

PROPOSED REVISION OF CONTRACT STANDING ORDERS

REPORT BY SARAH GOBEY, CHIEF FINANCIAL OFFICER

1.0 SUMMARY

- 1.1 This report proposes some further amendments to the Contract Standing Orders used by both Adur District Council and Worthing Borough Council following the implementation of the Public Contract Regulations 2015.
- 1.2 These provisions have been the subject of consultation with both Cabinet Members for Resources, and the points raised have been built into these Contract Standing Orders.

2.0 BACKGROUND

- 2.1 The Contract Standing Orders provide the framework for procuring works, supplies and Services. They apply to every member and employee of the Councils and anyone acting on behalf of the Councils. The standing orders identify the responsibilities of employees and members and where these responsibilities are delegated.
- 2.2 The Chief Financial Officer is responsible for:
 - Maintaining a continuous review of the Contract Standing Orders and financial regulations and submitting any additions or changes necessary to the Council for approval.
 - For reporting, where appropriate, breaches of the Contract Standing Orders and financial regulations to the Council and/or to the Cabinet Members.
 - Issuing advice and guidance to underpin the Contract Standing Orders and financial regulations which Members, employees and others acting on behalf of the Council are required to follow.
- 2.3 The contract standing orders were last considered by this Committee in January 2015. The contract standing orders were recommended by the Committee to both Councils for approval subject to some minor amendments.

2.0 BACKGROUND

- 2.4 Following this meeting, the Public Contracts Regulations 2015 have come into force. These regulations require that:
- a) Contracts over £25,000 must be advertised on Contracts Finder which is the Government's e-procurement portal. This portal is nationally available and must be used in addition to any local e-procurement portal.
 - b) Pre-Qualifying Questionnaires (PQQ) may only be used for contracts over the relevant EU procurement threshold.
- 2.5 In addition, all contract awards must be published on Contracts Finder. The following information must be provided:
- a) The full name of the company who won the contract;
 - b) the date on which the contract was entered into;
 - c) the total value of the contract;
 - d) for any contract below the EU procurement threshold, an indication of whether the contractor is a Small or Medium-sized Enterprise (SME) or a Voluntary Community and Social Enterprise (VCSE).
- 2.6 The implication of this change is that the Council may receive far more bids from all over the Country for contract opportunities. Officers are concerned that this may have two consequences for the Councils:
- a) The Council will receive additional bids leading to a more time consuming procurement process;
 - b) local suppliers may be disadvantaged as potential bids would need to be considered from wider geographic area.
- 2.7 However, Councils have the freedom to determine the level at which Contract opportunities need to be advertised for within the Contract Standing Orders. For Adur and Worthing Councils it is recommended that this is set at £100,000. Below this level, Officers will have the freedom to seek quotes from a range of suppliers in or go to formal tender which would require that the contract opportunity is advertised.

3.0 PROPOSALS

- 3.1 Attached at Appendix 1 is a proposed section for the new joint Administrative Procedure Best Practice manual. This sets out the proposed Contract Standing Orders.
- 3.2 The main changes to the Contract Standing Orders are as follows:
- a) A new Order 8.4 entitled 'Transparency and the Requirement to Advertise' has been introduced to deal with the requirement to advertise via Contracts Finder.

3.0 PROPOSALS

- b) Contract Standing Order 8.8.4 (Restricted Procedure) has been significantly reduced as the ability to issue PQQs has been removed and so it is now not possible to operate a restricted procedure.

All changes have been highlighted within the document to make them easier to identify.

- 3.3 The Cabinet Members for Resources and Chairmen of the Joint Governance Committee from both Councils have been consulted on the contents of the proposed Contract Standing Orders and their views have been incorporated into the proposed document.

4.0 LEGAL

- 4.1 These Contract Standing Orders are made pursuant to the Local Government Act 1972 Section 151 which requires the Chief Financial Officer to ensure the proper administration of the Councils financial affairs.
- 4.2 In addition, the Contract Standing Orders includes guidance which is designed to ensure officers act legally when procuring works, goods and services.

5.0 FINANCIAL IMPLICATIONS

- 5.1 Agreement of a revised set of Contract Standing Orders will improve the internal control environment of both Councils as the revision addresses any concerns raised by audit.

6.0 RECOMMENDATION

- 6.1 **Joint Governance Committee are asked to recommend to Council that the revised Contract Standing Orders be approved.**

Local Government Act 1972

Background Papers:

Adur District Council and Worthing Borough Council Contract Standing Orders

Crown Commercial Service Procurement Policy Note – Reforms to make public procurement more accessible to SME's

Crown Commercial Service - Guidance on the new transparency requirements for publishing on Contracts Finder

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SCHEDULE OF OTHER MATTERS

1.0 COUNCIL PRIORITY

- 1.1 This will enable the Council to have a common framework and so improve partnership working.

2.0 SPECIFIC ACTION PLANS

- 2.1 Matter considered and no issues identified.

3.0 SUSTAINABILITY ISSUES

- 3.1 Matter considered and no issues identified.

4.0 EQUALITY ISSUES

- 4.1 Matter considered and no issues identified.

5.0 COMMUNITY SAFETY ISSUES (SECTION 17)

- 5.1 Matter considered and no issues identified.

6.0 HUMAN RIGHTS ISSUES

- 6.1 Matter considered and no issues identified.

7.0 REPUTATION

- 7.1 A common set of updated Contract Standing Orders will enhance the Council reputation for financial probity.

8.0 CONSULTATIONS

- 8.1 The Cabinet Members of Resources from Worthing Borough Council and Adur District Council have been consulted on the proposed standing orders.
- 8.2 Internal audit have been consulted on the proposed revisions to the standing orders.

