

**CONSTITUTION 2021 – Version 2 (May 2022)**  
**PART 6 – PROCEDURE RULES (OTHER)**  
**SECTION 4 – STANDING ORDERS – PURCHASING, PROCUREMENT,  
CONTRACTS & DISPOSALS**

**PART 6 – PROCEDURE RULES (OTHER)**  
**(SECTION 4 – STANDING ORDERS – PURCHASING,  
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Procurement decisions and processes are very important because the money involved is public money and the Council needs to ensure the provision of high-quality services, supplies and works. Achieving Value for Money is essential.

The Council's reputation is equally important and the processes used must safeguard against any implication of dishonesty or corruption.

All staff are to comply with these Contract Standing Orders.

This Section is divided into the following sub-sections:

- A Introduction
- B Procurement Requirements
- C The Procurement Process
- D The Contract and other formalities
- E Post-Contract Requirements

| <b><u>Glossary of Defined Terms</u></b> |   |
|---|---|
| <b>Award Criteria</b>                   | The criteria by which the successful Quotation or Tender is to be selected (see further Standing Order 16).   |
| <b>Contracting Decision</b>             | Any of the following decisions: <ul style="list-style-type: none"> <li>• withdrawal of Invitation to Tender</li> <li>• whom to invite to submit a Quotation or Tender</li> <li>• Shortlisting</li> <li>• award of contract</li> <li>• any decision to terminate a contract</li> </ul> |
| <b>Dynamic Purchasing System (DPS)</b>  | A completely electronic system used by a contracting authority to purchase commonly used goods, works or services.<br>Suppliers may join a DPS at any time during its period of validity and there can be no limit on the number of suppliers on the DPS at any one time.             |
| <b>Employees Code of Conduct</b>        | The Employees Code of Conduct – available from Human Resources  |
| <b>European Economic Area</b>           | The members of the European Union and Norway, Iceland and Liechtenstein.  |
| <b>Financial Regulations</b>            | The Financial Procedure Rules at Part 6 Section 5 of the Constitution.  |

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| <b><u>Glossary of Defined Terms</u></b> |  |
|---|--|
| <b>Framework Agreement</b>              | <p>An agreement between one or more contracting authorities and one or more providers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price.</p> <p>If more than one provider is party to the agreement the price may be subject to mini-competition between all the providers at time of 'call-off'. Specific rules apply to Framework Agreements where the Total Value may exceed the UK Threshold.</p>  |
| <b>Invitation to Tender</b>             | The process and documents in the form required by Standing Orders by which a candidate is invited to bid.  |
| <b>Non-Commercial Considerations</b>    | <p>a) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</p> <p>b) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</p> <p>c) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of the contractors in industrial disputes between other persons.</p> <p>d) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.</p> <p>e) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</p> <p>f) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.</p> <p>g) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.</p> |
| <b>Parent Company Guarantee</b>         | A contract which binds the parent company 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.  |
| <b>Performance Bond</b>                 | An insurance policy. If the contractor does not do what it has promised to do under a contract with the Council, the Council can claim from the insurers the sum of money specified in the Bond (often 10% of the contract value). A Performance Bond is intended to protect the Council against a level of cost arising from the contractor's failure.  |
| <b>Procurement</b>                      | Procurement service provided by Hampshire County Council   |

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| <b><u>Glossary of Defined Terms</u></b> |   |
|---|---|
| <b>Quotation</b>                        | All requests for Quotations must be obtained on a Most Economically Advantageous Tender (MEAT) basis whereby the 'whole life' costs are considered and purchases must not be made on a cost only basis – unless previously agreed in writing by the Council's Procurement Officer. You should consider specification details, availability of product/service, delivery aspects, after sales/warranty requirements and also include quality, environmental, social and health & safety aspects. These factors must be weighted in your award decision and given appropriate consideration. Quotation must be in writing.  |
| <b>Relevant Contract</b>                | Contracts to which these Standing Orders apply (see Standing Order 3).  |
| <b>Responsible Officer</b>              | The officer responsible for dealing with a particular purchase or disposal. The Responsible Officer must be an employee of the Council.   |
| <b>Shortlist/ Shortlisting</b>          | Where the candidates are selected to quote or bid, or to proceed to final evaluation.   |
| <b>Tender</b>                           | A written proposal submitted in response to an Invitation to Tender.  |
| <b>Total Value</b>                      | <ul style="list-style-type: none"> <li>• The whole of the value or estimated value Including VAT (in money or equivalent value) for a single purchase or disposal</li> <li>• Whether or not it comprises several lots or stages</li> <li>• To be paid or received by the Council</li> </ul> <p>The Total Value shall be calculated as follows:</p> <ol style="list-style-type: none"> <li>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.</li> <li>b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions for the coming 12 months.</li> <li>c) Where the contract is for an uncertain duration, by multiplying the monthly payments by 48.</li> <li>d) For feasibility studies, the value of the scheme or contracts which may be awarded as a result.</li> <li>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.</li> </ol> |
| <b>UK Threshold</b>                     | The Total Value threshold above which the processes set out in the Public Contracts Regulations 2015 must be followed. For details of the latest thresholds refer to the Procurement section on the Intranet.   |
| <b>Value for Money</b>                  | 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.  |

