



ADUR & WORTHING  
COUNCILS

# Contract Standing Orders

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# **1. Standing Order 1**

## **1.1. Introduction and Purpose**

These Contract Standing Orders (CSO) are applicable to all the Council's Officers (and its appointed consultants) when procuring contracts for works, services and goods. They provide a legal framework to ensure a uniform and transparent approach to procurement, and enable the Council to achieve best value for money.

## **1.2. Creating a Contract**

A contract is created where there is an offer, acceptance, consideration and a legal intention between the parties; where these criteria exist a contract can be created orally or in writing. Officers entering into pre-contract negotiations with a Supplier, should declare all communications whether by telephone or by email to be 'subject to executed contract'. For the form of contract see CSO 12.1.

## **1.3. Pre-procurement considerations**

### **1.3.1 Request for Quote or Tender**

A request for quotation (RFQ) is the process used by Officers who know what they want and are seeking pricing information to achieve best value, for a defined scope of work, services, or goods. An RFQ can be used providing the value is below £100,000 (inclusive of VAT) and the processes set out at CSOs 8, 9 and 10 are followed.

An invitation to tender (ITT) is used when the Council wants to invite suppliers to bid on the delivery of works, services or goods and enables the Council to evaluate additional criteria such as the supplier's technical solutions, delivery methodology, skill sets, as well as quality and price. See CSOs 8.3 and 8.4.

### **1.3.2 Assessing the total Contract Value**

Prior to procuring, Officers must assess the total contract value of their contract.

The Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021 and [PPN 10/21](#), require the total value of all public contracts to be calculated including VAT, although the Council is generally able to recover the VAT element of a contract payment.

The total contract value includes the whole life-cycle cost, including any recurring revenue or capital expense, as well as all one-time charges including professional service fees, onboarding and exit fees.

Where the Council is procuring on behalf of other public bodies as well as itself, then the contract value shall be determined as the combined sum for all public bodies even if our Council is only paying one part of the overall cost.

Where the contract is procured in “lots”, e.g. based on geographical area or by particular type of requirements, then the contract value shall be the total value of all the combined lots.

### **1.3.3 Budget**

Officers must ensure that they have a sufficient and approved budget in place prior to commencing the procurement project. If the contract involves the supply of assets under lease finance arrangements, the Lease must be signed off by the Chief Financial Officer or their appointed deputy.

### **1.3.4 Authority**

Officers must have Member Authority to enter into the contract (see CSO 2). The type of Member authority required will depend upon the value of the contract, and whether or not budget is already in place. If in doubt, Officers should take advice from the Council’s Legal, Finance, or Procurement Services.

### **1.3.5 Decisions Pathway**

In addition to the requirement for budget and authority, Officers must consider good governance and the decision making process and always make sure that they have taken advice from Democratic or Legal Services. A Member or Officer Decision notice will need to be published prior to your contract, and any delay in following the decisions pathway will delay the execution of the contract.

Some decisions will also be a [Key Decision](#) and will require additional information to be placed on the forward plan for a minimum of 28 days prior to the publication of a decision notice.

### **1.3.6 TUPE Transfers**

Where the Council outsources services and re-procures for those services, TUPE may apply to that procurement with eligible staff being able to transfer from the outgoing service provider to the incoming service provider. Sufficient information (compliant with data protection legislation) will need to be included in the procurement process with an assessment of the cost impact on the incoming supplier. If in doubt, always contact Legal Services and Human Resources for advice.

### **1.3.7 Council Policies**

Depending upon the nature of the procurement, the Council may require the contractor to adopt or mirror certain policies during contract performance. Specific provisions may need to be built into the contract documents e.g. additional clauses, Health and Safety, Safeguarding, or Data Protection where personal data may be transferred.

### **1.3.8 Reserving below threshold procurement by Location, SME, VCSEs**

Below threshold procurements can be reserved by supplier location, or for suppliers that are Small and Medium sized Enterprises (SMEs); or for Voluntary, Community

and Social Enterprises (VCSEs) as enabled by the Cabinet Office [PPN 11/20](#), for the benefit of local businesses and communities.

These options should be considered on a case-by-case basis, and can be exercised on their own or together. For example, Officers may wish to reserve a procurement for suppliers based in a particular location as well as for SMEs and VCSEs, or may choose to reserve to location only or to SMEs only.

Reserving by location could also be UK-wide to support domestic supply chains and promote resilience and capacity, or where appropriate, by county to tackle economic inequality and support local recruitment, training, skills and investment. Where a county reservation is to be applied, only a single county (or borough for London) may be reserved. Supplier location should be described by reference to where the supplier is based or established and has substantive business operations and not by location of corporate ownership.

Any requirement to reserve the procurement under this CSO must follow up to date Cabinet Office guidance, and must be clearly set out in the tender documents, using the standardised definitions of SME/VCSE and supplier location outlined in the associated guidance.

### 1.3.9 Financial Thresholds (inclusive of VAT)

**All figures referred to in these CSO are inclusive of VAT.**

The following table provides VAT exclusive figures for the financial thresholds within these CSOs.

Thresholds inclusive VAT	Thresholds exclusive VAT	VAT
£5,000.00	<b>£4,166.67</b>	£333.33
£10,000.00	<b>£8,333.33</b>	£1,666.67
£25,000.00	<b>£20,8333.33</b>	£4,166.67
£100,000.00	<b>£83,333,33</b>	£16,666.67
£250,000.00	<b>£208,333.33</b>	£41,666.67

Public Procurement Thresholds as of 1<sup>st</sup> January 2022 (always check the thresholds as they are subject to change).