9.0 RISK ASSESSMENT

- 9.1 If the Contract Standing Orders are not updated there is a risk that officers will act outside the relevant legislation and related standing orders of the Council whilst delivering services on behalf of both Councils.

10.0 HEALTH & SAFETY ISSUES

- 10.1 Matter considered and no issues identified.

11.0 PROCUREMENT STRATEGY

- 11.1 The Contract Standing Orders outline the approach to be taken in procurement of works, goods and services.

12.0 PARTNERSHIP WORKING

- 12.1 The report proposes a joint set of Contract Standing Orders suitable for the complex environment resulting from partnership working.

JOINT COUNCILS

CONTRACT - STANDING ORDERS

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**ADMINISTRATIVE PROCEDURES
BEST PRACTICE MANUAL**



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INTRODUCTION

Contract Formation

A contract will exist between one or both of the Councils and another individual (person, partnership, company or other legal entity), where there is a legal intention by each party to create a legally binding agreement; there has been an offer made to or by the Council(s); the offer has been accepted by the Council or the other party; and there is a consideration (whether in money or otherwise). A contract can be made orally or in writing, so always exercise caution when negotiating contract terms with a supplier to avoid inadvertently creating a binding contract. Declare all your negotiations subject to executed contract.

A contract made orally can create difficulties if disputes arise as to its precise terms. These contract standing orders require all contracts to be made in writing, setting out all the agreed terms clearly. Often, the specification and any tender documents will also form the terms of your contract.

Where a contract has been made that has not followed these contract standing orders or followed a proper procurement procedure, the contract can be challenged by unsuccessful tenderers putting the Council at risk.

Assessing Value

The purpose of the contract standing orders ("orders") is to ensure that the Councils adopt a uniform approach when entering into contracts for works, goods and services. The contract must be in writing, preferably on the Councils terms, having regard to the laws of public procurement. These orders contain rules that explain the procedures to be followed when entering into all contracts and with particular rules relating to those with a value of up to £10,000; from £10,000 to £25,000; from £25,000 to £100,000; and above £100,000.

How to use the Contract Standing Orders

The starting point when using these orders is to assess the value of the contract. This will be the total of any initial payments made plus the aggregate of any on-going payments or maintenance costs, where they form part of the contract. The overall cost will be the total paid from start to finish and you must not exceed the total budgets available to you or your authority to spend over the same period.

INTRODUCTION CONTINUED

How to use the Contract Standing Orders

Once you have decided on the value of the contract first check the pre-procurement section of these Orders, then go to the part of the Orders that is relevant to the value of your contract, and follow the procedural steps. The Orders will explain when you must seek advice from the Procurement or Legal teams. These Orders will ensure that the contract is signed off by the correct person, either your Director or other person delegated to enter into the contract for the Council(s).

Below is a Matrix summarising the key requirements and procedures contained within the Contract Standing Orders.

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Include ALL costs

	Pre Procurement Discussion	Consider Social Value	How many quotes?	Contact Legal	Advertise	Specification	Value for Money	Evaluate	MEAT* Evaluation	Procurement Approval	Legal to Approve & Execute
£5K or Less	?	?	?	?	?	✓	✓	✓	?	?	?
> £5k but £10k or <	?	?	2	?	?	✓	✓	✓	?	✓	?
> £10k but £25k or <	?	?	2 (Written)	?	?	✓	✓	✓	?	✓	?
> £25k but < £100k	✓	?	3 (Sealed)	✓	?	✓	✓	✓	✓	✓	✓
> £100k but < EU Limit	✓	?	ITT	✓	✓	✓	✓	✓	✓	✓	✓
EU Limit or >	✓	✓	EU ITT	✓	✓	✓	✓	✓	✓	✓	✓
Framework	✓	?	MC	✓	X	✓	✓	✓	✓	✓	✓

>	Greater Than
<	Less Than
✓	Mandatory
X	Not Required
ITT	Invitation to Tender
MC	Mini Competition
?	Discretionary

* Most Economically Advantageous Tender

If at any time you are in any doubt about what to do, please contact either the procurement or legal teams.

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INTRODUCTION CONTINUED

Definition of a Quotation and a Tender

For the purposes of these Contract Standing Orders, you will need to know when it is appropriate to obtain a quote and when it is appropriate to run a tender process:

Quote - A quote is appropriate when you are able to fully specify what it is you wish to purchase and the value of your purchase is below £100,000. A quotation is a fixed price for an assessed job. The price may only increase in the event that something unforeseen by the supplier arises during the term of the contract. When obtaining a quotation you will need to prepare a full and detailed specification and provide all relevant information related to the contract. The supplier will then review what needs to be done and if necessary to inspect relevant work area, relying on their own skill and judgement in providing the quotation. The supplier will then give you the quotation and this is the price that he is legally bound to stick to, unless unforeseen events occur.

Tender - A Tender is usually used under the Contract Standing Orders when the value of the contract will exceed £100,000. Liaising with the Procurement team you will need to prepare a specification, which may be detailed or may invite a design element to the contract. The specification will explain what you want to achieve and will be accompanied by an invitation to tender which will set out how you intend to score or evaluate the tender responses received.

Think Carefully - Plan your procurement exercise carefully. A tender process will carry with it rules and regulations which must be followed. If the rules are breached the Council will be open to challenge by any supplier that has potentially lost out on winning a contract. It therefore follows, that if you know what you want to achieve, have a full and detailed specification, and the value of your contract is less than £100,000 then obtaining quotations as detailed in these Contract Standing Orders is your best option.