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**A – INTRODUCTION**

**1. PRINCIPLES**

- 1.1 All purchasing, procurement, contract and disposal procedures must:
- achieve Value for Money for public money spent and highest return for disposals
  - be consistent with the highest standards of integrity
  - ensure fairness in allocating public contracts
  - ensure fair and open competition, transparency of process and non-discrimination
  - comply with all legal requirements (including specific procurement legislation in force in England from time to time)
  - ensure that Non-commercial Considerations do not influence any Contracting Decision
  - support the Council's corporate and departmental strategies, aims and policies
  - comply with the Council's Value for Money policy and procurement strategy (refer to the Procurement section on the Intranet)
- 1.2 Before taking any steps to purchase or procure supplies, services or works, consideration should be given to the following issues:
- whether the acquisition is absolutely necessary or could be met sustainably by adopting the 3 R's principle – reduce, reuse, recycle
  - the use of alternative providers such as the voluntary and charity sectors, social enterprises and internal service providers
  - supporting local and/or small and medium sized enterprises (SME's)
- 1.3 Please seek advice from Procurement and Legal Services if you are unsure of how to proceed.
- 1.4 Increasing amounts of information are available on-line and specific note should be taken of Procurement guidance on Arun's Internet and Intranet sites.

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**2. OFFICER RESPONSIBILITIES**

2.1 The Responsible Officer must:

- 2.1.1 Comply with these Contract Standing Orders, the Council's Financial Procedure Rules, the Employees Code of Conduct and with all UK binding legal requirements
- 2.1.2 Be authorised to procure and award a contract within specific authorisation levels
- 2.1.3 Keep the records required by Standing Order 27
- 2.1.4 Ensure that Tender procedures are conducted in accordance with procedures set out in any Invitation to Tender
- 2.1.5 Ensure that agents, consultants, and contractual partners acting on the Council's behalf also fully comply with these Contract Standing Orders
- 2.1.6 Take all necessary legal, financial and professional advice at the commencement of the process and thereafter to follow the advice received.
- 2.1.7 Comply in all respects with these Contract Standing Orders. They are minimum requirements. Procurement will advise if a more detailed procedure is appropriate for particular contracts
- 2.1.8 Ensure the safekeeping of all original contracts and related files

2.2 Directors must :

- 2.2.1 Ensure that their staff understand and comply with Contract Standing Orders
- 2.2.2 Keep a record of all contracts
- 2.2.3 Ensure that sealed contracts (which includes those where the Total Value exceeds £50,000) are passed to Legal Services for secure storage.

**3. RELEVANT CONTRACTS**

3.1 All Relevant Contracts must comply with these Contract Standing Orders.

3.2 A Relevant Contract is any arrangement, including the setting up of Framework Agreements, irrespective of Total Value made by, or on behalf of, the Council for the carrying out of work or for supplies or services. These include (but are not limited to) arrangements for:

- the supply or disposal of goods
- hire, rental or lease of goods or equipment
- execution of works
- the supply of services, including those related to the recruitment of staff and financial and consultancy services

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- 3.3 Relevant Contracts do not include contracts relating to:
- the employment of staff
  - the engagement of Counsel
  - the engagement of a specific individual for the provision of consultancy services (this exclusion does not extend to the engagement of organisations to provide consultancy services or multiple individuals for the provision of the same consultancy services)
  - the acquisition, disposal or transfer of land (for which Financial Regulations shall apply).
  - the provision by Council in-house services
  - joint working agreements with other public bodies

**B – PROCUREMENT REQUIREMENTS**

**4. COMPETITION REQUIREMENTS**

- 4.1 The Responsible Officer must calculate the Total Value of the Relevant Contract.
- 4.2 Where the Total Value of the Relevant Contract is in the first column below, the competition procedure in the second column must be followed.

