).
"Senior Officer"	- A 'Senior Officer' is defined as Chief Executive, Board 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 well-being 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.
"Supervising Officer"	- the <i>Line Manager's</i> immediate superior, or other officer nominated by the Senior Officer.
"Tender"	- a <i>Candidate's</i> proposal submitted in response to an <i>Invitation to Tender</i> .
"Total Value"	<ul style="list-style-type: none"> • the whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal • 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

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Whenever DEFINED TERMS are used they are in italics, begin with a capital letter and are in the Glossary of Defined Terms.

Section 1 – Scope of Standing Orders

1. BASIC PRINCIPLES

- 1.1 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) unless they are expressly excluded under these Standing Orders. They should be read in conjunction with the Council's *Procurement Strategy* and the principles in the *Procurement Toolkit* and which must also be complied with. These Standing Orders are intended to support the commissioning and procurement of goods, services and works to ensure that the Council achieves *Best Value* in the way it spends money and to demonstrate good corporate governance.

2. OFFICER RESPONSIBILITIES

2.1 *Officers*

- 2.1.1 The *Officer* responsible for purchasing or disposal must comply with these Contract Standing Orders, the Council's *Financial Regulations*, the *Officers Code of Conduct* and with all UK and European Union binding legal requirements, and also the relevant Procurement Processes.
- 2.1.2 The *Officer* must keep the records required by Standing Order 6.
- 2.1.3 *Tender* procedures must be conducted in accordance with procedures set out in the *Invitation to Tender*.
- 2.1.4 The *Officer* must also ensure that agents acting on his/her behalf also comply with these standing orders.
- 2.1.5 The *Officer* must take all necessary legal, financial and professional advice.
- 2.1.6 **Standing Orders must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for a particular contract.**
(For example, if Standing Order 8.1 would normally require that quotes be obtained, it might be appropriate in the particular circumstances to seek more quotations in writing or tender submissions. Equally it may not always be appropriate to make use of an exemption under Standing Order 3 even if one might apply or be granted.)

2.2 Senior Officers

2.2.1 Senior Officers must:

- a) ensure that their staff comply with Standing Order 2.1.
- b) keep a register of contracts completed by signature (rather than by the Council's seal – see Standing Order 16.5). Original contracts where the contract value exceeds £100,000 or are completed by the Council's seal should be passed to the Director of Law and Democratic Services for safekeeping. *Senior Officers* are responsible for the safekeeping of all other original contracts on Council premises.
- exemptions recorded under Standing Order 3.2.

2.3 Procurement

2.3.1 The Head of Commercial Services must:

- (a) maintain a register of all contracts awarded by the Form C process
- (b) ensure appropriate processes are in place for contract award notices to be raised on a relevant procurement web portal.

2.4 Community Right to Challenge

2.4.1 The Board Director Commissioning in consultation with the Cabinet Member for Finance, the Director of Law and Democratic Services and relevant Board 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.

3. EXEMPTIONS

3.1 An exemption under this Standing Order 3 allows a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with Standing Order 8.

3.2 Before seeking an exemption the Officer must take any necessary advice from the Head of Commercial Services, *Financial Officer*, and Director of Law and Democratic Services. All exemptions, and the reasons for them, must be recorded using a 'Form C'.

3.3 The Council or the Cabinet have power to dispense with any provision

of these Standing Orders. No exemption can be used if the EU procurement procedure applies.