There are also circumstances when you will spend less than £100,000 but be unclear about how to achieve your desired result. In such circumstances, running a tender process may be appropriate.

If in doubt speak to the Procurement or Legal teams.

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PRE-PROCUREMENT CONSIDERATIONS:

Before entering into a Public Services Contract with a value that exceeds the EU threshold, there are now specific legislative requirements arising from the Public Services (Social Value) Act 2012 (the Act), that the Council must be able to show it has considered.

A 'Public Services' contract means any contract with a service provider. The 'EU Threshold' is currently £172,514 but may vary and should be checked with the Procurement Team.

Under the Act, if the Council proposes to procure the provision of services by:

- (a) Entering into a public services contract that is not a contract based on a framework agreement; or,
- (b) By concluding a framework agreement of which a public service contract is likely to constitute the greater part by value;
- (c) And the value of that contract (or the services element of it) is or exceeds the EU limit for Services

Then the Council must consider and be able to evidence in writing that it has considered:

- (a) How what is being proposed to be procured, might improve the economic, social and environmental well-being of the relevant area and;
- (b) In conducting the procurement process, how the Authority might secure that improvement;
- (c) Before the procurement process starts, whether the Authority should consult as to how best to achieve the requirements and comply with the best value duty.

For service contracts below the EU limit it is not compulsory to consider social value, but it is considered best practice for all public bodies to consider the inclusion of social value in all service contracts.

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If in doubt about your duty to comply with the Act, speak to the Procurement team or to the Legal team for guidance.

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STANDING ORDER 8.1: GENERAL

- 8.1.1 Every Contract made by the Councils or by the Cabinets, Committees, Standing Sub-Committees or by a Director shall comply with Part 8 of these Standing Orders except where otherwise required by United Kingdom statute or EU Treaty or EU Directive for the time being in force in the United Kingdom.
- 8.1.2 Save as provided for in Standing Order 8.18.1 (Contract documentation, conditions and execution) and Standing Order 8.5 (Contracts for a value or amount less than £10,000), these Standing Orders shall apply to all Contracts other than those relating to:
- (a) A Contract or series of Contracts not exceeding £10,000 in contract value (see Standing Order 8.5 for further guidance).
 - (b) The award to the Councils Direct Services Organisations of work which is capable of being awarded to it automatically by virtue of any statute.

Advice should be sought from the Procurement team for any planned contract irrespective of the size of the contract.

- 8.1.3 For the avoidance of doubt these Standing Orders apply to all contracts entered into or proposed by the Councils Direct Services organisation.
- 8.1.4 For further guidance Contract procedure rules shall be drawn up with the intention to inform the interpretation and application of these Contract Standing Orders and they shall be read and construed in accordance with these Standing Orders.

STANDING ORDER 8.2: AUTHORISATION OF CONTRACTS

- 8.2.1 Where any proposal is envisaged which would require a Contract or Contracts under these Standing Orders, the Director shall be authorised to proceed provided that:
- (a) There is sufficient approved revenue or capital budget to fund the proposed contract throughout its duration; and

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- (b) The Procurement team has confirmed that best value has been obtained for those contracts where the value exceeds £5,000.

STANDING ORDER 8.2: AUTHORISATION OF CONTRACTS

- (c) The procurement portal is used to obtain quotations or to carry out a tendering exercise unless it impractical to do so.
- (d) The Council's legal representative is consulted about:
 - The most suitable form of contract for all finance and operating leases;
 - The most suitable form of contract for any potentially complex arrangement;
 - The most suitable form of contract for all other contracts where the value exceeds £25,000; and
- (e) The key requirements detailed in standing orders are fulfilled.

In all other cases, a written report shall be presented by the Director to the respective Cabinet or Cabinet Member stating the nature of the proposal, an estimate of the anticipated direct and indirect costs thereof and the implications of the proposal upon the Capital Programme and Revenue Budget of the Council and recommendations as to the way in which the proposal should be carried out (including recommendations as to the mode of tendering or as to whether it is a Specialist Contract).

8.2.2 In authorising the acceptance of a quote regard must be had to whether the quote fully meets the specification before it is evaluated on price. In accepting a tender guidance is provided at 8.15 on suitable approaches. Consideration should be given to:

- (a) The supplier's/contractor's technical and financial ability to undertake the proposal and an assessment of the quality of work (see 8.15 for further guidance on assessing tenders);
- (b) The adequacy of the supplier's/contractor's insurance cover for the matters to be undertaken:

But all other things being equal the lowest quotation or tender duly received shall be accepted.

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STANDING ORDER 8.2: AUTHORISATION OF CONTRACTS

- 8.2.3 The approval of the relevant Cabinet Member, Joint Strategic Committee or Council shall be required to the seeking or acceptance of a Tender where the Tender, or the estimated cost of it, together with all relevant fees and costs, exceeds the provision made in the Council's Capital Programme or Revenue Budget, as the case may be, by £10,000 or 10% whichever is the lesser.

STANDING ORDER 8.3 : SPECIAL CIRCUMSTANCES OR EMERGENCIES

Note: This procedure cannot be used for a Contract that is over the EU threshold.

- 8.3 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.

Exemption from any of the provisions of these Standing Orders may **only** be made as follows:

- 8.3.1 For Contracts under £100,000:
Approval must be sought from the Monitoring Officer or any Legal Officer authorised to act on their behalf;
- 8.3.2 For Contracts over £100,000:
Approval of the Councils or the Cabinets or Cabinet Member or with the approval of the Joint Governance Committee (either at a meeting of the said Committee or by means of consultation with the Mayor/Chairman of Committees and the relevant Cabinet Members) where the Councils or the said Committee is satisfied that the exemption is justified in special circumstances; provided that:
- (a) Where such approval is given by the Councils or the said Committee, it is recorded in the minutes or record of decisions of the Council or the Committee;
 - (b) Where such approval is given by the Consultation Procedure, it is reported as soon as practicable to Members following the making of the decision.