| <b>Estimated Contract Value</b>                  | <b>Number of Tenders to be invited</b>   |
|--|--|
| Below £1,000                                     | Obtain a single written quote, where possible from a local contractor  |
| £1,000 to £10,000                                | Ensure Value for Money by inviting at least 2 written Quotes, one of which should be from a local contractor if possible   |
| £10,001 to £50,000<br>(Contact Procurement)      | Ensure Value for Money by Inviting at least 3 contractors to submit written Quotations, one of which should be local, if possible or use of an appropriate framework agreement or dynamic purchasing system. |
| £50,001 to UK Threshold<br>(Contact Procurement) | Formal Tender process following appropriate advertisement or use of an appropriate framework agreement or dynamic purchasing system.   |
| Above UK Threshold<br>(Contact Procurement)      | Formal Process as set out in the Public Contracts Regulations 2015 or use of an appropriate framework agreement or dynamic purchasing system   |



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- 4.3 If there are insufficient suitably qualified contractors to meet the competition requirement, all those suitably qualified are to be invited to submit a written Quotation.
- 4.4 Use of the Competitive Dialogue procedure, Innovation Partnership procedure or Competitive Procedure with Negotiation shall require the approval of the Group Head of Corporate Support.
- 4.5 The use of any Framework Agreement or Dynamic Purchasing System not set up by Arun District Council is subject to approval by the Group Head of Corporate Support that the proposed Framework Agreement or Dynamic Purchasing System is suitable for use by Arun District Council. Where any access agreement or similar is required to access a Framework Agreement or Dynamic Purchasing System such agreement shall be signed by the Group Head of Corporate Support.
- 4.6 A list of Framework Agreements and Dynamic Purchasing Systems approved for use by the Group Head of Corporate Support shall be maintained. Once a Framework Agreement or Dynamic Purchasing System is added to the list it may be used without further approval.
- 4.7 Framework Agreements will remain on the list and available for use for the remainder of their validity period. Dynamic Purchasing Systems shall remain on the list and available for use for 1 year from the date of approval.
- 4.8 The Responsible Officer must not enter into separate contracts nor select a method of calculating the Total Value in order to negate or minimise the application of these Contract Standing Orders or avoid compliance with procurement legislation or other statutory procedures.
- 4.9 Where the Public Contracts Regulations are applicable, the Responsible Officer shall consult the guidance on the Regulations (found in the Procurement section of the Intranet) and formally consult Procurement to agree the most appropriate procurement method.
- 4.10 Assets for disposal must be disposed of in accordance with the current Asset Disposal Policy
- 4.11 Providing services to external purchasers must be in compliance with the Local Authorities (Goods and Services) Act 1970, Local Government Act 2003 or the Localism Act 2011

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4.12 Partnership arrangements are subject to all English procurement legislation and must follow these Contract Standing Orders.

**5. STEPS PRIOR TO PURCHASE**

5.1 Before beginning a purchase, the Responsible Officer must:

- i. advise Procurement except where the estimated Total Value of the contract is less than £10,000
- ii. ensure a budget exists. If no budget is in place a virement from the service area or a supplementary estimate request to Full Council will be required (see Part 6 Section 5 Regulation 3 of the Constitution) and will need to be approved prior to commencing the purchase.
- iii. ensure that a contractual arrangement is not already in place
- iv. ensure there is a need for the expenditure and its priority
- v. define the objectives of the purchase
- vi. assess the risks associated with the purchase and how to manage them
- vii. consult Procurement where the estimated Total Value is likely to be over £50,000 for advice on what procurement method is most likely to achieve the purchasing objectives
- viii. consult Legal Services in relation to the appropriate contractual terms
- ix. ensure that there is approval for all of the expenditure to be incurred before an order is placed or a contract is entered into

5.2 Committee approval may be required when tendering, or before placing an order or entering into a contract depending on the Total Value. The table below sets out the authority requirements.

| Estimated Total Value | Key requirements to be fulfilled  |
|-----------------------|---|
| Less than £10,000     | <ul style="list-style-type: none"> <li>• No requirement for Committee decision</li> <li>• There must be authority to enter into the contract</li> <li>• No requirement for consultation with Procurement</li> <li>• The Responsible Officer is to retain evidence of to show that Contract Standing Orders have been complied with</li> </ul>                                 |
| £10,001-UK Threshold  | <ul style="list-style-type: none"> <li>• No requirement for Committee decision</li> <li>• There must be a authority to enter into the contract</li> <li>• Procurement to be consulted in advance to determine the most suitable criteria for evaluation and award of contract</li> <li>• The Responsible Officer is to retain evidence of contact with Procurement</li> </ul> |