- 3.4 Where an exemption is necessary because of unforeseen emergency involving immediate risk to persons, property or serious disruption to Council services *Senior Officers* may approve the exemption in consultation with the relevant Cabinet Member for the Service Area and must subsequently prepare a Cabinet Member Briefing Note to record the action taken.
- 3.5 Where an exemption is necessary because the contract relates to goods, work or services which in the opinion of the Chief Executive or of an officer designated by him/her is considered urgent, in which case the Chief Executive may approve the exemption in consultation with the relevant Cabinet Member for the Service Area via the Cabinet Member Briefing Note process.
- 3.6 Where an exemption is necessary because the goods, materials, works or services are of a proprietary or specialist nature in respect of which there are few suppliers or contractors able to tender or are only available from one supplier if patent, copyright or other exclusive design rights exist or because a pilot project is being undertaken. This includes making satisfactory arrangements for personal social care services for a person at risk, where there are no existing contractual arrangements in place. In all cases the Senior Officer may approve the exemption in consultation with the relevant Cabinet Member for the Service Area via the Cabinet Member Briefing Note process. All contracts entered into under this exemption shall fully comply with Standing Orders 16, 17, 18, 19, 20 and 21.
- 3.7 Where an exemption is necessary because there is a benefit from using another public sector organisation's framework agreement (e.g. OGC) which shall result in the use of non standard agreement terms, the Director of Law and Democratic Services, in consultation with the Head of Commercial Services, may approve the use of the framework agreement.
- 3.8 These Standing Orders shall not apply where statute or subordinate legislation prescribes otherwise.

4. RELEVANT CONTRACTS

These Standing orders do not apply to Contracts relating to:

- the employment of staff;
- the engagement of specialist legal advice (including Counsel); or
- the acquisition, disposal, or transfer of land (as defined by Section 270 Local Government Act 1972); or
- the contract is one entered into by a school under a scheme for the Local Management of Schools.

All other contracts are Relevant Contracts and must comply with Standing Orders.

Section 2 – Common Requirements

5. STEPS PRIOR TO PURCHASE

5.1 Before beginning a purchase, the *Officer* responsible for it must:

a) in a manner commensurate with the complexity and value of the purchase:

- take into account the requirements of *Best Value* and any strategic commissioning review;
- have regard to the Council's *Procurement Strategy* and *Procurement Policy*;
- consult the Head of Commercial Services to ensure that an existing contractual arrangement is not already in place (where these arrangements are in place *Officers* are required to use them);
- consult the Head of Commercial Services for any Contract where the value is anticipated to be in excess of £50,000;
- consider whether it would be more effective to use a supplier from the portfolio of pre-tendered goods and services maintained by the Government Procurement Service (<http://gps.cabinetoffice.gov.uk/>);
- consult with the Director of Law and Democratic Services on contractual issues where appropriate;
- appraise the need for the expenditure and its priority;
- define the objectives of the purchase;
- assess the risks associated with the purchase and how to manage them;
- consider Social Value if it is a service over the EU procurement threshold, take into account relevant Social Value measures and consult with the Head of Service responsible for the relevant service, the Director of Law and Democratic Services and the Board Director of Resources;
- take into account Community Right to Challenge considerations under Standing Order 2.4 and:-
 - (i) 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;
 - (ii) consult with the Head of Commercial Services, the Board Director and the Head of Service responsible for the relevant Service Area in connection with any communication received which might constitute an expression of interest;
 - (iii) consult with the Head of Commercial Services, the Board Director and the Head of Service responsible for the relevant service and the Director of Law and Democratic Services as to assessing, determining and responding to an expression of interest;
- consider what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing or sourcing through the Head of Commercial Services, packaging strategy and collaboration with other purchasers; partnering and

- long term relationships;
- consult users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring;
- select the most appropriate procurement method; and set these matters out in writing if the Total Value of the purchase exceeds £50,000;

b) and set out in writing that:

- there is Member or delegated approval for the expenditure
- there is adequate financial provision for the new expenditure.
- there is Cabinet approval for significant new proposals as required under the Council's Constitution and Financial Regulations; and
- Prior Information Notices if required in accordance with *EU Procedures*, have been sent.

6. RECORDS AND DEBRIEFING CANDIDATES

6.1 Where the *Total Value* is greater than £5,000 and less than £100,000, the *Officer* must complete the *Form C* and the following documents must be kept:

- invitations to quote and *Quotations* received
- a written record
 - of any exemptions and reasons for it
 - of the reason if the *Award Criteria* is not complied with
 - of the matters outlined in paragraph 5.1 if the *Total Value* of the purchase exceeds £50,000
- written records of communications with the successful contractor.

