

## **4(f) Contract Standing Orders**

**1. PURPOSE OF THE CONTRACT STANDING ORDERS**

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders (**CSOs**) is to provide a structure for purchasing decisions and processes which ensure that the Council:
- (a) furthers its corporate objectives;
  - (b) uses its resources efficiently and effectively;
  - (c) obtains best value;
  - (d) purchases or provides quality goods, services and works in a cost effective way;
  - (e) safeguards its reputation; and
  - (f) meets standards of good governance.
- 1.2 The CSOs are part of the Council's constitution and should be read in conjunction with the Council's Financial Regulations and the Council's Scheme of Delegation to Officers.
- 1.3 These CSOs do not provide guidelines on what is the best way to purchase works, goods (supplies) or services. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council's suite of procurement policies and documentation, including the Council's Procurement Policy and Principles.
- 1.4 These CSOs are made under section 135 of the Local Government Act 1972.

**2. GENERAL PRINCIPLES – APPLICATION OF, AND COMPLIANCE WITH, CONTRACT STANDING ORDERS**

- 2.1 These CSOs apply to any transaction in which the Council acquires services, goods (supplies) or works (whether or not payment is to be made by or to the Council) (**Contract**), including all purchase orders, concessions, and contractual arrangements entered into by the Council, except for the specific types of contracts and exemptions which are listed in 2.2 below.
- 2.2 These CSOs do not apply to:
- (a) employment contracts;
  - (b) works orders placed with statutory undertakers (e.g. for redirection or installation of cables or pipework);
  - (c) the acquisition or disposal of land or interests in or rights over land;
  - (d) contracts which have been dealt with by another public authority or public sector consortium in accordance with the applicable contract standing orders of that public authority;
  - (e) contracts for retention of legal counsel, the provision of external legal advice and the appointment of expert witnesses in legal proceedings or quasi-legal proceedings;

- (f) orders placed against a call-off contract or framework agreement where the call-off contract or framework agreement has been awarded in accordance with these CSOs;
- (g) a joint procurement with one or more public sector authority or where the Council is part of a public sector consortium where the Council is not the lead authority and the Contract is to be procured in accordance with the lead authority's contract standing orders.

### **3. REGULATORY CONTEXT**

- 3.1 In addition to complying with these CSOs, all purchasing activity, and resulting Contracts, made by or on behalf of the Council shall comply with:
- (a) all applicable statutory provisions, including public procurement legislation, the Public Services (Social Value) Act 2012 and information publication requirements (Local Government Transparency Code 2015);
  - (b) the Council's constitution, including the Financial Regulations and the Scheme of Delegation to Officers;
  - (c) the National Procurement Policy Statement, the Council's Procurement Policy and Principles and other policies and procedures of the Council as appropriate.
- 3.2 If there is any conflict between the above, UK law takes precedence, followed by the Council's constitution, the National Procurement Policy Statement, Council's Procurement Policy and Principles, and any Council policies or procedures, in that order.

### **4. RESPONSIBILITIES OF CORPORATE HEADS AND OFFICERS**

- 4.1 Each Executive Head is responsible for ensuring compliance with these CSOs in the service for which he or she is responsible and to take the appropriate action in the event of a breach of these CSOs.
- 4.2 It is a disciplinary offence to fail to comply with CSOs. All officers have a duty to report breaches of the CSOs to the Section 151 (s.151) Officer or to the Monitoring Officer. Compliance with these CSOs is also subject to internal and external audit.
- 4.3 All officers must declare an interest in any Contracts and suppliers in compliance with the Council's Code of Conduct for Staff. This includes interests by their close associates or family members. If officers become aware of any such conflict of interest, they should draw the matter to the attention of the s.151 Officer immediately who will then determine whether the interest is prejudicial. Failure to declare an interest, of which the officer is aware, is a disciplinary offence.
- 4.4 Any officer who suspects any misconduct or wrong-doing in relation to purchasing or Contracts must refer to the Council's Whistleblowing Policy and report it as set out above.
- 4.5 Council procurement and purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegation and in accordance with the Financial Regulations. Except for contracts executed as a deed, each Executive Head of Service is the authorised signatory.