Category	Thresholds inclusive VAT	Thresholds exclusive VAT	VAT
Goods and Services	£213,477.00	<b>£177,897.50</b>	£35,579
Works	£5,336,937.00	<b>£4,447,447.50</b>	£889,489.50

How to calculate a figure inclusive of VAT – (for a VAT rate of 20%) Divide the VAT inclusive figure by 1.2% to find the figure less VAT

### 1.3.10 Procurement Procedures Chart

Total Value (inclusive of VAT)	Procurement Route	Receipt of Quotes / Tenders	Delegated Authority for Contract Approval and Award	Method of Contract Completion	Transparency Code Obligations
Up to £25,000 (unless CSO 5.2 applies)	Two written quotations or if impractical one quote with evidence of value for money	Via post or email to department by Head of Service or appointed deputy	Head of Service	Signature and/or purchase order raised	Publish details of all contracts over £5,000 in Council's Contracts Register
From £25,000 up to but not including £100,000	Three written quotations or tenders. Opportunity (open) to be published on Contracts Finder	Quotes/Tenders submitted via portal and electronically opened after closed date and time has passed. Evaluated by a minimum of two officers	Head of Service	Signed by one Council officer with Authority	Advertise an opportunity on Contracts Finder Publish details of the Contract Award on Contracts Finder Complete the Council's Contracts Register
From £100,000 up to but not including the public procurement thresholds	Advertise Open invitation to tender (ITT) on the Council's portal and Contracts Finder. Other media can also be used Unless the exemption to the Open process in CSO 5.5 applies	Tenders submitted via portal and electronically opened once closing date and time has passed Evaluated by a minimum of two officers	Where provision has been made in the approved budget. For contracts below £250,000, in consultation with Executive Members. For contracts of £250,000 or more, with Executive Member authority pursuant to delivery of an Executive Member Report	Below £250,000 signed under hand by one authorised Officer; £250,000 or greater sealed and signed by one authorised Officer (witnessed as required) or signed by two authorised Officers	Advertise the opportunity on Contracts Finder Publish details of the Contract Award on Contracts Finder Complete the Council's Contract Register
From the Public Procurement Threshold and above	Advertise relevant Procurement Procedure by on the Council's portal Advertise on Contracts Finder and Find a Tender system Other media may also be used	Tenders submitted via Council's portal and electronically opened once closing date and time has passed Evaluated by a minimum of two officers	Executive Member, Executive, or relevant Committee	Sealed and signed by one authorised Officer (witnessed as required) or signed under hand by two authorised Officers	Advertise all tenders on FTS and then Contracts Finder Publish details of Contract Award on Find a Tender Complete the Council's Contracts Register

## 1.4. Incorporating Social Value in all procurement procedures

1.4.1. For all above threshold contracts, social value and the ability to improve the economic, environmental and social wellbeing of the Council's area is mandatory and must be given not less than 10% of the total evaluation

score.

**1.4.2.** For below threshold procurements social value must be considered, and incorporated, where the social value requirements are related and proportionate to the subject matter of the contract.

**1.4.3.** Examples of what can be incorporated as social value are set out in the table below.

1.4.4. Social Value Themes and Outcomes examples 1.4.5. (Procurement Policy Note – Taking Account of Social Value in the Award of Central Government Contracts Action Note <a href="#">PPN 06/20</a> September 2020)		
Themes (for social value)	Policy Outcomes (what can be achieved)	Delivery objectives - what good looks like (consider for evaluation criteria)
COVID-19 recovery	Help local communities to manage and recover from the impact of COVID-19	<p>Activities that, in the delivery of the contract:</p> <ul style="list-style-type: none"> <li>- Create employment, re-training and other return to work opportunities for those left unemployed by COVID-19, particularly new opportunities in high growth sectors.</li> <li>- Support people and communities to manage and recover from the impacts of COVID-19, including those worst affected or who are shielding.</li> <li>- Support organisations and businesses to manage and recover from the impacts of COVID-19, including where new ways of working are needed to deliver services.</li> <li>- Support the physical and mental health of people affected by COVID-19, including reducing the demand on health and care services.</li> <li>- Improve workplace conditions that support the COVID-19 recovery effort including effective social distancing, remote working, and sustainable travel solutions.</li> </ul>
Tackling economic inequality	Create new businesses, new jobs and new skills	<p>Activities that, in the delivery of the contract:</p> <ul style="list-style-type: none"> <li>- Create opportunities for entrepreneurship and help new, small organisations to grow, supporting economic growth and business creation.</li> <li>- Create employment opportunities particularly for those who face barriers to employment and/or who are located in deprived areas.</li> <li>- Create employment and training opportunities, particularly for people in industries with known skills shortages or in high growth sectors.</li> <li>- Support educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications.</li> <li>- Influence staff, suppliers, customers and communities through the delivery of the contract to support employment and skills opportunities in high growth sectors.</li> </ul>
	Increase supply chain resilience and capacity	<p>Activities that:</p> <ul style="list-style-type: none"> <li>- Create a diverse supply chain to deliver the contract including new businesses and entrepreneurs, start-ups, SMEs, VCSEs and mutuals.</li> <li>- Support innovation and disruptive technologies throughout the supply chain to deliver lower cost and/or higher quality goods and services.</li> <li>- Support the development of scalable and future-proofed new methods to modernise delivery and increase productivity.</li> <li>- Demonstrate collaboration throughout the supply chain, and a fair and responsible approach to working with supply chain partners in delivery of the contract.</li> <li>- Demonstrate action to identify and manage cyber security risks in the delivery of the contract including in the supply chain.</li> <li>- Influence staff, suppliers, customers and communities through the delivery of the contract to support resilience and capacity in the supply chain</li> </ul>

Fighting climate change	Effective stewardship of the environment	Activities that: - Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions. - Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement.
Equal opportunity	Reduce the disability employment gap	Activities that: - Demonstrate action to increase the representation of disabled people in the contract workforce. - Support disabled people in developing new skills relevant to the contract, including through training schemes that result in recognised qualifications. - Influence staff, suppliers, customers and communities through the delivery of the contract to support disabled people.
	Tackle workforce inequality	Activities that: - Demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce. - Support in-work progression to help people, including those from disadvantaged or minority groups, to move into higher paid work by developing new skills relevant to the contract. - Demonstrate action to identify and manage the risks of modern slavery in the delivery of the contract, including in the supply chain.
Wellbeing	Improve health and wellbeing	Activities that: - Demonstrate action to support the health and wellbeing, including physical and mental health, in the contract workforce. - Influence staff, suppliers, customers and communities through the delivery of the contract to support health and wellbeing, including physical and mental health.
	Improve community integration	Activities that: - Demonstrate collaboration with users and communities in the co-design and delivery of the contract to support strong integrated communities. - Influence staff, suppliers, customers and communities through the delivery of the contract to support strong, integrated communities.