6.2 For contracts where the *Total Value* is £100,000 and above, the *Officer* must complete the *Form C* and the following documents must be kept:

- the method for obtaining bids (see Standing Order 8.1)
- any *Contracting Decision* and the reasons for it
- any exemption under Standing Order 3 together with the reasons for it
- the *Award Criteria*
- tender documents sent to and received from *Candidates*
- pre-tender market research
- clarification and post-tender negotiation (to include minutes of meetings)
- the contract documents
- post-contract evaluation and monitoring
- written records of communications with *Candidates* and with the successful contractor throughout the period of the contract.

6.3 Written records required by this Standing Order must be kept for six years (twelve years if under seal) after the end of the contract. However documents, which relate to unsuccessful *Candidates*, may be

microfilmed or electronically scanned or stored by some other suitable method after 1 month from award of contract, provided there is no dispute about the award.

6.4 *Candidates* must be notified simultaneously and as soon as possible of any *Contracting Decision*.

The notification must be in writing by email where possible.

If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the *Officer* must give the reasons in writing within 10 days of the request (see further Standing Order 15.4) or in accordance with EU procurement legislation.

For contracts where the *Total Value* is £100,000 and above notification should be accompanied by detailed reasons for the *Contracting Decision* given in accordance with European Union procurement legislation as best practice.

Where the *Total Value* is below £100,000 notification should include information with respect to the scoring for the bidder being notified and the successful bidder's scoring but no further detailed reasons are required to be provided.

7. ADVERTISING AND APPROVED LISTS

7.1 The appropriate *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 have been suitably assessed. The assessment process shall establish that the potential suppliers have sound:

- economic and financial standing; and
- Health & Safety policy and procedures
- ability and technical capacity to fulfil the requirements of the Council.

7.2 This may be achieved in respect of proposed contracts that are expected to exceed £50,000 by selecting organisations from

- a) Framework agreements maintained on behalf of Central Government or any other public body
- (b) A shortlist of contractors assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

7.3 Where the value of the proposed contract is less than £50,000 appropriate enquiries will be made, based on the degree of risk to which the Council will be exposed.

Section 3 – Conducting a Purchase and Disposal

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

- 8.1 The Officer must calculate the estimated Total Value. The following procedures apply where there are no other procedures that take precedence. Other procedures may include agency agreements with government. If in doubt, Officers must seek, in writing, the formal advice of the Director of Law and Democratic Services.

Purchasing – Competition Requirements

- 8.2 Where the *Total Value* for a purchase of goods, works, or services including professional consultants is within the values in the first column below, at minimum the *Award Procedure* in the second column must be followed.
Shortlisting shall be undertaken by the persons specified in the third column.

Total Value	Award Procedure	Shortlisting
Up to £4,999.99	Quotations in writing should be obtained for purchases and it is recommended that more than one written quotation is obtained if reasonably practicable. However, if the value of the purchase is estimated as not likely to exceed £100, then at least one oral quotation will suffice. <i>Officers</i> must be able to demonstrate both <i>Best Value</i> and probity in the process. Existing contractual arrangements must be used if they are in place.	<i>Officer</i>
£5,000- £99,999	At least three written <i>Quotations</i> .	<i>Two Officers</i>

£100,000 and above	<i>EU Procedure</i> or, where this does not apply, Invitation to Tender by Advertisement to at least five Candidates or all suppliers on a framework agreement who are capable of providing the particular goods, services or works in question to be invited	<i>Three Officers</i> one of whom should be the <i>Financial Officer</i>
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- 8.3 Where it can be demonstrated that there are insufficient suitably qualified Candidates to meet the competition requirement, all suitably qualified Candidates who have met the relevant prequalification criteria must be invited.
- 8.4 *An Officer* must not enter into separate contracts nor select a method of calculating the Total Value in order to minimise the application of these Standing Orders.
- 8.5 Where the *EU Procedure* is required the *Officer* shall formally consult, in writing, with the Head of Commercial Services and the Director of Law and Democratic Services before deciding the method of conducting the purchase.
- 8.6 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 surplus or obsolete stocks/stores or assets other than land must be formally agreed with the Head of Commercial Services.
- 8.7 Providing services to external purchasers must be in compliance with the Local Authority (Goods and Services Act) 1970 and other relevant legislation and any necessary approval must be sought.
- 8.8 *Best Value* and partnership arrangements are subject to all UK and EU Procurement legislation and must follow these Standing Orders. If in doubt, *Officers* must seek the formal advice of the Director of Law and Democratic Services.