- 4.6 Each officer with responsibility for managing a budget is accountable to the Executive Head of Service for the performance of his or her duties in relation to procurement, purchasing and contract management.
- 4.7 Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing.
- 4.8 In considering how best to purchase works, goods and services, an officer with responsibility for purchasing (procuring officer) shall take into account wider contractual delivery opportunities and purchasing methods such as setting up or letting under framework agreements, joint procurements with other public authorities, e-procurement methods and the availability of local authority trading and charging powers under the Local Government Act 2003 and the Localism Act 2011.
- 4.9 A procuring officer is responsible for ensuring:
- (a) there is a proper analysis informing the choice of procurement process selected, the requirement/specification/brief, timescales, criteria for award and documentation to be used;
  - (b) all invitations to tender of a value of £5,000 or more are included on the Council's procurement register;
  - (c) proper records of all contract award decisions and procedures, waivers, exceptions and extensions are maintained;
  - (d) all contracts of a value of £5,000 or more are to be included on the Council's contract register;
  - (e) the supplier's technical competence, financial standing and ability to comply with all relevant legal requirements has been verified by evidence obtained sufficiently recently to be relied on;
  - (f) the contract payments can be accommodated within approved budgets; and
  - (g) where the Contract value exceeds £1,000,000, the Executive Head of the procuring Service shall identify a contract manager to the supplier.

## **5. FINANCIAL THRESHOLDS AND PURCHASING PROCEDURES**

- 5.1 The table below sets out the general rules applying to the procurement procedure which applies to purchasing and Contracts with the stated Contract value.
- 5.2 For any contract with a value of £1,000,000 or above, the procurement and Contract strategy must have been approved by the Cabinet before the contract opportunity is advertised.

- 5.3 For any contract with a value equal to or in excess of the threshold applicable to Service Contracts<sup>1</sup> but below £1,000,000, the procurement and Contract strategy must have been approved by the Executive Head and the s.151 officer before the contract opportunity is advertised.

Contract Value	Contract Type	Procedure
Up to £19,999	Works, Goods (Supplies) Services	Evidence of value for money, through at least one quotation obtained in advance or on-line research.
£20,000 - £49,999	Goods (Supplies) Services	At least three quotations obtained in advance.
£20,000 - £99,999	Works	
£50,000 - not exceeding the threshold applicable to Service Contracts	Goods (Supplies) Services	At least three tenders invited in advance.  No selection questionnaire (SQ) stage is permitted for the purposes of reducing the number of suppliers (although the Council is permitted to request responses to one or more suitability assessment question(s)).
£100,000 - not exceeding the threshold applicable to Service Contracts	Works	
£ threshold applicable to Service Contracts – and above	Works Goods (Supplies) Services	Public procurement rules regulate a procurement for works, goods/supplies and services where the contract value is equal to or higher than specified thresholds. These thresholds are revised every two years <sup>2</sup> .  Where the selected procurement procedure involves the use of a SQ stage to shortlist suppliers, then subject to passing the SQ, at least three suppliers should be shortlisted in a negotiated procedure, and at least five should be shortlisted in all other procedures.

<sup>1</sup> The threshold for public **service/supply** contracts is £ 189,330 with effect from 01.01.20 to 31.12.21. The threshold for public **works** and **concession** contracts is £4,733.252, with effect from 01.01.20 to 31.12.21. NB Although the UK has now left the EU, these thresholds will apply until 01.01.22.

- 5.4 All contract opportunities with a value of £50,000 or above for goods and services, or £100,000 or above for works, but which are below the threshold must be advertised on Contracts Finder or an e-tendering system which interfaces with Contracts Finder.
- 5.5 In addition, consideration should be given to advertising contract opportunities for above threshold contracts as appropriate.
- 5.6 For above threshold procurements, advice must be taken from Procurement and from Legal Services on the choice, and use, of the most appropriate procedure.