## 2. Standing Order 2: Authorisation to Contract

- 2.1.1** The Director, Heads of Service or their delegated nominee shall have authority to enter into contracts provided that:
- 2.1.2** There is sufficient approved revenue or capital budget to fund the proposed contract throughout its duration (see CSO 1.3.2 and 1.3.3);
- 2.1.3** That the processes under these CSO have been followed correctly;
- 2.1.4** That the Procurement Department has been consulted in advance for contracts over £25,000 (inclusive of VAT);
- 2.1.5** That Member authority has been obtained (this may be from the Joint Strategic Committee; Executive Members for the particular service; or under a delegated authority).
- 2.1.6** The contract formalities have been compiled with at CSO 12;
- 2.1.7** That the Decisions Pathway has been followed (see CSO 1.3.5).

### **3. Standing Order 3: Special Circumstances and Emergencies**

- 3.1** This CSO cannot be used for a contract that is over the public procurement threshold. For urgent contracts over the threshold Officers would need to consult with the Monitoring Officer and the Chief Executive Officer.
- 3.2** A 'Special Circumstance' or 'Emergency' is defined as a situation which poses an immediate risk to Council services or the wellbeing of residents, for which urgent action is needed and which cannot be dealt with using the Councils usual processes and procedures.
- 3.3** Exemption from any of the provisions of these Standing Orders may only be made as follows:
- 3.3.1** For contracts under £100,000 (inclusive of VAT) approval must be sought from the Monitoring Officer and the s151 Finance Officer and the Director for Service should publish an Officer Decision Notice;
- 3.3.2** For contracts over £100,000 (inclusive of VAT) and below the Public Procurement Threshold the Monitoring Officer, the s151 Finance Officer must approve the award and the Director for Service (or their delegated nominee) must consult with appropriate Executive Members or their Leader, (or the Joint Strategic Committee) who must be satisfied that the matter is Urgent or is a Special Circumstance having regard to the above definition, and if so satisfied, a direct award under this CSO exemption will be authorised.
- 3.3.3** Where the exemption at 3.3.2 is so authorised, the Director for Service or their delegated nominee must ensure that:
- a) An Officer Decision awarding the contract is recorded by Democratic Services on the Decisions Pathway and/or in the minutes of the Committee giving the approval and the rules relating to Key Decisions in the Access to Information Rules are followed; and
  - b) Unless committee approval is already obtained, the use of this CSO is to be reported as soon as practicable to the next Joint Strategic Committee following the consultation with the Executive Members and the publication of the Officer Decision.
  - c) If it is impracticable for the Director or their delegated nominee to consult with the relevant Members, then the Director shall, when submitting the report to the next Joint Strategic Committee to explain the emergency, additionally give reasons as to why the Director was not able to consult with the relevant Members at the time.

**3.4** Advice should always be taken from the Monitoring Officer and Democratic Services as to the requirement to make any public notice in the Forward Plan of Key Decisions/28 Day Notice.

**3.5** For the avoidance of doubt, recruitment of temporary or agency staff to cover sickness or vacancies is included under this CSO.

## **4. Standing Order 4: Publishing Contract Notices**

### **4.1 Publishing a Contract Opportunity Notice**

**4.1.1.** The Council advertises a contract opportunity when it carries out an open invitation to tender (ITT) or open request for quotation (RFQ) for a contract with a value of, or greater than £25,000 (inclusive of VAT).

**Open** means that the opportunity is advertised to all suppliers whether nationally or within a geographic location and in these circumstances the contract must be published on the UK's National Contracts Finder website.

Where the Council advertises a contract opportunity it shall publish the information on the UK National Contracts Finder website within 24 hours of the time when it first advertises the contract opportunity on the Council's portal, see Regulation 110 (3) Public Contract Regulations 2015.

**4.1.2.** The Council does not advertise an opportunity (and shall not be required to publish an opportunity on UK National Contracts Finder) where it carries out a closed ITT or closed RFQ process and only makes the opportunity available to a number of particular suppliers who have been selected for that purpose (whether ad hoc or by virtue of their membership of some closed category such as a framework agreement or DPS) and regardless of how it draws that opportunity to the attention of those suppliers.

**4.1.3.** A regular report presenting information from the Contracts Register shall be presented to the Council's Procurement Working Group by the Director for Service or their nominated representative identifying all those contracts due to expire and the proposed action to be taken. The report identifying these contracts should be presented in a timely fashion to allow for sufficient time to re-procure, if necessary.

If you need guidance on publishing a contract opportunity, always seek advice from the Procurement Department or Legal Services.

### **4.2 Publishing a Contract Award Notice**

- 4.2.1.** UK National Contracts Finder - Cabinet Office [PPN09/21](#) requires Officers to publish a Contract Award Notice for all contracts with a value of, or greater than, £25,000 (inclusive of VAT) regardless of how the contract was procured and whether or not a contract opportunity was advertised. The Notice must be published within 90 calendar days from the date of completion.
- 4.2.2.** Officers are responsible for notifying the Procurement Department when a Contract Award Notice is to be published and must provide all information required for the award notice to the Procurement Department.
- 4.2.3.** The Council's Contracts Register - in addition to the requirement to publish on UK National Contracts Finder, a Council Contract Register for all contracts of, or greater than, £5,000 (inclusive of VAT) shall be kept and maintained by the Council's Procurement Department on behalf of the Director for Digital, Sustainability and Resources. The Register shall be open to inspection by any Member of the Council or public.
- 4.2.4.** All Officers completing contracts over £5,000 (inclusive of VAT) are responsible for providing the following information (as appropriate) to the Council's Procurement Department to ensure the Contracts Register is kept up to date:
- a) Contract Reference Number
  - b) Title of Agreement
  - c) Department Responsible
  - d) Description of Contract
  - e) Contract Start Date
  - f) Contract End Date
  - g) Contract Extension period (if applicable)
  - h) Contract Review Date
  - i) Contract Value
  - j) Irrecoverable VAT
  - k) Supplier Name
  - l) Supplier Type (legal standing of the organisation)
  - m) Procurement process used

## **5. Standing Order 5: Financial Limits and Procedures**

### **5.1 Contracts for a value up to but not including £25,000 (inclusive of VAT)**

- 5.1.1.** For purchases up to (but not including) £25,000 (inclusive of VAT), two written quotes are to be obtained. Where it is impracticable to obtain two written quotes due to the specialist nature of supply, one quote can be obtained providing there is written record that value for money has been considered,

and the quote represents value for money.