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

- 9.1 The *Officer* responsible for the purchase
- may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters provided this

does not prejudice any potential *Candidate*, and

- may seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them unless this may prejudice the equal treatment of all potential *Candidates* or distort competition, and
- should seek advice from the Head of Commercial Services.

10. STANDARDS AND AWARD CRITERIA

10.1 The *Officer* must ascertain what are the relevant British (or equivalent European or International standards) which apply to the subject matter of the contract. The *Officer* must include those standards that are necessary to describe the required quality. The Director of Law and Democratic Services must be formally consulted before any *Officer* decides to use standards other than British or European standards.

10.2 The *Officer* must define and document *Award Criteria* and sub-criteria appropriate to the purchase. *Award Criteria* must be designed to secure an outcome giving best value for money for the Council. The criteria for awarding contracts should be based on the economically most advantageous quotation or tender to the Council. In the event of any *Officer* wishing to depart from this provision, they should consult the Cabinet member in writing.

10.3 *Award Criteria* and Sub-Criteria must not include:

- *Non-Commercial Considerations*
- matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.
- *Environmental criteria not relevant to the subject matter of the Contract*

11. INVITATIONS TO TENDER/QUOTATIONS

11.1 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.

11.2 Notwithstanding the provisions of Contract Standing Order 11.1 if a quotation or tender is

- a) received in an envelope incorrectly endorsed, or
- b) is received after other quotations or tenders of the same contract have been opened, bearing a postmark or other evidence of delivery prior to the stipulated date and time for receipt of tenders
- c) sent electronically at a time prior to the stipulated date and time for receipt of tenders but received after that deadline

then the Director of Law and Democratic Services (or an officer designated by him/her), if they are satisfied that such technical

breaches of Standing Orders were caused by inadvertence and the tenderer did not intend to gain or could not gain any unfair advantage, may determine that such quotations or tenders should be considered for acceptance.

11.3 All *Invitations to Tender* shall include the following:

- a) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- b) A requirement for tenderers to declare that the *tender* content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
- c) A requirement for tenderers to complete fully and sign all tender documents including a Form of Tender and certificates relating to canvassing and non-collusion;
- d) Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense;
- e) A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the *Award Criteria* in objective terms and if possible in descending order of importance;
- f) A stipulation that any Tenders submitted by fax or other electronic means shall not be considered except where an electronic tender process is to be used whereby bids can be stored in a secured 'in box' or electronic document management system until after the stipulated time and date and which method has been approved by the Director of Law and Democratic Services.

11.4 All *Invitations to Tender* or *Quotation* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Standing Order 16).

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

11.6 All *Candidates* invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

12. SHORTLISTING

12.1 Any *Shortlisting* must have regard to financial and technical standards relevant to the contract and may have regard to *Award Criteria*. Special rules apply in respect of the *EU Procedure*.

12.2 The *Officers* responsible for *Shortlisting* are specified in Standing Order 8.1.

13. SUBMISSION, RECEIPT AND OPENING OF TENDERS AND QUOTES

Period for *Candidates'* response:

- 13.1 *Candidates* invited to respond must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the urgency of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The time periods laid down in the *EU Procedures* should be followed when they apply.
- 13.2 All *Tenders* must be returned to the Director of Law and Democratic Services. All quotations must be returned to the *Officer*. *Tenders* or *quotations* must be returned in sealed envelopes endorsed 'Tender for [Contract Name]' with no method of identifying the sender on the envelope or into a secure electronic mailbox or document management system approved by the Director of Law and Democratic Services.
- 13.3 *Tenders* and *quotes* by fax must be rejected. Electronic receipt of tenders or quotes may be used but must be subject to the same rigours of a manual tender opening process. This will require a secure electronic mailbox or document management system approved by the Director of Law and Democratic Services to be used in order to provide the level of security required.
- 13.4 The Director of Law and Democratic Services shall be responsible for the safekeeping of *Tenders* until opening. Receipt of each *Tender* must be:
 - date-stamped and initialled by the receiving *Officer*, except where received electronically in which case appropriate security safeguards will be applicable as have been approved by the Director of Law and Democratic Services.
 - logged immediately upon receipt in the *Form C*.
- 13.5 The Director of Law and Democratic Services must ensure that all *Tenders* are opened at the same time, after the period for their submission has ended. *Tenders* must be opened in the presence of two *Officers*.
- 13.6 Upon opening, receipt of the *Tender* must be recorded in the *Form .C*. The summary must be initialled on behalf of the Director of Law and Democratic Services.
- 13.7 The *Officer(s)* opening the tender shall initial each tender at the time of opening and shall sign and date a list of the tenders.
- 13.8 The *Officer* must ensure that all *Quotations* are opened at the same time when the period for their submission has ended. The *Officer* or his representative must be present. *Quotations* must be opened in the presence of two *Officers*. Upon opening, receipt of the *Quotation* must be recorded in the *Form C*.

14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 14.1 Providing clarification of an Invitation to Tender to potential or actual *Candidates* or seeking clarification of a *specification* whether in writing or by way of a meeting is permitted.
- 14.2 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.
- 14.3 Where post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.
- 14.4 If post tender negotiations are necessary after a single stage tender or after the second stage of a two stage tender, then such negotiations shall only be undertaken with the tenderer who has previously been identified as submitting the best tender.
- 14.5 **Procedure**
- 14.5.1 Post-tender negotiation must only be conducted in accordance with such guidance that maybe issued by the Director of Law and Democratic Services.
- 14.5.2 The Director of Law and Democratic Services must be formally consulted wherever it is proposed to enter into post-tender negotiation
- 14.5.3 Negotiations must be conducted by a team of at least two *Officers*.
- 14.5.4 *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 in writing.

15. EVALUATION AND AWARD OF CONTRACT

- 15.1 Apart from the notification required or permitted by Standing Order 15.5
- confidentiality of Quotations, Tenders and the identity of *Candidates* must be preserved at all times
 - information about one *Candidate's* response must not be given to another *Candidate*.
- 15.2 Contracts must be evaluated and awarded in accordance with the *Award Criteria and Sub Criteria*.
- 15.3 The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their tender. Alternatively, if the rates

in the tender, rather than the overall price, were stated within the *Invitation to Tender* as being dominant, an amended *Tender* price may be requested to accord with the rates given by the tenderer.

- 15.4 *Senior Officers* shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 15.5 The *Officer* should notify in writing all those *Candidates* who submitted a tender or quotation about the reasons why they were unsuccessful. No other information should be given without taking the formal advice of the Director of Law and Democratic Services.
- 15.6 If requested, the *Officer* shall within 10 days give the notification information required by Standing Order 15.5 to *Candidates* who were deselected in the pre-tender *Shortlisting* process. However if this is an EU procurement procedure then the relevant notification requirements will have to be complied with.
- 15.7 Senior Officers may accept quotations and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Standing Orders and, in respect of proposed contracts that are expected to exceed £500,000, the approval of the budget by Cabinet has been secured.
- 15.8 Where the value exceeds £20,000 the Form C must be signed by the Head of Commercial Services or a I officer authorised to do so by the Head of Commercial Services.

Section 4 – Contract and Other Formalities

16. CONTRACT DOCUMENTS

- 16.1 All *Relevant Contracts* that exceed £5,000 shall be in writing in a form agreed by the Director of Law and Democratic Services,

AND

the Council's Standard Terms and Conditions or those issued by a relevant professional body (eg JCT) must be used where possible.

- 16.2 In addition, every *Relevant Contract* must refer to the Council's Whistleblowing policy and Freedom of Information requirements and purchases over £30,000 must also as a minimum state clearly:

- that the contractor may not assign or sub-contract without prior written consent
- any insurance requirements
- health and safety requirements
- ombudsman requirements
- data protection requirements if relevant
- that charter standards are to be met if relevant
- race relations, equalities and equal opportunities requirements
- (where agents are used to let contracts) that agents must comply with the Council's contract Standing Orders relating to contracts
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

- 16.3. The advice of the Director of Law and Democratic Services 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 £5,000
- where there are intellectual property rights assigned to the Council.