## **6. FINANCIAL THRESHOLDS AND APPROVAL AND EXECUTION OF CONTRACTS**

- 6.1 Where a contract value is below the current threshold applicable to Service contracts, the Contract award decision must be approved by the relevant Executive Head or authorised officer. If the contract value is above the current threshold applicable to Service contracts but below £1,000,000, the Contract award decision must be approved by the relevant Executive Head and the s.151 Officer. Where the contract value is £1,000,000 and above, the Contract award decision must be approved by the Cabinet.
- 6.2 All contract award decisions with a value of £50,000 or above for goods and services or £100,000 or above for works, but which are below the applicable threshold, must be publicised on Contracts Finder or an e-tendering system which interfaces with Contracts Finder. Contract award decisions which are above the applicable threshold must be published on FTS as well as on Contracts Finder. The contract award notice must be published no later than 90 calendar days after the contract award date (being the date on which the contract was executed by all parties).

## **7. CALCULATING CONTRACT VALUES**

- 7.1 The Contract value shall be a genuine pre-estimate of the value of the Contract excluding VAT over the predicted contract period (and in respect of concession contracts, the Contract value is the estimated total turnover of the contractor arising from the concession contract). In determining the predicted contract period, it should include any proposed extensions and options, or where the contract period is renewable with no fixed period, a four year contract period should be used. The contract value should include all payments to be made or potentially to be made under the Contract as a result of likely additional orders arising under the contract (for example through day works or additional services) or indexation of sums payable.
- 7.2 In respect of any consortium or joint contract, the Contract value must be the aggregate of each participating authority's requirements in estimating the value in accordance with CSO 7.1.
- 7.3 There shall be no artificial splitting of a Contract to avoid the application of procurement law or these CSOs.
- 7.4 Procurement law may apply to Contracts which are below the thresholds where they involve repeat purchases and/or purchases of a similar type in a specified period. Officers should seek advice from the Legal Services team on the application of procurement law in relation to these types of Contracts.

**8. INVITATIONS TO QUOTE (ITQ) AND INVITATIONS TO TENDER (ITT)**

8.1 Any invitation to quote (ITQ) or any invitation to tender (ITT) must:

- (a) be in a form prepared by, or on behalf of the Executive Head of the procuring service;
- (b) set out the evaluation model which will be used in compliance with CSO 9;
- (c) state the closing time and date for submissions. This must comply with the minimum time limits specified in the applicable public procurement regulations, otherwise the submission deadline shall be not less than 14 calendar days for procurements with a contract value of up to £24,999 and a sufficient period of time but not less than 21 calendar days for procurements with a contract value of £25,000 and above up to the applicable threshold from publication of the ITT or ITQ;
- (d) state that the Council will not be bound to accept the lowest or any quotation or tender.

8.2 On receipt of a tender or a quotation, the date and time of receipt will be recorded by the e-tendering system. No tender or quotation shall be opened until the time appointed for opening. If using an e-tendering system, this shall be controlled through the selection of a locked opening ceremony option. The e-tendering system ensures a clear audit trail. A quotation or tender received after the specified deadline, shall not be considered save in exceptional circumstances.

8.3 A register of procurements on which quotations or tenders are invited shall be maintained automatically through the e-tendering system. The following particulars shall be recorded in the register:

- (a) a brief description of the requirement/proposal;
- (b) the date and time for close of quotations or tenders on the procurement;
- (c) the date and time each quotation or tender was received;
- (d) the name of each contractor submitting a quotation or tender and the amount of their quotation or tender;
- (e) the name of each contractor invited to submit a quotation or tender but who did not do so;
- (f) the date and time the quotations or tenders were opened;
- (g) details of any disqualified quotations or tenders and the reason for disqualification.