**5.1.2.** A written contract is required (see CSO 12). Any Finance Lease or Finance arrangement, must also be checked in advance by Financial Services.

**5.1.3.** Contracts under CSO 5.1 do not need to be signed by Legal Services and can be signed by an Officer with sufficient budget, authority and has followed the Decisions Pathway (see CSO 1.3.5).

## **5.2 Exemption from Obtaining Two Written Quotes**

**5.2.1.** Where the proposed purchase is for works, goods or services is below £5,000 (inclusive of VAT) and the purchase is for reactive maintenance and minor works to Council buildings or structures within the Council's ownership and responsibility, the procuring officer need only obtain one written or oral quote.

**5.2.2.** Use of the exemption at clause 5.2.1 is to be monitored. Where the aggregate value of the contracts reactive maintenance and minor works with any one supplier reaches £25,000 (inclusive of VAT) in the aggregate or in any four year period, then the procuring officer will obtain two quotes prior to any further instruction to the same supplier to ensure value for money.

**5.2.3.** In the event the aggregate spend has reached £25,000 (inclusive of VAT) and the procuring officer has obtained two quotes to ensure value for money as required by CSO 5.2.2, if the same supplier has provided the most economically advantageous quote, the procuring officer may re-apply the procedure at clause 5.2.1 up to a further spend of £25,000 (inclusive of VAT) for reactive maintenance and repairs.

## **5.3 Contracts for a value of £25,000 (inclusive of VAT) up to but not including £100,000 (inclusive of VAT)**

**5.3.1** Where the estimated value of a contract is from and including £25,000 (inclusive of VAT) but below £100,000 (inclusive of VAT), the Director or their delegated nominee is to obtain three written quotes or carry out a tender process. The Procurement Department can advise on the most appropriate route.

**5.3.2** Unless the exemption at CSO 5.4 applies to this CSO, all quotations and tenders must be published on the Council's e-portal.

**5.3.3** All quotes or tenders pursuant to this CSO shall be invited and received through the e-portal in accordance with CSO 9.

**5.3.4** Quotes or tenders should only be evaluated in accordance with the criteria stated by the Council in the original RFQ or ITT documentation. The

evaluation process and reasons for the evaluation decision should be clearly documented and retained on file. If in doubt, seek advice from the Procurement Department.

## **5.4 Exemption to Obtaining Three Quotes or Tenders**

**5.4.1** Where in the opinion of the relevant Director, Head of Service, or their delegated nominee, it is impracticable to follow the procedure set out at CSO 5.3, due to the specialist nature of supply or the nature of any warranty that exists, then an exemption to obtaining three quotes will apply providing the reasoning for reaching the decision to use the exemption is recorded by the relevant Officer and approved by Legal, Finance, and Procurement Services in advance of the contract.

## **5.5 Contracts for a value of £100,000 (inclusive of VAT) up to but not including the Public Procurement Threshold**

**5.5.1** Where the estimated value of the contract is from £100,000 (inclusive of VAT) but below the procurement threshold, the Director for Service or their delegated nominee shall follow an open tender process unless the exemption to **the open** process at 5.6 applies.

**5.5.2** For below threshold contracts, an open process can be reserved by supplier location; small and medium sized enterprises (SMEs); voluntary and community groups and Social Enterprises (VCSEs). See CSO 1.3.8.

**5.5.3** An open procedure under this CSO requires the publication of:

- a. A notice on the Council's Portal;
- b. A contract opportunity notice on Contracts Finder within 24 hours of the publication on the Portal. The contract opportunity notice will be automatically created through the Portal using the information provided.

**5.5.4** In addition to the mandatory notices, Officers may consider giving notice of the procurement in a local publication, trade journal and/or on the Council's web site.

**5.5.5** Instead of an open procurement a Framework Agreement may be used see CSO 7.1 and 7.2. When using a framework or a dynamic purchasing system there is no need to publish a contract opportunity notice on National Contracts Finder.

## **5.6 Exemption to the Open Process**

- 5.6.1** This exemption is only to be used in limited circumstances where approval is obtained from the Chief Financial Officer and the Head of Legal Services.
- 5.6.2** An Open Process need not be followed, nor will a contract opportunity notice need to be published on National Contracts Finder, if it has been agreed by the Chief Financial Officer and Head of Legal Services that the invitation to tender is to be made available to only a limited number of suppliers who have been selected for the purpose. In such circumstances, the tender process should invite a minimum of five tenderers unless the Chief Financial Officer and Head of Legal Services agree that it is impractical to do so.

## **6. Standing Order 6: Above Threshold Procurements**

### **6.1 Tendering Procedures**

- 6.1.1.** When awarding public contracts, the Council shall apply one of the following procedures, always contact the Procurement Department for advice on the appropriate procedure:

**6.1.2.** Open Procedure

In which all interested suppliers may respond to the advertisement published on the Council's Portal and the UK Find a Tender website by submitting a tender for the contract.

**6.1.3.** Restricted Procedure

The Council will publish a qualitative selection questionnaire and only those tenderers that pass the selection are invited to submit a tender for the contract.

**6.1.4.** Competitive Dialogue Procedure (for developing solutions in dialogue)

A qualitative selection is made of those who respond to the advertisement and the contracting authority enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender.

**6.1.5.** Competitive Procedure with Negotiation (for improving bidders' offers)

A qualitative selection is made of those who respond to the advertisement. The Council may then open negotiations with the tenderers to seek improved offers and evaluate modified tender responses.

**6.1.6.** Innovation Partnership Procedure (for developing innovative solutions)

A qualitative selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market.

The contracting authority is allowed to award partnerships to more than one supplier.

## **6.2 Maintaining a Record of the Procurement Process**

**6.2.1.** Whichever above threshold procedure is to be used the procuring Officer must keep a Regulation 84 Report detailing each step of the procurement. The Report should be ongoing and specify:

- a) What process was used;
- b) Which stage has been reached;
- c) The names of selected and rejected tenderers;
- d) how the tenderers were evaluated and why;
- e) reasons for selection and rejection;
- f) details of any known subcontractors;
- g) circumstances justifying the use of the tender procedure chosen;
- h) conflicts of interest identified and action taken;
- i) all details specific to negotiation or dialogue with the supplier.