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STANDING ORDER 8.3 : SPECIAL CIRCUMSTANCES OR EMERGENCIES

8.3.3 Emergency works:

- Where the Contract exceeds £100,000 for a works contract, and £25,000 in value in for goods and services, he shall only do so following consultation with the Joint Strategic Committee, Cabinets or appropriate Cabinet Members. The Director shall submit a report explaining the emergency to the next meeting of the Joint Strategic Committee or Cabinet.
- If it is impracticable to consult with the relevant Members, then the Director shall submit a report explaining the emergency to the next meeting of the Joint Strategic Committee or Cabinet.

For the avoidance of doubt recruitment of temporary or agency staff to cover sickness or vacancies is included under this Standing Order.

STANDING ORDER 8.4: - TRANSPARENCY AND THE REQUIREMENT TO ADVERTISE THE CONTRACT

8.4.1. Contract Opportunities:

Under these standing orders, a procurement opportunity for a contract with a value of less than £100,000 (net of VAT) need not be advertised on the National Contracts Finder if:-

(a) The Council's procurement and legal teams are satisfied it is lawful not to advertise the contract opportunity: and

(b) The Contract will be entered into as a result of obtaining quotations or [after a tender exercise] and the estimated value of the contract does not exceed £100,000;

(c) The Council is offering an opportunity to bid for a contract to a closed group of suppliers who have already been selected onto a Framework Agreement or Dynamic Purchasing System (but this does not apply where the Council is in the process of establishing a new Framework Agreement or Dynamic Purchasing System).

8.4.2. Contract Awards:

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Any officer that has awarded a contract with a value of £25,000 (net of VAT) or more, to a supplier of goods services or works, after obtaining quotations [or following a tender process], must forward the Contract to the Procurement Team for posting on the National Contracts Finder e-Procurement portal so as to comply with the Government's guidance on transparency requirements.

STANDING ORDER 8.5: - CONTRACTS FOR A VALUE OR AMOUNT LESS THAN £10,000

8.5.1 Where possible a corporate Contract should be used where they exist, regardless of the value of the purchase.

8.5.2 For Contracts less than £5,000:

For lower value purchases, formal competitive quotes are not needed, though it is good practice to obtain at least two quotes from relevant suppliers before a formal purchase order is issued specifying the supplies, services or works to be procured and setting out prices and terms of payment. Value for money must always be considered.

8.5.3 For Contracts of £5,000 or more but less than £10,000:

At least two quotes should be obtained unless it is impractical to do so due to the specialist nature of supply or the nature of any warranty that exists. Details of the quotes received and how the successful contractor was chosen should be submitted to the Procurement team for approval. No order can be placed until such time as approval from the Procurement team is received. A faxed or e-mailed quotation is acceptable in these cases.

8.5.4 A record should be made and retained demonstrating how best value was considered and that local supply has been explored.

STANDING ORDER 8.6: - CONTRACTS FOR A VALUE OR AMOUNT EXCEEDING £10,000 BUT NOT EXCEEDING £100,000

8.6.1 Where the estimated value or amount of a Contract is more than £10,000 but not exceeding £100,000, the following procedures shall be adopted as a minimum, as appropriate, for the selection of a Contractor. However, it may be more appropriate to undertake a more formal tender. The

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Procurement Officer can advise on the most appropriate procurement route:

- (a) Where the estimated value or amount of the Contract exceeds £10,000 but does not exceed £25,000: the Director or their delegated nominee shall, obtain at least two written quotes for the execution of the Contract from persons or bodies who in the opinion of the Director or the delegated nominee are capable of performing the Contract unless it is impractical to do so due to the specialist nature of supply or the nature of any warranty that exists. Where available a corporate contract shall be used.

STANDING ORDER 8.6: - CONTRACTS FOR A VALUE OR AMOUNT EXCEEDING £10,000 BUT NOT EXCEEDING £100,000

- (b) Where the estimated value or amount of the Contract exceeds £25,000 but does not exceed £100,000: the Director or their delegated nominee shall obtain at least three **sealed** written quotes or three tenders (whichever is appropriate) from persons or bodies who in the opinion of the Director or their delegated nominee are capable of performing the Contract unless it is impracticable due to the specialist nature of supply or the nature of any warranty that exists. Where available an agreed form of standard contract should be used.
- (c) Details of the quotes received and how the successful contractor was chosen should be submitted to the Procurement team for approval for all contracts.
- (d) The requirement for written quotes shall not apply where an up to date and relevant pre-tendered framework agreement is in place unless the rules governing such a framework agreement requires competitive tendering or quotes (see Standing Order 8.9)
- (e) All quotes received pursuant to this Standing Order shall either be:
- i) Opened using the Council's e-procurement portal; or
 - ii) Opened in the presence of the Director or their delegated nominee and in the presence of one other Officer designated by the Director.

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- (f) Quotes should only be evaluated in accordance with the criteria stated by the Council in the original documentation. This should be clearly documented and retained on file.
- (g) The Head of Service shall then have delegated power to accept such a quote but in the case of a quote other than the lowest then the Head of Service must have due regard to the procedure for tenders set out in Standing Order 8.14.1.