- 16.4 The following clause must be inserted in every written Council contract over £30,000:

"The Council may terminate this contract with immediate effect 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 Section 117(2) of the Local Government Act 1972; or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

Any clause limiting the Contractor's liability shall not apply to this clause."

16.5 **Contract formalities**

- 16.5.1 Agreements shall be completed as follows (subject to delegated financial limits or as otherwise advised by the Director of Law and Democratic Services):

Total Value	Method of Completion	By
From £5,000 to £10,000	signature	By two <i>Officers</i> including <i>Line Manager</i>
£10,001 to £100,000	signature	By two <i>Officers</i> including <i>Supervising Officer</i>
Above £100,000	sealing	Director of Law and Democratic Services.

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.

16.5.2 **Signature**

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

17. **SURETIES**

- 17.1 Sureties for the due performance of a works contract shall be required in all cases where the contract sum is estimated to exceed £250,000 unless the Finance Director or Financial Officer and the appropriate *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.
- 17.2 The Finance Director or Financial Officer and the *officer* may require the provision of sureties in respect of any other contract.
- 17.3 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 if a framework agreement) 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 Bond or Guarantee in a form approved by the Director of Law and Democratic Services provided by a Bank, Insurance Company or other surety acceptable to the Finance Director or Financial Officer; or
- c) the joint and several guarantee of personal sureties approved by the Finance Director or Financial Officer.

18. PREVENTION OF CORRUPTION

- 18.1 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.
- 18.2 It will be for the *officer* to prove that anything received was not received corruptly.
- 18.3 High standards of conduct are obligatory. Corrupt behaviour will lead to disciplinary action.

19 DECLARATION OF INTERESTS

- 19.1 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 Director of Law and Democratic Services. The Director of Law and Democratic Services shall report such declarations to the Standards Committee.
- 19.2 Members should at all times comply with the relevant legislation and the Members Code of Conduct.
- 19.3 The Director of Law and Democratic Services shall maintain a record of all declarations of interests notified by Members and officers.
- 19.4 The Director of Law and Democratic Services shall ensure that the attention of all Members is drawn to the Council's Members code of conduct.

Section 5 – General

20. POST-CONTRACT MONITORING AND EVALUATION

- 20.1 During the life of a relevant contract the *Officer* or other person appointed for that purpose must monitor its operation in respect of
- performance
 - compliance with specification and contract
 - cost
 - any *Best Value* requirements
 - user satisfaction and risk management
- 20.2 At the request of the Head of Commercial Services or relevant Cabinet Member, the *Officer* must make a written report evaluating the extent to which the purchasing need and the contract objectives (as determined in accordance with Standing Order 5.1) were met by the contract. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

Section 6 – Extensions to Contract

21. EXTENSIONS TO CONTRACT

- 21.1 No extensions may be made to contracts unless an extension is specifically allowed within the original contract except when:-
- a) A *Senior Officer*, in consultation with the Head of Commercial Services and Director of Law and Democratic Services has approved the extension in order to better secure *Best Value* (having also taken into account Community Right to Challenge considerations under Standing Order 2.4);
or
 - b) Where an exemption is necessary because the contract relates to work which in the opinion of the Chief Executive or of an officer designated by him/her is considered urgent, in which case the Chief Executive may approve the exemption but they must prepare a Cabinet Member Briefing Note to support the action taken.
- 21.2 The maximum length of the extension should be explicitly stated in the original contract.

Section 7 – Technical Amendments

22. TECHNICAL AMENDMENTS

- 22.1 The Director of Law and Democratic Services shall have the power to make technical amendments from time to time to make these Standing Orders consistent with legal requirements, Government Directives, changes in Council structures and personnel and best practice after consultation with the Finance Director and the Cabinet Member with portfolio responsibility for Procurement.