**6.2.2.** The Procurement Department will provide a template for the Report and it is the Officer's responsibility to ensure the Report is kept up to date.

**6.2.3.** These mandatory Regulation 84 Reports may be fully disclosable in any procurement challenge, or may also be requested by a Cabinet Office Minister. Officers should not disclose any information from the Report, without first obtaining legal advice.

**6.2.4.** The Report is not required for contracts under a framework agreement.

**6.2.5.** For contracts below threshold the Regulation 84 Report is not mandatory, but it is deemed good practice for Officers to keep a Report for reasons of transparency.

## **7. Standing Order 7: Frameworks, Dynamic Purchasing Systems and Consortia Organisations**

### **7.1 Framework Agreements**

A Framework Agreement is a collective of suppliers that have already tendered through a compliant procurement process, and have been selected (on quality and cost criteria) for their ability to provide either works, goods or services to the Council. The Framework will enable the Council to hold a mini-competition to obtain best value, or it will enable a direct call-off to a single supplier.

The Framework Agreement has established call-off contract terms to be used between the Council and the Supplier, and there will be Framework rules and guidance on how to use the Framework and what amendments if any can be made to the call-off terms.

## **7.2 Dynamic Purchasing Systems (DPS)**

The DPS is similar to a Framework Agreement but new suppliers can apply to join at any time providing they meet the DPS criteria. A mini competition must always be held with the DPS.

## **7.3 Consortia Procurements**

Consortia bidding is the term used to describe the situation where a number of economic operators come together to submit a bid for a contract in a procurement process and could be a useful process for major projects requiring a mix of professional skills.

# **8. Standing Order 8: Preparation of the Procurement Documents**

## **8.1 Request for Quotation and Specification Documents**

**8.1.1.** The Request for Quotation (RFQ) - Officers must ensure that they are using the most current version of the RFQ document which has been approved by the Procurement Department as it contains necessary protections to the Council during the RFQ process.

The RFQ document can be varied from being 100% price based or can be reviewed on a combined price and quality assessment. The Procurement Department can give a guidance on using and completing the RFQ.

**8.1.2.** The Specification accompanies the RFQ and must clearly and concisely set out the Officer's needs, having regard to the nature of the works goods or services to be procured.

**8.1.3.** Contract Terms and Conditions - it is preferable for each RFQ to attach the Council's terms and conditions of contract which are appropriate to the nature of the works, goods or services being procured. Officers will need to contact legal services in advance of publishing the RFQ for advice on contract terms and conditions.

## **8.2 Invitation to Tender and Specification Documents**

**8.2.1. The Invitation to Tender (ITT)** - Officers must ensure that they are using the most current version of the ITT document which has been approved by the

Procurement Department as it contains necessary protections to the Council during the tender process. The Procurement Department can give a guidance on completing the ITT.

In all cases, every invitation to tender shall include the following:

- a) A statement that the tendering process will be conducted through the Council's Portal;
- b) Full instructions on how to submit a tender to this system;
- c) The deadline for submission of tenders to this system;
- d) A Tender submission schedule which contains:
  - FOI Exemption Form
  - Form of Tender
  - Collusive Tendering Certificate
  - Mandatory and Discretionary Exclusion Grounds
  - Supplier's selection questionnaire
- e) The ITT shall also include the evaluation criteria against which the tenderers will be scored and the weighting (or score) to be applied to each criterion with an explanation of the scoring mechanism. All criteria must be capable of being objectively assessed, clear and concise. Criteria will include price (which usually carries a score of not less than 30%) and Social Value (with a score of 10%). The remaining criteria (60%) usually address the quality of the goods works or services to be delivered. Please see CSO 8.3 for example evaluation criteria.

**8.2.2.** Fully detailed Specification - Officers must ensure that they have a fully detailed specification setting out exactly what it is the Council wants to purchase which provides all specific and technical requirements.

**8.2.3.** Contract Terms and Conditions - Each ITT is to attach an appropriate form of contract as approved by Legal Services.

### **8.3 Establishing the Most Economically Advantageous Tender (MEAT) or other approved Assessment**

**8.3.1.** The criteria for considering MEAT must:

- a) Be agreed in advance and applied equally to all tenders;
- b) Be relevant and appropriate to the subject matter of the tender;
- c) Be objectively identifiable capable of being objectively scored;
- d) Not be anti-competitive or capable of distorting competition;
- e) Be listed in a decreasing order of importance having regard to the weightings attributed to them starting with the highest scoring criteria first.

**8.3.2.** Weighting must be given to each criterion used, which reflects the importance of each element of the contract.

**8.3.3.** Where any weighted criterion has sub-criteria to be considered this must be disclosed in advance in the ITT and relevant sub-weightings attributed to the sub-criteria.

- 8.3.4. Price must be a criterion and normally must have a weighting of not less than 30%. Where the award requires adopting a price weighting of less than 30%, this will need to be justified to, and agreed with, the Procurement Department.
- 8.3.5. Social value is to be given a weighting of not less than 10% unless the Procurement Department agrees otherwise.
- 8.3.6. The remaining criteria used must reflect the quality and available social value of the purchase, and be broken down appropriately to consider all aspects of required quality appropriate for the tender.

*An example evaluation scoring could be 30% price, 60% quality and 10% social value totalling 100%. Quality and Social Value would most likely have sub-criteria with their total weightings not exceeding 60% and 10% respectively.*

## **8.4 Examples of criteria for establishing MEAT:**

- 8.4.1. Costs - the whole lifecycle cost should be evaluated - see CSO 1.3.2
- 8.4.2. Social value - for Social Value criteria - see CSO 1.4
- 8.4.3. Quality - Examples include: technical and professional merit, aesthetic and functional characteristics, environmental characteristics, service delivery, after-sales service and technical assistance, customer service and support, contract mobilisation, implementation and management, experience, and risk management.