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| Estimated Total Value | Key requirements to be fulfilled  |
|-----------------------|---|
|                       | <ul style="list-style-type: none"> <li>• The Responsible Officer is to retain evidence to show that Contract Standing Orders have been complied with</li> <li>• Officer to put a written record signed with the contract papers with their name, date &amp; details of what they are committing the Council to, including the date for the first and last payment. A copy of the form to be given to the Council's Procurement Officer.</li> </ul>  |
| Above UK Threshold    | <ul style="list-style-type: none"> <li>• Where not already in existence Committee approval of the budget to be obtained prior to the commencement of any procurement process and at the same time committee approval to award the contract if bids/returns come within budget.</li> <li>• Procurement to be consulted prior to the commencement of any procurement activity to determine the method of procurement, advise on tender documentation, agree the procurement timetable and the most suitable criteria for evaluation and award of contract</li> <li>• Legal Services to be consulted prior to the commencement of any procurement activity in relation to contractual terms</li> <li>• Procurement Pro-forma to be completed by officer &amp; signed off by the Council's Procurement Officer agreeing approach &amp; methodology to be used</li> <li>• Procurement Pro-forma to be retained on contract file</li> <li>• No Committee decision is required at the pre-award stage unless the proposed contract's value is in excess of the approved budget.</li> </ul> |

**6. WAIVERS AND EXEMPTIONS**

6.1 The Council has power to waive any requirement of Contract Standing Orders in specific instances.

6.2 It is not possible to waive Contract Standing Orders in their entirety.

6.3 There can be no waiver of the procedures set out in the Public Contracts Regulations 2015.

6.4 All applications for waivers of these Contract Standing Orders must be in writing in prescribed form and state:

- i. the reason why a waiver is needed (see 6.8 below) and
- ii. the specific requirement of Contract Standing Orders that is to be waived including the paragraph number

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- iii. the risks that will be incurred if the waiver is permitted
  - iv. contain comments by Legal Officers and Finance Officers
- 6.5 The waiver form is found in the Procurement section of the Intranet.
- 6.6 Waivers must be authorised by the Group Head of Corporate Support or their Deputy in their absence, or the Chief Executive prior to continuing with the purchase or award of contract:
- 6.7 The Responsible Officer is required to send a copy of the signed waiver to Procurement and for the original to be placed with the contract
- 6.8 The following are examples of when a waiver might be appropriate. Where the works, supplies or services to be provided:
- are exclusively manufactured or provided by the supplier and the Responsible Officer is able to demonstrate this, or the supplies or services are sold only at a fixed price and no satisfactory alternative is available,
  - must be entrusted to the appropriate utility undertaking,
  - constitute an extension of an existing contract, where such extension is unauthorised,
  - are required so urgently as not to permit the invitation of Tenders,
  - consist of repairs to or the supply of parts for existing machinery or plant that can only be carried out by the supplier or manufacturer of that machinery, or under licence for a fixed price,
  - are to be part of a Tender invited on behalf of any consortium or similar body of which the Council is a member, or
  - are to be procured on behalf of the Council by another Contracting Authority under that Contracting Authority's Standing Orders; or
  - are of a type where it is necessary to contract on the supplier's terms and conditions and these have been checked by Legal Services; or
  - for other reasons Procurement and Group Head of Corporate Support are satisfied that the seeking of written Quotations or Tenders would not achieve genuine competition.
- 6.9 These Standing Orders do not apply where Standing Orders relating to contracts of another Local Authority or Public Funded Body (e.g. NHS or Police), Government Department or Agency (e.g. OGC Buying Solutions, Constructionline), or public service purchasing consortium are adopted by the Lead Agency for the exercise.

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6.10 These Contract Standing Orders do not apply to calling off from a current Arun District Council Framework Agreement. However, where the Arun District Council Framework Agreement provides for mini competitions to be held, a waiver is to be obtained for any deviation from the terms of that Framework Agreement.

*Modifications to Existing Contracts*

6.11 Save for as set out below at paragraph 6.12 below, any variation or modification to an existing contract, including to extend the contract period beyond the original term and any extensions originally specified, shall require a waiver of Standing Orders.

6.12 A modification or variation to an existing contract does not require a waiver in the following circumstances, providing always that the modification or variation does not materially alter the nature or scope of the contract nor render it materially different to the original:

6.12.1 Where the modification or variation is expressly provided for within the existing contract.

6.12.2 Where additional works, services or supplies are required and it would not be practical for any supplier other than the existing supplier to supply these, and the value of the additional works, services or supplies is not more than 10% of the original contract value.

