



Proposed Revisions to Contract Standing Orders

Report by the Director for Digital & Resources

1.0 SUMMARY

- 1.1 This report proposes some further amendments to the Joint Contract Standing Orders
- 1.2 These provisions have been the subject of consultation with both Executive Members of Resources, Chairman of the Joint Governance Committee and the Council's Leadership Team.

2.0 BACKGROUND

- 2.1 The Joint Contract Standing Orders provide the framework for procuring goods, services and works. They apply to every member and employee of the Councils and anyone acting on behalf of the Councils.
- 2.2 The Joint Contract Standing Orders were last approved by the Joint Governance Committee in January 2015 following changes in Procurement Legislation.
- 2.3 Since these changes were approved, there has been an extensive training programme given to Council officers on procurement to ensure that all involved in purchasing understand these contract standing orders and their responsibilities. In addition, following the approval of the revised contract standing orders a new toolkit will be released providing managers with detailed guidance on procurement matters.
- 2.4 There have also been a number of audit recommendations related to these Joint Contract Standing Orders which have now been incorporated into this version of the document.
- 2.5 Attached at Appendix 1 are the limits for other Councils in West Sussex.

3.0 PROPOSALS

- 3.1 The following major changes are proposed to the contract standing orders:

3.0 PROPOSALS

- The most significant change to the contract standing orders is the increase in the thresholds where formal Procurement involvement is required; this has been increased from £5,000 to £25,000. This reflects the improvement in procurement skills throughout the organisation and the introduction of a new procurement toolkit to help guide managers through the process. This change and will release in capacity in the procurement team to support supplier and contract management, an acknowledged area of weakness within the organisations.
- All tenders over £25,000 are now to be submitted via the Council's e-procurement solution. The solution gives potential suppliers much better visibility of procurement activity via the Councils' website. Consequently, the section related to the submission of paper tenders have been removed from this version of the Contract Standing Orders and the distinctions between procurements under £50,000 and over £50,000 have been removed.
- The contract standing orders have been restructured to make it easier for the reader to follow and there is a complete revision of the introduction to provide clearer guidance. Pre-procurement considerations now form part of the introduction.

The changes to the contract standing orders have been highlighted so that members can easily identify the recommended amendments. As the introduction has been completely revised this is not highlighted.

3.2 The Cabinet Members for Resources from both Councils, Chairman of the Joint Governance Committee and the Council's Leadership Team have been consulted on the contents of the proposed Joint Contract Standing Orders and their views have been incorporated into the proposed document.

3.3 The rationale behind this increase is, as detailed above; staff have undergone significant training and the skills in Procurement have significantly improved since this level was first introduced.

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 the Councils that the revised Contract Standing Orders be approved.

Local Government Act 1972

Background Papers:

Adur District Council and Worthing Borough Council Contract Standing Orders

Internal audit report – Use of Consultants

Internal audit report - Voluntary and Community Infrastructure Support Service Contract Procurement Compliance

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Appendix 1

Adur & Worthing Current Limits	Adur & Worthing Proposed Limits	Horsham (goods & services)	Horsham (works)	Crawley/ Mid Sussex (goods & services)	Crawley/ Mid Sussex (works)	Arun	Chichester
Under £5,000 2 quotes	Under £25,000 2 quotes	Under £20,000	Under £20,000	Under £20,000	Under £20,000	Under £10,000	Under £10,000
£5,001 - £10,000 2 quotes and consult with procurement	£25,000 - £99,999.99 3 Sealed tenders	£20,000 - £49,999.99	£20,000 - £99,999.99	£20,000 - £49,999.99	£20,000 - £99,999.99	£10,000 - £50,000	£10,000 to £50,000
£10,001 - £25,000 2 written quotes and consult with procurement							
£25,001 - £99,999.99 3 sealed tenders							
£100,000 - below EU Threshold Invitation to Tender (from £100,000 to EU must be advertised on Contract Finder)	£100,000 - below EU Threshold Invitation to Tender (from £100,000 to EU must be advertised on Contract Finder)	£50,000 – EU below Threshold	£100,000 - below EU Threshold	£50,000 – EU below Threshold	£100,000 - below EU Threshold	£50,000 - EU below threshold	£50,001 – EU below Threshold
EU Threshold EU Invitation to Tender	EU Threshold EU Invitation to Tender	EU Threshold	EU Threshold	EU Threshold	EU Threshold	EU Threshold	EU Threshold

JOINT COUNCILS

CONTRACT - STANDING ORDERS

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INTRODUCTION

The purpose of the contract standing orders ("Orders") is to establish the legal framework under which the Councils will enter into contracts for works, goods and services. Contract standing orders ensure that a uniform approach, that is both legally compliant and that will deliver the best value for money, is adopted when entering into contracts.