## **9. Standing Order 9: Using e-Procurement Portal**

### **9.1 Publishing and Accepting Quotations and Tenders on the Portal**

- 9.1.1. Unless the exemption at paragraph 9.2 below applies, all requests for quotations (RFQ) and invitations to tenders (ITT) are to be published and accepted on the Council's portal.
- 9.1.2. All quotations and tenders will be stored electronically by the portal in a secure inbox until opened after the deadline.
- 9.1.3. Officers must ensure bids received are compliant by checking that the appropriate information detailed in the RFQ/ITT documents is completed and submitted by suppliers as requested in those documents.
- 9.1.4. Bidders must return their submissions on or before the deadline set out in the RFQ/ITT documents. Submissions returned after the time and date must be rejected by the Council, although the Council may extend the deadline for a late submission if there is evidence available to demonstrate that the bidder has made an attempt to submit to the portal before the expiration of the deadline, or if an extension is afforded to all those bidding. All information

regarding quotations or tenders received, their submission date, time and their opened date and time will be stored by the system.

## **9.2 Exemption to publishing on the Council's Portal**

**9.2.1.** For below-threshold procurements, where the Head of Legal Services and the Chief Financial Officer agree that due to the specialist nature of the supply it is impractical for potential suppliers to be asked to quote or tender using the portal (i.e. due to a lack of technical knowledge and experience or availability) then the quotes or tenders can be obtained as set out below:

- a) The Director or their delegated nominee shall obtain at least three **sealed** written quotes or **sealed** tenders from persons or bodies who in the opinion of the Director or their delegated nominee are capable of performing the contract.
- b) An agreed form of standard contract should be used and Legal Services should be instructed in advance of the procurement.
- c) All quotes and tenders received pursuant to this CSO shall either be opened by electronic means or if written sealed quotes or sealed tenders in the presence of the Director for Service and a Procurement Officer.
- d) The Head of Service or their delegated nominee shall then have delegated authority to accept such a quote or tender, but in the case of a quote other than the lowest, then the Head of Service must establish MEAT as set out in CSO 8.3.
- e) Details of the quotes or tenders received and how the successful contractor was chosen should be submitted to the Procurement Department for approval for all contracts.

**9.2.2.** Where this exemption applies the procuring officer must still comply with any requirement to publish the contract award notice on Contracts Finder and on the Council's contracts register.

## **10. Standing Order 10: Evaluation and Notifications to Bidders**

### **10.1 Evaluation of Quotations and Tenders**

**10.1.1.** The members of an evaluation panel should be carefully considered and all members must declare any conflicts of interests in the procurement and its outcome prior to commencing any evaluation.

**10.1.2.** Members of the evaluation panel should only receive that part of the tender response which they are required to score. This prevents undue influence on the scoring of their specified section.

- 10.1.3.** Submissions must be evaluated objectively and strictly in accordance with the criteria stated in the original request for quotation (RFQ) or invitation to tender (ITT) and in compliance with the Public Contract Regulations 2015 or other relevant legislation.
- 10.1.4.** The evaluating panel members must clearly document and record the reasons for their decision and any other relevant matter arising during the evaluation. Where the tender process is above threshold, panel members must continue to keep this information up to date see CSO 6.2 (Maintaining a Record of the Procurement Process).
- 10.1.5.** Unless seeking an RFQ based on price only, the award must be based on the most economically advantageous tender (MEAT) which uses a cost-effective approach for price/quality ratio, offering best price (which will not necessarily be the lowest price). Or, if approved by the Procurement Department, another recognised evaluation assessment method (see CSO 8.3 MEAT or other Approved Assessment).
- 10.1.6.** A tenderer's submission may not be altered after the time and date specified for the return of tenders. If an error in the submission is discovered, the tenderer shall be given the opportunity to confirm or withdraw the tender as it is submitted. If, in the opinion of the Head of Finance, there are exceptional circumstances, a tenderer may be allowed to correct any arithmetical error in the tender or clarify its tender, but not add to or enhance it.

## **10.2 Notification to Unsuccessful Bidders**

- 10.2.1.** Following an evaluation of a request for quotation or an invitation to tender, the procuring officer will ensure that they liaise with the Procurement Department to ensure that all bidders are simultaneously notified in writing through the Council's portal with the evaluation outcome by providing the information below. Supplying the following information is mandatory for above-threshold tenders and for below-threshold tenders is good transparent practice:
  - a) The tender evaluation criteria;
  - b) The reasons for the decision, including the characteristics and relative advantages of the successful tender;
  - c) The evaluation scores of the tenderer receiving the notice and the scores of the successful tenderer;
  - d) The reasons (if any) why the tenderer did not meet the technical specification and/or the areas where the tenderers submission was weaker than that of the successful tenderer;
  - e) The name of the tenderer(s) to be awarded the contract

- f) A statement on the date the standstill period is expected to end (see 10.6 Standstill Period).

### **10.3 Notification to Successful Bidders**

- 10.3.1.** Successful tenderers will be sent a Notification of an Intention to Award Letter, which will usually be subject to a ten day standstill period (see 10.4). Officers must ensure that they do not create a binding contract with the supplier until the contract has been finalised and executed. This is in keeping with the request for quotation or invitation to tender, which confirms the Council will not be bound until the contract is executed.

### **10.4 Standstill Period**

- 10.4.1. Above Threshold** - The standstill period must run for a minimum of 10 calendar days commencing the day after the notice was emailed to the tenderer and expires at midnight on the 10<sup>th</sup> day. If the expiry date of the standstill period falls on a weekend or public holiday then the expiry date shall be midnight on the next working day.
- 10.4.2.** Should a Tenderer request further information or debrief during the standstill period, the Officer should immediately consult with the Procurement Department and Head of Legal Services for advice. The Council may extend the standstill period for further days until the tenderer has received and considered the information.
- 10.4.3.** If the Council receives notification from a tenderer that it intends to challenge a contract award decision, then the Head of Legal Services must be notified immediately and the Council must automatically refrain from entering into the contract until legal advice has been received (failure to comply with this CSO may result in the court making a declaration of ineffectiveness with damages payable by the Council). Inform the Council's Freedom of Information Officer if a challenge is received to ensure that commercially sensitive information is not released without prior consideration and authority.
- 10.4.4.** Upon satisfactory conclusion of the standstill period the Officer may advise the successful tenderer(s) that the standstill period has passed and instruct the Head of Legal Services to draw up a formal contract with the successful tenderer(s).
- 10.4.5.** Once the standstill period has concluded a Contract Award Notice should be placed in the Find a Tender (FTS) by the Procurement Department within 30 days of the contract award.
- 10.4.6. Below Threshold** - tenders below the public procurement threshold are not covered by the full requirements laid out in Section 10.2 (Notification to Unsuccessful Bidders). However, it is best practice to follow the same principles of notifying unsuccessful tenderers and, if requested by the

tenderer, providing feedback on the outcome of the procurement exercise.