6.12.3 Where a contract is to be novated to a new supplier as a result of corporate restructure including takeover, merger, acquisition or insolvency of the original supplier.

6.12.4 To correct a genuine drafting error within the first 3 months of the contract term (any error correction beyond 3 months will require a waiver).

6.13 In all cases advice must be sought from Procurement and Legal Services prior to any modification or variation being implemented.

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**C – THE PROCUREMENT PROCESS**

**7. SUMMARY OF REQUIREMENTS AS TO ADVERTISING, USE OF PROCEDURES, AWARD NOTICES**

- 7.1. The Council must advertise contract opportunities and publish details of contracts awarded in accordance with legislative requirements in force at the time.
- 7.2. Responsible Officers are advised to consult with Procurement to determine the appropriate advertising requirements for each procurement.

**Procurements at or above the UK Thresholds**

**8. REQUIREMENT TO ADVERTISE**

- 8.1. The Responsible Officer must take advice from Procurement before advertising any opportunities which exceed the UK thresholds.
- 8.2. All procurement documentation must be available from the time the opportunity is advertised in accordance with current legislative requirements. Therefore, no advertisement should be placed until the procurement documentation is complete. The Responsible Officer must ensure the Contract Notice includes a specified location where interested parties can electronically access all procurement documentation.
- 8.3. The Responsible Officer is responsible for ensuring all Contract Notices and publications are published in accordance with these rules.

**9. PROCUREMENT PROCEDURES**

- 9.1 For public contracts equal to or greater than the UK threshold, the Council shall:
- a. advertise the contract and choose a procurement route in accordance with current legislation in force at the time; or
  - b. where appropriate and lawful, use an existing contract, dynamic purchasing system or Framework Agreement which was procured in compliance with legislation in force at the time.

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**Contracts below the UK Thresholds**

**10. CONTRACTS VALUED BETWEEN £50,000 AND UK THRESHOLDS**

10.1 The Responsible Officer shall use one of the following procurement routes to procure a contract valued between £50,000 and the appropriate UK threshold:

(a) competitive procurement process appropriately advertised, including on the Council's own website; or

(b) use of contract, dynamic purchasing system or Framework Agreement to which the Council is a party procured by another contracting authority.

10.2 The Responsible Officer must devise a fair and transparent sourcing route based on sound commercial principles and designed to achieve Value for Money, taking advice from Procurement. The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the procurement file.

**11. CONTRACTS WITH A VALUE BETWEEN £10,000 AND £50,000**

11.1 When procuring a contract valued between £10,000 and £50,000 the Responsible Officer must:

a. Invite a minimum of three written quotations from suppliers, where the Responsible Officer has sufficient knowledge of the market to be reasonably certain such an approach would elicit bids representing Value for Money, or

b. undertake competitive procurement process advertised in accordance with legislative requirements and the Council's own website, or

c. with the prior written approval of the relevant Director, obtain a single tender or written quote from a reputable supplier where the Responsible Officer has sufficient knowledge of the market to be reasonably certain such an approach would elicit a quote representing Value for Money.

11.2 Contract opportunities and awards must be advertised in accordance with the requirements of legislation in force at the time of the procurement.

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**12. CONTRACTS WITH A VALUE OF LESS THAN £10,000**

12.1 The Responsible Officer must, in relation to any contract with a value of less than £10,000, demonstrate and record on the procurement file that the contract represents Value for Money. The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the procurement file.

**13. USE OF SUPPLIER SELECTION QUESTIONNAIRES (SSQS)**

13.1. The Responsible Officer shall apply minimum standards of experience, reputation and economic standing to suppliers to test their suitability to bid for a Council contract. For contracts above UK thresholds suitability is usually tested by means of a SSQ.

13.2. All the methods and criteria used for assessing the suitability of suppliers shall be transparent, objective and non-discriminatory.

13.3. The Responsible Officer must use the Government's standard SSQ and adhere to its statutory guidance for all procurements of contracts above the relevant UK Threshold.

13.4. The Responsible Officer shall not use a SSQ for contracts with a value less than the current UK threshold.

**14. ELIGIBILITY TO BID**

14.1. Suppliers who fail to meet all of the Council's minimum standards of reputation, technical ability, experience or economic and financial standing as specified in the SSQ and accompanying documents shall be excluded from the procurement process.

14.2. Where the supplier is being excluded on grounds set out in current legislation but provides evidence in support of its reliability despite the existence of a relevant ground of exclusion, the Responsible Officer must consider that evidence and determine whether to exclude that supplier.

14.3. The Responsible Officer shall consult with the Council's Group Head of Corporate Support or his/her representative before reaching any decision under Standing Order 14.2.