STANDING ORDER 8.7 : STANDING LIST (MAINLY APPLICABLE TO CONSTRUCTION CONTRACTS)

- 8.7.1 Standing lists are no longer a recommended approach to procurement and must not be used. Please contact the Procurement team for guidance.

STANDING ORDER 8.8 : CONTRACTS FOR A VALUE OR AMOUNT EXCEEDING £100,000 BUT NOT EXCEEDING THE RELEVANT EU THRESHOLD

- 8.8.1 Where the estimated value of the Contract is £100,000 or greater but less than the relevant EU Threshold, and there is an up to date and relevant pre-tendered framework agreement in place then that framework may be used (see Standing Order 8.9).
- 8.8.2 Where no suitable framework is available, the Director or their delegated nominee shall obtain at least 5 sealed tenders using either the open or restricted procedure, unless it is impractical to do so.

Open Procedure

- 8.8.3 The open procedure requires the publication of a notice on the Council's E-Procurement Portal, the National Contracts Finder e-Procurement Portal (<https://www.gov.uk/contracts-finder>), a Local Publication and a Trade Journal. Additionally advice should be sought by the Procurement team as to whether the notice should be published on the Official Journal of the European Union.

The public notice shall specify:

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- i) A suitable time period (which is proportionate to the procurement being undertaken) within which interested parties may submit their tender to the council; and
- ii) The link to where interested parties can access, view and download the tender documentation

When using the open procedure please ask "suitable assessment" questions, and the questions can be related to usual selection issues. If in doubt please contact the Procurement team for advice.

Restricted Procedure

- 8.8.4 The restricted procedure cannot be used for any contract (including works contracts) for a value under the Goods and Services EU procurement threshold.

**STANDING ORDER 8.8: CONTRACTS FOR A VALUE OR AMOUNT EXCEEDING £100,000
BUT NOT EXCEEDING THE RELEVANT EU THRESHOLD**

- 8.8.5 In all cases, every invitation to tender shall include the following:
- a) Statement that the tendering process will be conducted within the Council's e-procurement portal;
 - b) Full instructions on how to submit their tender to this system;
 - c) Advice that tenders, once received in the system, will be anonymous and locked away until the time for their opening
 - d) Advice as to the deadline for submission of tenders to this system.
- 8.8.6 The invitation to tender shall state the evaluation criteria, including sub-criteria and sub-sub criteria (where used), weightings and scoring criteria that will be applied in the award of the Contract. These criteria must be capable of objective assessment, including price and other relevant factors, please refer to Contract Standing Order 8.15 Acceptance of Tenders.
- 8.8.7 The invitation to tender shall also include (where possible) the terms and conditions that will apply to the Contract.

**STANDING ORDER 8.9 TENDERING PROCEDURES FOR CONTRACTS ABOVE THE RELEVANT
EU THRESHOLD**

- 8.9.1 The EU Public Procurement Directives set a financial threshold beyond which prescribed tendering procedures must be followed. The EU Thresholds are reviewed annually, and the updated figures can be found on the Intranet.
- 8.9.2 Where the estimated value of the Contract is in excess or within 20% of the relevant EU Threshold, the procedures set out in the EU Public Procurement Directives must be followed.

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8.9.3 Advice from the Procurement team **MUST** be sought for all Contracts that are in excess or within 20% of the relevant EU Threshold.

STANDING ORDER 8.10 : USE OF FRAMEWORK AGREEMENTS AND PROCUREMENT FROM CONSORTIA ORGANISATIONS

8.10.1 Consortium organisations and framework agreements can be used when it can be demonstrated that good value for money can be achieved.

8.10.2 The Councils can benefit from a framework agreement for services, supplies or works provided that the framework agreement is up-to-date. The rules regulating such framework agreement require competitive process but in some circumstances a direct award may be allowed. Always consult with the Procurement team if you intend to use a Framework Agreement.

8.10.3 Any contract entered into between the Councils and the successful bidder shall be deemed to comply with these Standing Orders provided that the Framework establisher has itself adopted the same or broadly similar tendering procedures in relation to the letting of Contracts as are contained in these Standing Orders.

STANDING ORDER 8.11: SUBMISSION OF TENDERS OVER £100,000

8.11.1 Where in pursuance of these Standing Orders an Invitation to Tender is made, every Invitation shall state:

- (a) That the Councils shall not be bound to accept the lowest of any tender which may be received; and,
- (b) That no tender will be received unless it is either:
 - (i) Submitted electronically via the specified e-tendering solution; or
 - (ii) Enclosed in a plain sealed envelope which shall bear the words "TENDER FOR" followed by the subject to which it relates but no other name or mark indicating the sender; date of receipt and who it is received by; or

- (c) The last date and time of day by which tenders must be submitted via the procurement portal or received by the Director of Communities.
- (d) The method of evaluation to be used. Tenders should only be evaluated in accordance with the criteria stated in the original tender advert and tender documentation. This should be clearly documented and retained on file.

STANDING ORDER 8.11: SUBMISSION OF TENDERS OVER £100,000

- (e) The tender evaluation panel and evaluation should be agreed at the commencement of the procurement process and should be documented and held on file.

8.11.2 Electronic Receipt

Where the procurement route has been agreed as an e-tender using the Council's approved e-tendering solution.

All information must be submitted via the e-tendering solution by the date and time stipulated in the Invitation to Tender.

All tenders will be sorted electronically by the e-tendering provider in a secure inbox until opened after the deadline in accordance with 8.12.

8.11.3 Director for Communities shall be responsible for the safe keeping of all paper Tenders until opening. Receipt of each Tender must be:

- Date stamped at the point of receipt;
- Initialled by the Receiver Officer;
- Logged immediately upon receipt in the Tender Record Book.