It is important to consider procurement carefully (see the Pre-procurement section for useful elements to consider) and ensure adequate time has been allocated to deliver the requirement. Further guidance on the different procedures is available in the Procurement Toolkit or from the Procurement Team.

Contract Formation

A contract may 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. An offer will have been made by one party (either the Councils or the individual) to the other party, which the other party has accepted and in return provides a Consideration, which is usually (but not always) in the form of a monetary payment.

A contract may be created orally or in writing so always exercise caution when discussing contract terms with a supplier to avoid inadvertently creating a binding contract. Declare all your negotiations are without prejudice and subject to an executed contract. A contract made orally can create difficulties if disputes arise as the precise terms of the contract will not have been recorded.

These contract standing orders require all contracts to be made in writing, setting out all the agreed terms clearly, preferably under the Councils' Terms and Conditions. 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.

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:

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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, often a one-off or short term requirement. 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 required 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 be based on performance outcomes, or invites 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.

There are also circumstances when you will spend less than £100,000 but be unclear about how to achieve your desired result or if the requirement is more complex in nature. In such circumstances, running a tender process may be appropriate.

Getting Started

The starting point on any procurement is to understand the potential total value of the contract as this will determine which procurement procedure to follow and what pre-procurement elements need to be considered.

Assessing the total value of a contract

The total contract value is based on the whole cost of ownership in Pounds Sterling exclusive of Value Added Tax and therefore includes not only the initial purchase price but all the associated costs over the entire contract period (including any potential contract extension). These could include installation, training, maintenance, consumable items and disposal costs.

If the expenditure on an item, service or with a particular supplier is recurring then the likely expenditure over a 12 month period must be determined and multiplied by the length of the contract. Where the contract is for an uncertain duration, then, as per the requirements of the Public Contract Regulations 2015, the total value shall be determined as the value of the requirement over a period of 48 months. **For example, an ongoing service requirement costing £2,000 per month would have a total contract value of £96,000 (£2,000 per month x 48 months).**

Where the requirement covers a number of suppliers providing the same goods, services or works then the contract value shall be the combined sum of all the individual contracts.

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Where the Council is collaborating or acting on behalf of other public bodies then the contract value shall be determined as the combined sum of all the individual public bodies requirements.

Where it is intended to package the contract into several different "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.

Contracts cannot be shortened in length to less than 48 months, or a contract requirement split into separate or smaller packages, solely to avoid an EU or local tender threshold.

In the case of Concession contracts (i.e. where the Service Users as opposed to the Council make payments to the contractor for use of the service) then the total value (i.e. turnover) of the contract must be used to determine the contract value. Concession contracts are subject to different procurement rules and advice should be obtained from Procurement or Legal prior to undertaking a Concession procurement.

Pre-Procurement Considerations

Depending on the nature and value of the requirement some or all of the following elements may need to be considered for inclusion within the documentation that is issued. This list is not intended to be exhaustive. Further information is available in the Procurement Toolkit.

General considerations:

1. **Budget approval.** Ensure appropriate budget approval has been received prior to commencing the procurement project. If the requirement involves the supply of assets under lease finance arrangements it must be signed off by the Chief Financial Officer or their appointed deputy;
2. **Authority to enter into Contracts** - Officers should ensure they are aware of the level of Delegated Authority required to enter into the contract, and if necessary seek formal approval prior to commencing the procurement.
3. **Key Decisions/Decision making process.** When determining the procurement process and timetable also need to identify who can make the contract award decision and the timeframe for this to be completed. If the requirement is identified as a Key Decision then formal notice must also be included on the Forward Plan of Key Decisions/28 Day notice. As a general rule most procurements over £100,000 in value will be Key Decisions. A Decisions Pathway must also be completed and as much notice as possible given to the Councils' Leadership Team about the procurement project. Contact Democratic Services for information and guidance. *Note: If sufficient notice has not been given for a Key Decision then there is a high likelihood that when a contract is to be awarded there will be a delay whilst due public notice is given.*

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4. **IT software/hardware or digital service.** If the requirement may include any IT software/hardware or digital service then approval from the Director of Digital Service or their delegated nominee must have been received prior to commencement.