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**15. ASSESSING PAST EXPERIENCE AND FINANCIAL STANDING**

- 15.1. The Responsible Officer shall ensure suppliers' past experience and technical ability are assessed, for all contracts.
- 15.2. Only those suppliers who meet the Council's minimum requirements of economic and financial standing and technical and professional ability shall be awarded a contract.

**16. AWARD CRITERIA**

- 16.1. The Responsible Officer shall adopt award criteria which are fair, transparent, proportionate and appropriate to the subject matter of the contract.
- 16.2. Where the Responsible Officer proposes to use price as the only award criteria this approach must be approved by the Responsible Offer's Group Head.
- 16.3. The Responsible Officer shall adopt evaluation methodologies that are robust, have been tested to ensure they are appropriate for the procurement in question, and transparent.

**Tendering Procedure**

**17. OPENING TENDERS**

- 17.1. All tenders over £50,000 must be conducted through the Council's prescribed e-tendering portal except as permitted with the prior written approval of Procurement. This includes any tender process carried out on the Council's behalf by an external organisation other than another Contracting Authority. Requests for Quotations for contracts valued at less than £50,000 may be conducted outside the Council's e-tendering portal.
- 17.2. After they are opened, the tenders must be listed in the tender register and the list must be signed by both persons who witnessed the opening of the tenders.

**18. CLARIFICATION PROCEDURES AND POST TENDER DISCUSSIONS**

- 18.1. Providing clarification of an Invitation to Tender to potential or actual tenderers or seeking clarification of a Tender is permitted.

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**19. EVALUATION**

- 19.1. Quotations and Tenders must be evaluated by more than one Council officer unless the award criterion was lowest cost only.
- 19.2. 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 amend their tender accordingly.

**20. CONTRACT AWARD**

- 20.1. All contracts shall be awarded in accordance with the criteria set out in the procurement documents.
- 20.2. For contracts with a value at or above the UK Thresholds, the Responsible Officer shall adhere to the contract award procedures set out in current legislation in force and observe a standstill period before entering into the contract. The standstill period will normally end at midnight at the end of the tenth day after the date the Council sends notice to the tenderers electronically that it has made an award decision. No standstill period is required for contracts valued below the relevant UK Threshold but consideration should be given as to whether running a standstill period would mitigate any risks arising during the course of the procurement process.

**21. CORRECTION OF ERRORS AND LATE TENDERS**

- 21.1. All tenders must comply with the conditions set out in the procurement documents. Tenderers should be advised that any failure to adhere to the specific rules applicable to the tender in question is likely to result in their tender being rejected.
- 21.2. The Responsible Officer may reserve the right in the procurement documents to accept late submissions or documents forming part of the tender at the Council's discretion, for example, where:
- the delay was caused by a mistake or failure of the Council; or
  - the posting of the document or submission in question clearly pre-dated the deadline for receipt of tenders and the decision not to exclude the tenderer would not unduly favour any or disadvantage the other candidates.

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**22. DISCLOSURE, TRANSPARENCY AND RECORD KEEPING**

**22.1 Electronic availability of documents**

The Responsible Officer shall ensure that all procurement documents for contracts that are at or above the UK Thresholds are available online free of charge without restriction from the time the Contract Notice is published

**23. DUTY OF CONFIDENTIALITY OWED TO SUPPLIERS**

23.1 The Responsible Officer shall not disclose information which has been forwarded by a supplier and designated by that supplier as confidential or commercially sensitive, including technical or trade secrets and the confidential aspects of tenders, without express authorisation from the Group Head of Law and Governance & Monitoring Officer who shall balance the duty of confidentiality owed to suppliers against the Council's obligations under Freedom of Information Act 2000 (as amended or re-enacted from time to time) and any other disclosure obligations. The procurement documents must inform interested parties of the Council's duties of disclosure and invite tenderers to designate information as confidential or commercially sensitive. However, the Council cannot guarantee that all information so designated will be withheld.

**24. PUBLICATION OF CONTRACT AWARD NOTICES**

24.1 The Responsible Officer shall ensure that a Contract Award Notice is published in accordance with current legislative requirements. This Standing Order 24 applies to all contracts including contracts let under Framework Agreements, whether or not that Framework Agreement was itself advertised on Contracts Finder or anywhere else.

**25. DEBRIEFING TENDERERS**

25.1 For contracts valued at or above the UK Threshold, the Responsible Officer shall ensure that all candidates and tenderers are offered debrief information in accordance with current legislative requirements.

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25.2 The Responsible Officer shall ensure no additional debrief meetings or communications take place outside of that required under paragraph 26.1 above until any standstill period has been completed.