- 10.4.7.** It is not necessary to have a standstill period for a below threshold contract, but it is good practice to apply one and only in limited circumstances will the Procurement Department agree to reduce the standstill period.

## **11. Standing Order 11: Subcontracting**

- 11.1** Where it is anticipated that the successful tenderer will want to subcontract out an element of delivery to a third party the Director for Service must ensure that:
- 11.1.1.** The subcontractor is not a supplier that would have been excluded in the tender process;
- 11.1.2.** The main supplier has carried a best value exercise in line with these CSO and that best value for the subcontractor has been approved by the Procurement Department; and
- 11.1.3.** Any subcontractor is paid on the same payment terms as the supplier in the main contract and on terms no less favourable than those agreed with the supplier, i.e. on payment terms within 30 days;
- 11.2** Consideration must be given as to whether or not a collateral warranty between the subcontractor and the Council is required. A collateral warranty is most often required where there is no direct contractual relationship between the Council and the subcontractor.
- 11.3** There shall be inserted in every contract a clause detailing the subcontracting arrangements.

## **12. Standing Order 12: Contract Formalities**

### **12.1 The Form of Contract**

- 12.1.1.** All contracts should be made in writing and on the Council's standard written terms unless Legal Services approves otherwise. Contracts made on the supplier's written terms must be reviewed and approved by Legal Services. In advance of the tender process, the procuring Officer must seek advice from Legal Services on the form of contract to be used.
- 12.1.2.** Advice from the Finance Department must be obtained where the contract involves a finance leasing arrangement.
- 12.1.3.** Every contract shall specify the goods, materials or services to be supplied and the work to be executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties and are required by law.

- 12.1.4.** Consideration must be given as to whether or not a performance bond, parent company guarantee, or other form of security (see 12.2.2 below Liquidated Damages) acceptable to the S151 officer and the Legal Services, is required from the supplier.

## **12.2 Required Terms**

- 12.2.1 Boilerplate Clauses** - The Council is required to include statutory terms which include non-exhaustively: Anti Bribery; Anti-Money Laundering; Freedom of Information; Data Protection; Safeguarding of Vulnerable Adults and Children; Transparency; Prevention of Terrorism; Audit; Anti-Discrimination Equality and Diversity; Payment of Subcontractors; Termination and Exit of Above Threshold Contracts; Compliance with Anti-Slavery and Human Trafficking laws; Force Majeure; Health and Safety.

If Officers consider one of the above clauses is more appropriate to their contract, they must notify Legal Services when asking them to consider the contract terms. For example, where personal data is being controlled or processed by a third party on the Council's behalf, an additional data sharing agreement may be required.

- 12.2.2 Liquidated Damages** - Officers must consider the effect on the Council of any delay in performance of the contract, and whether that delay is likely to cause the Council financial loss which requires protection. If so, the Officer must estimate the reasonable and genuine loss that the Council is likely to suffer as a result of the delay and provide to Legal Services a figure which would fairly compensate the Council, usually at a daily or weekly rate for that loss.

- 12.2.3 Standards** - Where an appropriate British Standard or code of practice (or other applicable standard) applies to the procurement, the procuring Officers are required to notify Legal Services so the relevant standard is included in the contract.

## **12.3 Execution of Contracts**

- 12.3.1.** Where any contract is required as a result of any legal procedure or legal proceedings on behalf of the Council, it will be signed by the Head of Legal Services or another person authorised by them, unless any enactment otherwise authorises.

- 12.3.2.** Contracts with a value of less than £25,000 (inclusive of VAT) can be executed by the Head of Service of their delegated nominee. Contracts of £25,000 (inclusive of VAT) or above, are to be executed in Legal Services, unless Legal Services approves otherwise.

**12.3.3.** Any contract for an amount of or greater than £250,000 (inclusive of VAT) is to be executed as a deed using the common seal of the Council, signed by an authorised signatory and witnessed as formality requires.

## **12.4 Electronic Signatures**

**12.4.1.** For all contracts below £250,000 (inclusive of VAT), the Council may execute the contract via a method of e-signature which has been pre-approved by Legal Services. Any contract with a value of £25,000 (inclusive of VAT) or above, must be authorised, signed and completed by Legal Services.

**12.4.2.** For contracts that require a seal, the Monitoring Officer may adopt such means of sealing as from time to time they consider appropriate. This may include allowing electronic sealing in accordance with section 7A(1) of the Electronic Communications Act 2000 (or other subsequent legislation). Affixing of an electronic seal approved in this way shall be of the same legal effect as affixing the common seal of the Council. Any additional formality relating to the witnessing of such contracts are complied with.

## **13. Standing Order 13: Engagement of Consultants**

**13.1** The financial limits in these CSOs apply to the engagement of consultants, the appointment must be based on MEAT or other approved evaluation (see CSO 8.3). If a consultant is to provide services over the lifetime of a project then the whole lifetime cost should be taken into account when procuring the consultant.

**13.2** External legal consultants must be appointed through Legal Services in accordance with the Council's constitution.

**13.3** Prior to the engagement of the consultant the Officer must:

- a) Prepare a business case in advance of the appointment which as a minimum, should detail the reason for seeking external expertise, for example, lack of internal capacity or capability due to the specialist nature of services;
- b) This business case should be approved by either the Director or the Head of Service or their delegated nominee;
- c) Financial checks of lead consultants' financial stability and professional indemnity insurance should be made (which should also include any sub-consultants);
- d) Insurance expiry date should be monitored by project managers except in those cases where the insurance Section is directly responsible for

such insurance. Ongoing checks of valid insurance renewals should be undertaken during the lifetime of contracts;

- e) Where the consultant is an individual, check with Payroll and Procurement to find out if the consultant is acting in the capacity of an employee and therefore subject to IR35 (tax and national insurance payments at source)

**13.4** It shall be a condition that the consultancy contract shall require the consultant to:

- a) Comply with these CSO in consultation with the relevant Head of Service or Director if the consultant is procuring goods works or services on the Council's behalf.
- b) Produce to the Head of Service or Director on request, all the records maintained by them in relation to the contract; and
- c) On completion of the contract, transmit all such records to the Head of Service or Director or to any other Head of Service duly authorised by the Council for this purpose.
- d) Consider and deal with ownership of intellectual property rights created by the instruction of the consultant.