8.4 Any exceptions to the use of the e-tendering system must be authorised in advance by the Executive Head of Service in consultation with the Legal Services Manager.

**9. EVALUATION OF QUOTATIONS AND TENDERS**

- 9.1 Quotations and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotations/tenders.
- 9.2 Carbon reduction and sustainability shall be evaluated as part of all goods and services procured by the Council to encourage its suppliers to minimise their environmental impact.
- 9.3 All Contracts shall be awarded on the basis of the quote or tender which is the Most Economically Advantageous Tender (MEAT).
- 9.4 In a MEAT evaluation model, the weighting between price and quality criteria shall be determined so as to ensure best value by:
- (a) the Executive Head of the procuring Service, where the contract value is below the current EU threshold applicable to Service contracts;
  - (b) the Executive Head of the procuring Service and the s.151 Officer, where the contract value is above the current EU threshold applicable to Service contracts but below £1,000,000;
  - (c) the Cabinet, where the contract value is £1,000,000 or above.
- 9.5 Where less than three quotations or tenders are received, before determining whether to proceed, the officer must be satisfied that best value will be secured by the Contract award.
- 9.6 Subject to CSO 9.7, other than under the Competitive Dialogue or Negotiated Procedure, no quotation or tender submitted to the Council may be amended by the contractor.
- 9.7 CSO 9.6 shall not prevent the clarification of a quotation or tender in writing in response to a question raised by the Council in the course of an evaluation.

**10. GENERAL PRINCIPLES APPLYING TO ALL CONTRACTS**

- 10.1 Every Contract shall be the subject of an official order and on the Councils' standard terms and conditions or evidenced through a formal written Contract before an invoice relating to it can be authorised for payment.
- 10.2 All orders and Contracts shall:
- (a) be governed by English law;
  - (b) clearly and carefully specify the requirement/proposal, including the required quality with reference to the relevant standard of the British Standards Institution or equivalent, where applicable and appropriate;
  - (c) contain a delivery date, programme for completion or Contract period, the price, terms of payment and all other terms and conditions;
  - (d) impose requirements to hold and maintain the specified insurance cover, where appropriate;



- (e) impose requirements to comply with equalities and health and safety legislation, where appropriate;
- (f) impose requirements to comply with the Council's health and safety policy, where appropriate;
- (g) set out the consequences if the contractor fails to comply with its contractual obligations in whole or in part, including liquidated and ascertained damages for contracts for the execution of works with a value of £50,000 or more.
- (h) give the Council the right to cancel the Contract, and recover from the contractor the amount of any loss resulting from such cancellation, if the contractor, or any person acting on their behalf, shall have, in relation to the Contract or any other Contract with the Council:
  - (i) offered or given, directly or indirectly, any gift or consideration of any kind to any person as an inducement to do or forbear from doing anything, or as a reward for doing or forbearing from doing anything; or
  - (ii) committed any offence under the Bribery Act 2010, or given or offered any fee or reward receipt of which is contrary to section 117(2) of the Local Government Act 1972;
- (i) set out a contractual protocol for dealing with Freedom of Information Act 2000 and Environmental Information Regulations 2004 information requests and, where applicable, obligations under data protection legislation, and enabling compliance with the requirements of any applicable information publication scheme (including the Local Government Transparency Code 2015);
- (j) set out a contractual protocol to ensure that any subcontract awarded by a contractor imposes a requirement on the contractor to pay its sub-contractor no later than 30 days from the date of a valid and undisputed invoice; and for any sub-contractor in turn to include the same requirement in its sub-contracts awarded for the purpose of performing any part of a Council contract;
- (k) reserve rights of audit to the Council where the contractor makes payments to, or collects income on behalf of, the Council;
- (l) where appropriate, for contracts involving the supply of services<sup>3</sup>, the contractor shall be required to:
  - (i) comply in its performance of the Contract with the provisions of the Human Rights Act 1998 in all respects as if the contractor were a public body within the meaning of that Act; and
  - (ii) indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses

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<sup>3</sup> Advice should be sought from Legal Services, but relevant factors are the type of services being delivered under the contract, whether the services are considered to be 'public services' and attract public interest, and the nature/extent of powers/duties which would apply, were the Council delivering such services in-house, how such services are regulated/supervised/inspected, and the extent of the risk of violation of the Convention rights, were the services improperly performed.

whatsoever in respect of any breach by the contractor of the obligation in CSO 10.2(l)(i);

- (m) where appropriate, for contracts for the supply of goods and services where the documentation or technology product is required to be in a digitally accessible format, the contractor shall be required to comply with the following technical standards (or equivalents) (i) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance level AA; and (ii) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.
- (n) for contracts regulated by the Public Contract Regulations 2015 (PCR) or the Concession Contract Regulations 2016 (CCR), the right to terminate the contract where:
  - (i) the contract has been subject to a substantial modification which would have required a new procurement procedure under regulation 72 PCR 2015 or regulation 43 CCR 2016;
  - (ii) the contractor has, at the time of the contract award, been in one of the situations referred to in regulation 57 PCR 2015 or regulation 38 CCR 2016 (mandatory exclusions) and should have been excluded from the procurement procedure; and
  - (iii) a UK Court has declared that the contract should not have been awarded to the contractor in view of a serious breach of procurement law.

10.3 It shall be a requirement of every Contract, in which the Council reserves the right to nominate a sub-contractor<sup>4</sup>, that:

- (a) unless the s.151 officer otherwise determines, quotations or tenders for nomination shall be invited and evaluated in accordance with these CSOs, as if they were for a Contract with the Council; and
- (b) the invitation to quote or tender for nomination shall require an undertaking by the contractor submitting the quotation or tender that, if selected, it will enter into a Contract with the main-contractor on terms which indemnify the main contractor against the main contractor's own obligations under the main Contract in relation to the services, supplies or works included in the sub-contract.

10.4 It shall be a condition of any Contract to let, supervise or administer another Contract on the Council's behalf that the appointee shall comply with the requirements of these CSOs in letting, supervising or administering that other Contract.

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<sup>4</sup> A right to nominate sub-contractors should only be included in a contract after very careful consideration. Firstly, the Council may incur claims under the main contract as a result of a nominated sub-contractor's failure to perform. Secondly, under advice contained in a letter from the Office of the Deputy Prime Minister on 9 September 2004, the practice of nominating or naming contractors, sub-contractors or consultants in technical specifications is a reference to a particular source for the purposes of the Public Contract Regulations. This means that the reservation of a right to nominate sub-contractors will have to be justified by the subject of the main contract, or that the reservation must be the only way of precisely and intelligibly specifying the subject of the main contract and it is accompanied by the words "or equivalent", with the Council being genuinely open to alternatives

- 10.5 All works which fall within the Construction Design and Management Regulations shall have a CDM Principal Designer appointed and this shall form a part of the budgetary provision.
- 10.6 Consideration should be given as to the form of security, if any, that should be requested for the due performance of every Contract having a value of £50,000 or more.
- 10.7 With the exception of call-off contracts required to be executed under hand, a Contract with a value of £100,000 or over shall be documented as a deed by the contractor and executed under seal by the Council. For the avoidance of doubt, execution under seal includes electronic execution by way of an appropriate electronic platform approved by the Legal Services Manager or in accordance with other accepted methods in the legal profession.
- 10.8 Officers with the appropriate delegated authority may sign lower value contracts, or those which are not intended to be executed as a deed, and this may be done electronically.