**26. PROCUREMENT REPORT**

26.1 The Responsible Officer shall keep a copy of all procurement documents in accordance with the Council's document retention policy.

26.2 The Responsible Officer shall prepare a written report in relation to each procurement with a value at or above the relevant UK Threshold containing the following information (unless such information is contained in the Contract Award Notice):

26.2.1 the subject-matter and value of the contract, Framework Agreement or dynamic purchasing system;

26.2.2 where applicable, the results of the qualitative selection and reduction of numbers under regulations 65 and 66, namely:

- a) the names of the selected candidates or tenderers and the reasons for their selection;
- b) the names of the rejected candidates or tenderers and the reasons for their rejection;
- c) the reasons for the rejection of tenders found to be abnormally low;
- d) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share (if any) of the contract or Framework Agreement which the successful tenderer intends to subcontract to third parties, and the names of the main contractor's subcontractors (if any);
- e) for competitive procedures with negotiation and competitive dialogues, the circumstances as laid down in regulation 26 which justify the use of those procedures;
- f) for negotiated procedures without prior publication, the circumstances referred to in regulation 32 which justify the use of this procedure;
- g) where applicable, the reasons why the contracting authority has decided not to award a contract or Framework Agreement or to establish a dynamic purchasing system;
- h) where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders; and
- i) where applicable, conflicts of interests detected and subsequent measures taken.

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26.3 The Responsible Officer shall maintain a procurement file containing sufficient information to justify decisions taken at all stages of the procurement such as documentation on:

- communications with suppliers and internal deliberations;
- preparation of the procurement documents;
- dialogue or negotiations, if any; and
- selection and award of the contract.

26.4 The Responsible Officer shall prepare a report containing such information as the Cabinet Office may request in respect of procurements at or above the relevant UK Threshold.

**D - THE CONTRACT AND OTHER FORMALITIES**

**27. CONTRACT DOCUMENTS**

27.1 All Relevant Contracts shall be in writing.

27.2 All Relevant Contracts for services and supplies which exceed £213,277<sup>1</sup> in Total Value and all contracts for the execution of works over £50,000 shall be in writing and executed as a deed by affixing the Council's seal.

27.3 All Relevant Contracts, irrespective of value, shall clearly specify:

- the works, supplies or services to be provided (description, quantity and quality)
- the price to be paid, with a statement of any discounts or other deductions
- the time, or times, within which the contract is to be performed
- the Council's terms and conditions (in accordance with 28.3 and 28.4 below)

27.4 The Council's official purchase order (created by either E5 or QL) identifies the Council's terms and conditions which are applicable to all Relevant Contracts with a Total Value up to £50,000. Where the nature of a contract requires a bespoke set of terms and conditions is required these shall be drafted by Legal Services.

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<sup>1</sup> The GPA/WTO threshold since January 2022 is £213,477 with VAT at 20% (or £177,897 without VAT)

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27.5 Where the nature of the goods or services purchased require the Council to contract on the terms and conditions of a supplier the permission of the Group Head of Law and Governance & Monitoring Officer shall be obtained.

27.6 Where the Total Value of a Relevant Contract exceeds £50,000, the purchase order terms and conditions will be superseded by either:

- the Council's standard terms and conditions (long form)
- terms and conditions issued by a relevant professional body or organisation e.g. the Joint Contracts Tribunal
- bespoke terms and conditions approved by Legal Services
- the supplier's terms and conditions (which must be reviewed by Legal Services prior to placing an order/entering into the contract)

27.7 Every Relevant Contract over £50,000 must be in a form agreed by Legal Services and there is a presumption that it will also include:

- that the supplier may not assign or sub-contract without prior written consent
- that the Council reserves the right to determine whether the terms of the engagement of the supplier are on employed or self-employed terms for tax purposes
- any insurance requirements
- health and safety requirements
- ombudsman requirements
- data protection (if relevant) and Freedom of Information requirements
- that consultants must comply with the Council's Contract Standing Orders (where consultants are used to let contracts)
- a right of access to relevant documentation and records of the supplier for monitoring and audit purposes if relevant.
- the Council's right to require removal of a supplier employee
- a clause relating to the prevention of bribery– see Standing Order 31
- compliance with legislation regarding equality, diversity, discrimination and safeguarding (if relevant).