**13.5** The terms of engagement of a consultant (not being an Officer of the Council) shall be set down in a form approved by Legal Service.

**13.6** Previous employees should not be engaged as consultants until a period of at least 6 months has elapsed since they ended their employment with the Council.

## **14. Standing Order 14: Contract Performance Monitoring**

**14.1** The procuring Officer should ensure that the contractor's performance is monitored against the contractually agreed terms, by an appropriate Officer responsible for contract management in their department. The extent of the monitoring should be proportionate to the nature, duration and associated cost of the contract.

**14.2** Heads of Service and managers are required to ensure Officers carry out proper contract management and that any issues in contract performance are brought to their attention. For higher value contracts, Members may also require an updating report on contract performance.

**14.3** Contract managers are to periodically revise how delivery and processes under ongoing contracts might be improved and to ensure that those improvements are implemented by the supplier and monitored by the contract manager.

**14.4** Where further goods, works, or services will be required at the end of an existing contract term, contract managers must consult with the Procurement Department prior to the expiration of the existing contract in sufficient time to plan the re-procurement to avoid disruption to Council services.

## **15. Standing Order 15: Extensions to Contracts**

**15.1** This Standing Order is only to be used in the following circumstances:

- a) The extension is required to undertake an evaluation of the future requirement of the existing contract/service/service delivery;
- b) There has been no previous extension of the original contract (other than an extension, or option to extend, which was agreed as a term of the original contract);
- c) There is approved budget;
- d) The proposed extension has been approved by Procurement and Legal Services having consideration to these CSO and the public procurement rules;

**15.2** Where the Director for Service or Officer acting with delegated authority on their behalf proposes to extend a fixed-term contract to include additional works, services, goods they shall only do so in accordance with this CSO and CSO 2.1 (Authorisation to Contract).

**15.3** For above-threshold contracts, the terms of the contract extension must not breach the requirements of Regulation 72 of the Public Contract Regulations 2015 (Modification of Contracts).

**15.4** In addition:

- a) The extension must be on the same terms as the original contract including terms as to price, although an increase in the price payable for the goods, services or works, which reflects an RPI increase is acceptable;
- b) The original contractor has agreed the additional goods, services or works will be supplied on the same terms;
- c) The extension is necessary and a legitimate business case for it has been approved and recorded in writing by the Director for Service or Officer with delegated authority to extend the contract;
- d) The extension must be made during the term of the original contract or continue immediately following the expiration of the original contract without any break in continuity between the expiration of the original contract and the extension of it;
- e) In the case of construction works, the proposed additional works are on the same site as the original contract or of a similar nature;

- f) The procurement for the original contract complied with these CSOs;
- g) The extension is for no more than 24 months;
- h) The decisions pathway has been followed prior to awarding the extension.

**15.5** In all cases, consideration should be given as to whether approval should be obtained from the relevant Executive Member(s) before any extensions are granted.

## **16. Standing Order 16: Variations to Contracts**

**16.1** The effect of the proposed variation on the contract value must be fully assessed and recorded in writing prior to the variation being made. Officers must ensure that there is an authorised budget sufficient to meet the value of the variation in place, and the decisions pathway must be followed.

**16.2** Officers must consult Procurement, Financial and Legal Services for advice on the proposed variation prior to making the variation. Any contract variation with a value of £25,000 (inclusive of VAT) or above, is to be signed by Legal Services.

**16.3** For above-threshold contracts, the terms of the contract variation must not breach any rule under Public Contract Regulations 2015 or other updating legislation.

**16.4** All of the following clauses shall apply to a contract variation.

**16.4.1.** All contract variations must be within the scope of the original contract. The variation will be in scope if it is within a similar range of goods, services or works supplied under the original contract and the variation is required in order to complete an aim or purpose of the original contract.

**16.4.2.** In all cases, there should be a clear statement recorded in writing setting out the business justification, the cost, the benefits and the duration of the variation (whether temporary or for the remaining term of the contract) which is to be shared with Procurement Financial and Legal Services, as well as to inform the audit trail.

**16.4.3.** All contract variations must be authorised by the Director for Service or have relevant Member approval having regard to the business case and any comments made by the Procurement, Financial and Legal Departments. The variation must be in writing and signed by both the Council and the contractor. Where the value of the contract variation exceeds £25,000 it must be executed by Legal Services.

**16.4.4.** In all circumstances at the time the variation is proposed, Officers must follow the decisions pathway and if required to do so by that pathway, seek authorisation from (or consult with) Executive Member(s).

## **17. Standing Order 17: Termination of Contracts**

**17.1** No contract with a value greater than £250,000 (inclusive of VAT) which has been entered into under the authority of the Council's Executive or appropriate Executive Members, shall be terminated either by agreement or by unilateral action without the approval of the Chief Financial Officer and the Head of Legal Services, and consultation with Executive Members in advance of terminating the contract.

**17.2** Where in the opinion of the Chief Financial Officer and the Head of Legal Services, the termination will have a significant financial impact on the Council or will cause a significant disruption to Council services, then the Director for Service is to provide a full report to Executive Members or the Joint Strategic Committee (as advised by the Head of Legal Services) and obtain Member authority to terminate the contract in advance of the termination.

**17.3** Where, in the opinion of the Director for Service, termination of the contract is urgent and delay would have an adverse impact on services, assets, or the public; and there is insufficient time to take a report to Members (as required by paragraph 17.2), then providing the Chief Financial Officer and Head of Legal Services agree, the Director may terminate the contract and report as soon as possible after the termination providing full details of the circumstances, financial effect and/or disruption to services.

**17.4** For all contracts below £100,000 (inclusive of VAT), the Director for Service can terminate the contract without Member consultation providing that the Chief Financial Officer and Head of Legal Services agree there is no significant financial impact or disruption to Council services.

**17.5** Legal advice shall be sought before terminating any contract.