**11. WAIVERS AND EXCEPTIONS TO THESE CONTRACT STANDING ORDERS**

- 11.1 No waivers or exceptions may be made to these CSOs which would contravene the Public Contract Regulations 2015 or the Concession Contract Regulations 2016 or other applicable legislation.
- 11.2 Subject to CSO 11.1, an exception from these CSOs may be made as set out below:

Grounds	Decision-maker	Pre-conditions
Contract variation outside of the original Contract terms	Cabinet, where the original contract value was £1,000,000 or above.	Receipt of an option appraisal recommending Contract renegotiation as the recommended Contract strategy
	S.151 Officer	Extension value is not more than either 20% of the estimated value of the existing Contract before it was awarded or the current threshold applicable to Service contracts (whichever is lesser).
Expedient to the Efficient Management of the Council	S.151 Officer	On the grounds of avoiding personal injury, damage to property, for emergency/urgent works, the Council incurring additional liability, the Council is properly being reimbursed by its insurers/its tenants or missing an opportunity to secure best value.  Use of this exception shall be reported to the next meeting of the Cabinet.

Special or Proprietary Character	S.151 Officer	Proposed Contract value up to the current threshold applicable to Service contracts.  This may include a procurement of specialist/IT support/maintenance, or where it is not possible to obtain competitive prices, or would not achieve best value.
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11.3 Any variation must take into account probity and the obligation to secure best value for the Council.

**12. FRAMEWORK AGREEMENTS OR OTHER PURCHASING SCHEMES**

12.1 Purchasing Schemes include the following:

- (a) framework agreements;
- (b) purchasing arrangements set up by central purchasing bodies;
- (c) consortium purchasing;
- (d) collaborative working arrangements;
- (e) formal agency arrangements
- (f) e-procurement/purchasing schemes.

12.2 Any purchasing officer wishing to access a purchasing scheme must first check:

- (a) that the Council is legally entitled to use the purchasing scheme;
- (b) the Contract falls within the purchasing scheme;
- (c) the purchasing scheme complies with all applicable statutory requirements (in particular for EU regulated procurements) and meets the Council’s own requirements in relation to the Contract terms and conditions.

12.3 Suppliers other than those with whom the Council has a relevant Call-off Contract may only be used with the prior authorisation of the s.151 officer.

12.4 Where a purchasing scheme is used, and there is only one framework contractor, the Contract may be awarded directly provided the terms of the framework agreement are applied and provided the officer is satisfied that it provides best value. Otherwise where there is more than one appointed supplier, the terms of the framework agreement must be observed in relation to the process for awarding a contract.

**13. DISPOSAL OF ASSETS**

13.1 Assets may be declared surplus to requirements by the s.151 officer or a member of the Strategic Leadership Team, who shall then assess the value of the assets with such expert assistance as considered prudent in the circumstances, and dispose of them in accordance with this CSO.

- 13.2 The value of an asset for the purposes of this CSO shall be the estimated price for which the asset might reasonably be expected to be sold by a willing seller to a willing purchaser in the open market. Similar assets declared surplus to requirements at or about the same time shall be valued in aggregate.
- 13.3 Assets having no realisable value (or such little realisable value that the costs of disposal are likely to be equal to or greater than the price received) may be disposed of as waste, provided that the disposal shall be for recycling where this is reasonable in practical and financial terms.
- 13.4 Assets with a value of £1,000 or less may be donated to a charitable or similar purpose approved by the s.151 officer.
- 13.5 Assets with a value of £50,000 or less may be sold without a competitive process.
- 13.6 In the case of all other assets, disposal shall be carried out by inviting bids for the assets through an open marketing process or by auction.
- 13.7 The levels of authorisation to award Contracts set out in CSO 5 shall also apply to the disposal of assets, provided that other than the sale of a business where the evaluation criteria include social benefits, only the highest quotation or tender shall be accepted.

#### **14. REVIEW OF THESE CONTRACT STANDING ORDERS**

These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to thresholds or otherwise arising out of a change in the law, any changes to these Contract Standing Orders shall be approved and adopted by the Council. Revisions to thresholds or otherwise arising out of a change in the law shall be dealt with by the Legal Services Manager, in consultation with the s.151 officer.