8.11.4 In all appropriate cases, invitations to tender shall stipulate a Commencement Date and a Completion Date for the proposed Contract and shall require Tenderers to confirm in their tenders that they will be able to comply with such dates.

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STANDING ORDER 8.12: OPENING OF TENDERS (POSTAL)

- 8.12.1 Tenders received under these Standing Orders where the estimated value or amount of the proposed Contract does not exceed £100,000 (and are over £50,000) shall be opened at one time and in the presence of two Officers of the Councils not from the same Section.
- 8.12.2 Tenders received under these Standing Orders where the estimated value or amount of the proposed Contract exceeds £100,000 shall be opened at one time and in the presence of:
- (a) The presence of two Officers of the Councils not from the same Section, and

STANDING ORDER 8.12: OPENING OF TENDERS (POSTAL)

- (b) The Director for Communities or an Officer of the Council designated by him/her.
- 8.12.3 Ensure that all tenders correctly received are collected from the strong room when tender opening occurs.

STANDING ORDER 8.13: ELECTRONIC RECEIPT (E-TENDERING)

- 8.13.1 Where the procurement route has been agreed as an e-tender exercise using the Council's approved e-tendering solution, all information must be submitted via the e-tendering solution by the date and time stipulated in the Invitation to Tender.
- 8.13.2 All tenders will be stored electronically by the e-tendering provider in a secure inbox. Once the deadline for receipt has passed the e-tendering system will allow electronic opening of the tenders.
- 8.13.3 Tenders sent by electronic transmission must be opened by the Procurement Officer in the presence of the Director for Service or his/her appointed representative:

E-Auctions

- 8.13.4 Before proceeding with an e-auction the Procurement team must be consulted and their advice taken. In the event of the use of e-auctions, it is customary in the case of late bids being received, that the time (but not

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the date) for the receipt of tenders is extended to give rival bidders an opportunity to respond. Provided that such arrangements are set out in the tender details this procedure shall not be a breach of the Standing Orders.

STANDING ORDER 8.14: REGISTER OF TENDERS RECEIVED

- 8.14.1 All paper Tenders received (over £100,000), other than under Standing Order 8.11.1, shall be recorded by the Director for Communities in a Register of Tenders received, to be kept and maintained by him/her.
- 8.14.2 For all other tenders and quotes received is at or exceeds £5,000 for goods, services or works shall be recorded in a register maintained by the Procurement team.
- 8.14.3 Copies of the register shall be made available to the Councils' Procurement team.
- 8.14.4 Officers are required to formally record in writing their reasons for the acceptance of a late tender (see 8.15.2 and 8.15.3)

STANDING ORDER 8.15 : ACCEPTANCE OF TENDERS

- 8.15.1 For the purposes of the Standing Order, "Tender" includes a written sealed quote.
- 8.15.2 Any paper tender received after the time and date specified in the invitation shall be returned promptly to the Tenderer by the Director for Communities unless there are exceptional mitigating circumstances (see 8.13.4 above). The tender may be opened to ascertain the name of the Tenderer but no details of the tender shall be disclosed.
- 8.15.3 In the event of mitigating circumstances such as industrial action or adverse weather consideration shall be given to extending the return date and shall be communicated to all Tenderers.

~~8.15.4 Where it is appropriate as part of the tendering process there shall be provision for pre-tendering procedures such as inviting expressions of interest and completion of questionnaires before tenderers are invited to tender. (deleted)~~

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- 8.15.4 Where tenders are issued without specifying that they may be subject to negotiation, the tenders submitted should be accepted or rejected as they stand.
- 8.15.5 A Tender may not be altered after the time and date specified for the return of tenders. If an error in the Tender is discovered the Tenderer shall be given the opportunity to confirm or withdraw the Tender as it is submitted; provided that, if there are, in the opinion of the Section 151 Officer, exceptional circumstances, a tenderer may be allowed to correct any arithmetic error in the Tender subject to this fact.
- 8.15.6 Tenders should only be evaluated in accordance with the criteria stated in the original tender advert and tender documentation. This should be clearly documented and retained on file.
- 8.15.7 Award must be based on a recognised assessment method; typically Officers should use the Most Economically Advantageous Tender method (MEAT) also known as the Economically Most Advantageous Tender (EMAT) method.

Elements of MEAT or EMAT criteria must include price and may include other criteria including:-

- Technical aspects
- User views

STANDING ORDER 8.15 : ACCEPTANCE OF TENDERS

- Quality
- Environmental Issues
- Aesthetic consideration

Criteria used must:

- a) Be agreed in advance and applied equally to all tenders;
- b) Be appropriate to the subject matter of the tender;
- c) Be a legitimate client interest;
- d) Not be anti-competitive.

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- 8.15.8 Weighting must be given to each criterion used, which reflects the importance of each aspect required for that particular type of contract. 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 team. The remaining number of criteria used other than price must be greater than 1 and will have a combined weighting of no more than 70%, apart from where, as above, the Procurement team has sanctioned a departure from this general rule.
- 8.15.9 Scoring for each criteria (e.g. Health and Safety) shall be consistent across all tenders and might be as shown below:

SCORING CRITERIA		
0	UNACCEPTABLE	The response to this question indicates a significant short coming, such that that the supplier has failed to meet the required standard.
1	POOR	The response fails to meet the requirement in many respects
2	ACCEPTABLE	The response is acceptable, but no more. It may fall short in some areas being considered under this heading but it meets, or even exceeds requirements in enough other areas to make up for these short falls
3	GOOD	Meets or almost meets all aspects of the requirement
5	EXCELLENT	Meets all requirements and exceeds some

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STANDING ORDER 8.15: ACCEPTANCE OF TENDERS

The method of scoring should be discussed with the Procurement team in advance and their advice taken. If the Tenderer scores nil points in any one category or 1 point in two or more categories, the tender shall be deemed unacceptable and rejected.