27.8 The formal advice of the Group Head of Corporate Support or his nominated representative must be sought for the following circumstances:

- where leasing arrangements are involved
- where it is proposed to use a supplier's own terms
- where a third party or sub-contractor is to be employed by the supplier to fulfil the contract

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**28. CONTRACT FORMALITIES**

28.1 Agreements shall be completed as follows (subject to delegated financial limits):

| Total Value   | Form of Contract   |  |
|---------------|--|--|
| Up to £50,000 | Purchase order to be raised by an officer with signing authority of at least £50,000                             | <ul style="list-style-type: none"> <li>• The contract is formed by the purchase order, the terms and conditions referred to in the purchase order and any specification</li> <li>• Where it is necessary to have a bespoke contract a written contract is to be prepared by Legal Services</li> <li>• Where it is proposed to use the suppliers' terms and conditions Legal Services is to be consulted</li> </ul> |
| Above £50,000 | Subject to CSO 22.8 (above) Written contract to be executed as a deed by sealing. This is done by Legal Services | <ul style="list-style-type: none"> <li>• Purchase order to be raised</li> <li>• The written contract is to be prepared by Legal Services.</li> </ul>   |

28.2 Purchase orders must be raised and written contracts entered into before the supplies or services are provided or works begin, except in exceptional circumstances, and then only with the written consent of the Group Head of Law and Governance.

28.3 Sealing - The fixing of the Council's seal is to be witnessed by an authorised officer on behalf of the Group Head of Law and Governance . Every seal will be consecutively numbered and recorded in the Council's seal register which will also be signed by the authorised officer witnessing the seal. The seal must not be affixed without the authority of Full Council, a Committee, or authorised officer.

A contract must be sealed where:

- Subject to 28.2 above the Total Value is expected to exceed £50,000, (this may not apply to Framework Agreements), or
- the Council may wish to enforce the contract for more than six years after its end, or
- the price paid or received under the contract is a nominal price and does not reflect the value of the supplies, services or works, or

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- there is any doubt about the authority of the person signing for the other contracting party

**29. PERFORMANCE BONDS AND PARENT COMPANY GUARANTEES**

29.1 The Responsible Officer must consult the Group Head of Corporate Support:

29.1.1 about whether a Parent Company Guarantee is necessary when a tenderer is a subsidiary of a parent company, and:

- the Total Value of a Relevant Contract exceeds £250,000 or
- award is based on evaluation of the parent company, or
- there is some concern about the stability of the tenderer

29.1.2 about whether a Performance Bond is needed:

- where the Total Value of a Relevant Contract exceeds £1,000,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the tenderer.

**30. PREVENTION OF BRIBERY**

30.1 The Responsible Officer must take into account the requirements of the Bribery Act 2010 which introduces the general offences of offering or receiving bribes, a specific offence of bribing a foreign official and the new corporate offence of failing to prevent bribery.

30.2 The Responsible Officer must comply with the Employees Code of Conduct and the Council's anti-fraud and corruption strategy and must not invite or accept any gift or reward in respect of the award or performance of any contract.

Where an Officer is offered gifts or hospitality this must be declared on the Council's Gifts and Hospitality register which is maintained by the respective Directors' personal assistants and must comply with the clear guidance to Officers on accepting Gifts or Hospitality.

Where a gift or hospitality is offered by a potential contractor during a procurement process the potential contractor is to be excluded from the process and the matter is to be immediately reported to the Group Head of Corporate Support.



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It will be for the Officer concerned to prove that anything received was not received corruptly.

High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in this Contract Standing Order 31.

- 30.3 All written Council contracts must include a Prevention of Bribery clause. Care should be taken to ensure that an appropriate clause is included in contracts issued by professional bodies or organisations and in supplier's terms and conditions before these are accepted. Advice must be sought from Legal Services if in doubt.

### **31. DECLARATION OF INTERESTS**

31.1 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 Interest (as defined in the Code of Conduct) has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Group Head of Law and Governance & Monitoring Officer. The Group Head of Law and Governance & Monitoring Officer shall report such declarations to the appropriate meeting for recording in the minutes.

31.2 The Group Head of Law and Governance & Monitoring Officer shall maintain a record of all declarations of interests notified by Members and officers.

31.3 The Group Head of Law and Governance & Monitoring Officer shall ensure that the attention of all Members is drawn to the Members' Code of Conduct.

## **E – POST-CONTRACT REQUIREMENTS**

### **32. CONTRACT MONITORING AND EVALUATION**

32.1 During the term of all Relevant Contracts the Responsible Officer must monitor the following areas:

- performance
- compliance with the specification and terms and conditions
- cost
- any Value for Money requirements
- user satisfaction and risk management

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32.2 Where the Total Value of the Relevant Contract exceeds £50,000 the Responsible 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. This should be done normally when the contract is completed. 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.