STANDING ORDER 8.16: CONTRACT REGISTER

8.16.1 A register of all Contracts over £5,000 placed by the Council shall be kept and maintained by the Director for Digital and Resources in conjunction with the Councils' Procurement team. The register shall be open to inspection by any Member of the Council.

8.16.2 The joint Contracts Register shall identify, where appropriate, the following for each Contract:

- Contract Reference Number
- Title of Agreement
- Department Responsible
- Description of Contract
- Contract Start Date
- Contract End Date
- Contract Extension period (if applicable)
- Contract Review Date
- Contract Value
- Irrecoverable VAT
- Supplier Name
- Supplier Type (legal standing of the organisation)
- Procurement process used

8.16.3 A regular report should be presented to the Council's Procurement Working Group by the Director for Service or his/her nominated representative

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identifying all those Contracts due to expire and the proposed action to be taken.

8.16.4 The report identifying these Contracts should be presented in a timely fashion to allow for sufficient time to re-procure if necessary.

STANDING ORDER 8.17: NOMINATED SUB-CONTRACTORS

8.17.1 Where it is anticipated that the main supplier of the Contract will want to sub-contract out to a third party any part of the service, goods or works to be supplied in the main contract, the Director for Service must ensure that:-

- a) The sub-contractor has been approved
- b) The main supplier has carried a best value exercise in line with these Contract Standing Orders and that best value for the sub-contractor has been approved by the Procurement team; and
- c) Any sub-contractor is paid under the same payment terms as the main contractor.

STANDING ORDER 8.18: CONTRACT DOCUMENTATION, CONDITIONS AND EXECUTION

See also para. 8.1.2.

8.18.1 The formal advice of the Legal team must be sought for the following Contracts. This advice must be sought in good time:

- where the Total Value exceeds £25,000 for all Contracts
- those involving finance leasing arrangements
- those which are complex in any other way
- where it is proposed to use a supplier's own contract terms and conditions

8.18.2 Unless the Council, Cabinet or approved Cabinet Member otherwise resolves the following requirements shall apply to all Contracts.

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1. Contracts less than £10,000 need not be in writing but there must be document to support the arrangement
2. Contracts between £10,000 and £25,000 must be in writing and in a form approved by the Director for Service
3. Contracts in excess of £25,000 must be in writing and in a form approved by Legal and must be executed by Legal.

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STANDING ORDER 8.17: CONTRACT DOCUMENTATION, CONDITIONS AND EXECUTION

- 8.18.3 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.
- 8.18.4 Where a Contract exceeds the sum determined under EU Directive threshold, in amount or value, the Contractor shall give sufficient security acceptable to the Legal team following consultation with the Section S151 Officer for the due performance of the Contract.
- 8.18.5 In the case of every Contract for the execution of works with a value over £50,000, the following clause or a clause having like effect shall be inserted:

"The Contractor shall make available for inspection any vouchers, records, receipts and other documents, samples of materials and any other information or thing which may be reasonably required by any Officer of the Council in order to ascertain whether or not the terms of the Contract are being complied with."

STANDING ORDER 8.19: STANDARDS

- 8.19.1 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution or EU Standard Specification or Code of Practice is current at the date of the Contract every Contract exceeding £25,000 shall require that all the goods and materials used or supplied, and all the workmanship under the Contract shall be at least of the standard required by the appropriate British or EU Standards Specification or Codes of Practice current at the date of the Contract.

STANDING ORDER 8.20: CONTRACT PERFORMANCE

- 8.20.1 The Contractor's performance against contractually agreed criteria should be monitored. The monitoring should be proportionate to the nature and duration of the contract.

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8.20.2 Contract performance should be reported to management and, if significant issues are arising, Members on a regular and timely basis via the regular monitoring reports.

STANDING ORDER 8.20: CONTRACT PERFORMANCE

8.20.3 Progress against agreed actions arising out of formal feedback to the contractor should be monitored, recorded and reported on for achievement and continuing compliance.

STANDING ORDER 8.21: PREVENTION OF BRIBERY AND CORRUPTION

8.21.1 There shall be inserted in every Contract exceeding £25,000 in value or amount a clause empowering the Council to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor (including its employees or any person so associated with it):-

- Has offered, promised or given, a bribe to another person or has requested or agreed to receive or accept a bribe, offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing any action in relation to the obtaining or execution of the Contract or any other Contract with the Council or;
- Has failed to prevent bribery by a person acting on its behalf where the bribery was intended to obtain or retain a business advantage for the Contractor or its organisation or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Council (whether with or without the actual knowledge of the Contractor) or;
- If in relation to any Contract with the Council, the Contractor has committed any offence under the Bribery Act 2010 or any statutory modification or re-enactment thereof or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972 or any statutory modification or re-enactment thereof.

STANDING ORDER 8.22: PREVENTION OF SUB-CONTRACTING

8.22.1 There shall be inserted in every Contract a clause detailing the sub-contracting arrangements as set out in 8.14.

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STANDING ORDER 8.23 : ENGAGEMENT OF CONSULTANTS

- 8.23.1 It shall be a condition of the engagement any consultant (not being an Officer of the Councils) other than Legal Counsel, who is to be responsible to the Councils for the supervision of a Contract on its behalf, that in relation to that Contract he/she shall:
- (a) Comply with the requirements of these Standing Orders in consultation with the relevant Head of Service or Director
 - (b) At any time during the carrying out of the Contract, produce to the Head of Service or Director on request, all the records maintained by him/her 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.
- 8.23.2 The terms of engagement of consultant (not being an Officer of the Councils) who is to be responsible to the Councils for the supervision of a Contract on its behalf shall be set down in a form approved by the Legal team.
- 8.23.3 The employment status of any consultant should be confirmed prior to the engagement and, if appropriate, the consultant should be paid via the payroll system. Guidance is available from the Procurement Team or the Payroll Team.
- 8.23.4 Where the cost of the appointment of any consultant is likely to exceed £10,000 the following should actions should be taken:
- (i) A business case is made for each appointment of a consultant (outside of Framework agreements or other contracts for regular provision of a service where it is assumed that such a business case will have already been presented). This should detail the reason for seeking external expertise, for example, lack of internal capacity or capability due to specialist nature of services.
 - (ii) Financial checks of lead consultants' financial stability should be made which should also include any consortium members.
 - (iii) Details of consultants professional indemnity insurances should be filed with copies of the Contract documentation (manual or

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electronic). 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.

STANDING ORDER 8.24 : TERMINATION OF CONTRACTS OVER EU THRESHOLD

8.24.1 No Contract which has been entered into under the authority (which can be given through the Consultation Procedure) of the Councils, Cabinets or appropriate Cabinet Members shall be terminated either by agreement or by unilateral action on the part of the Councils without the authority of the Joint Strategic Committee, Cabinets or appropriate Cabinet Members which shall first consider the full financial, legal and other effects of such termination upon the progress of any scheme or other activity of the Councils.

FOR ALL OTHER CONTRACTS

8.24.2 Contracts may be terminated by the appropriate Head of Service early by agreement prior to the expiry date or in accordance with the Termination Provisions set out in the Contract. Legal advice shall be sought before terminating any contract.

STANDING ORDER 8.25: EXTENSIONS TO CONTRACTS

8.25.1 This Standing Order is only to be used in the following three circumstances:-

1. The extension is required to provide sufficient time to Officers to carry out a procurement exercise for the re-letting of a new contract using the procedures set out in these Contract Standing Orders and
2. There has been no previous extension of the original Contract (other than an extension which was an agreed contractual terms of the original contract during a procurement process) and
3. All of the following criteria apply:-

Where the Director for Service or Officer acting with delegated authority on his/her behalf proposes to extend a fixed-term Contract to include additional works, services, goods he/she shall only do so in accordance with Standing Orders 8.2.1 and 8.2.2

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- The value of the extension does not exceed a sum which greater than 10% of the original contract price for goods or services or 15% for works contracts and advice is taken from the Legal and Procurement teams that the total value of the contract including the value of the extension is not within 20% of the current EU Financial Threshold;

STANDING ORDER 8.24: EXTENSIONS TO CONTRACTS

- 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;
- The original Contractor has agreed the additional goods, services or works will be supplied on the same terms;
- 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;
- 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;
- In the case of construction works, the proposed additional works are on the same site as the original Contract or of a similar nature;
- At least three other tenders were invited for the performance of the original Contract (contracts over £25,000 only);
- The original Contract has not previously been extended under this Standing Order (contracts over £25,000 only) other than that allowed under the original contract and the extension is for no more than 18 months;
- A contract variation or amendment regarding the extension has been approved by the Head of Legal Services.

8.25.2 In all cases, consideration should be given as to whether approval should be obtained from the Joint Strategic Committee before any extensions are granted.

STANDING ORDER 8.26: VARIATIONS TO CONTRACTS

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

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- 8.26.1 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.

STANDING ORDER 8.26: VARIATIONS TO CONTRACTS

- 8.26.2 Where Officers are in doubt as to whether the variation is within the original scope of the contract or consider the variation will significantly impact upon the works and services provided it must be reported to and approved by the Legal team prior to any action being taken in respect of the variation of the proposed variation.
- 8.26.3 If the variation will increase the cost to the Council beyond an RPI increase or its effect is to bring the value of the contract within 20% of the current EU Threshold, no variation may be made unless the value of the variation has been assessed and advice is sought from Procurement and Legal teams. If the value cannot be accommodated within existing budgets, then additional resources must be sought at the earliest opportunity.
- 8.26.4 In all cases, there should be a clear statement setting out the business justification, the cost, the benefits and the duration of the variation provided to the Legal team in a timely manner to allow sufficient to properly assess the likely legal and financial impact of the proposed variation and where appropriate Legal shall refer the variation to the finance department for analysis of the figures.
- 8.26.5 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 and Legal teams. 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 the Legal team. The value of the variation must be assessed and authorised before signing the variation.
- 8.26.6 In all circumstances at the time the variation is proposed, Officers must review and give consideration to the need to Members, to obtain authority and approval for the variation.

STANDING ORDER 8.26: LIQUIDATED DAMAGES

- 8.27.1 Every contract which is estimated to exceed £100,000 in value or amount and is for the execution of works or for the supply of goods or materials by a particular date or series of dates must provide for liquidated damages in case the terms of the contract are not duly performed unless the Legal

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team or the Head of Finance approve another or another form of financial protection. The amount to be specified in each such contract shall be made available to the Legal team or the Head of Finance upon request.

STANDING ORDER 8.27: LIQUIDATED DAMAGES

8.27.2 For contracts below £100,000 there may be circumstances where it is necessary to include a clause requiring payment of liquidated damages. Such a clause would put the Council in a stronger position in the event of default by the Contractor and having assessed the risk, such a clause is desirable.