Specific considerations:

5. **Social Value.** If the requirement is for a service to be provided then the requirements of the Public Services (Social Value) Act 2012 may need to be considered. The Act normally applies to contracts with a value in excess of £150,000 but it is best practice to consider on lower value service contracts as well. Further information is available in the Procurement Toolkit or from the Procurement Team.
6. **Transfer of Duty.** Some legislation imposes a Duty upon the Councils to undertake certain activities through the provision of its services. Where these services are provided by a third party on behalf of the Councils then this Duty should transfer becoming the third party's responsibility, but the Councils must still ensure, through effective contract management, that the Duty is being undertaken. Examples include:
 - **Safeguarding.** If the requirement may involve the contractor's staff working with or coming into contact with children, young people or vulnerable adults then appropriate arrangements for Safeguarding should be included within the contract documents.
 - **Prevent (Counter Terrorism) Duty.** A Duty to prevent individuals becoming radicalised and report instances of concern.
7. **Other Legal Considerations.** Depending upon the nature of the requirement specific provisions may need to be built into the contract documents. For example, a contract that involved a third party processing data about individuals listed on the Councils' housing registers may be subject to Data Protection regulations. Further guidance and advice is available from Procurement or Legal.
8. **Transfer of Staff.** If the service involves the potential transfer of staff between the Council and a third party or between two third parties then TUPE may apply and Human Resources should be contacted for advice.
9. **Council Policies.** Depending upon the nature of the requirement the Councils may wish the contractor to adopt or mirror certain Policies whilst performing the contract for the Councils. As such specific provisions may need to be built into the contract documents. Examples may include Whistleblowing Policy, Alcohol & Drugs Policy, Dignity at Work Policy, Business Continuity arrangements, etc.

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Next Steps

Once you have determined the value of the contract and built the appropriate pre-procurement consideration elements into the procurement documentation follow the instructions in the part of the Orders relevant to the value of the requirement. 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 table summarising the key elements of each procedure with contract standing orders.

Procurement Thresholds and Contract Award Procedure

Total Value	Procurement Route	Short-listing of potential suppliers	Receipt of Quotes / Tenders	Delegated Authority for Contract Approval and Award	Method of Contract Completion	Transparency Code Obligations
Under £25,000	Evidence of value for money; recommended seek two written quotations	Head of Service or appointed deputy	Via post or email to department	Head of Service	Signature and/or purchase order raised	Publish details of all contracts over £5,000 in Council's Contracts Register
£25,000 - £100,000	Three written quotations	Tenders to be evaluated by a minimum of two officers.	Quotations submitted via electronic procurement portal and electronically opened after closed date and time has passed	Head of Service	Sealing	Publish details of all contracts over £5,000 in Council's Contracts Register
£100,000 – EU Threshold (see intranet for current EU threshold)	Invitation to tender, by advertisement on the Council's procurement portal and Contracts Finder. Other media can also be used	Tenders to be evaluated by a minimum of two officers.	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	Executive Member, Executive or relevant Committee	Sealing	Advertise all tenders and publish details of the Contract Award on Contracts Finder. Publish details of all contracts over £5,000 in Council's Contracts Register
Above EU Threshold	EU Procedure, or where this does not apply, invitation to tender to at least five Tenderers by advertisement on the Council's procurement portal, Contracts Finder and in the Official European Journal. Other media may also be used.	Tenders to be evaluated by a minimum of two officers. Approval of shortlist by , Head of Service and relevant Director	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	Executive Member, Executive or relevant Committee	Sealing	Advertise all tenders in OJEU and then Contracts Finder. Publish details of Contract Award in OJEU and on Contracts Finder. Publish details of all contracts over £5,000 in the Councils' Contracts Register

STANDING ORDER 8.1: GENERAL

- 8.1.1 Every Contract made by the Councils or by the Executives, 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 8.15.1 (Contract documentation, conditions and execution) and Standing Order 8.5 (Contracts for a value or amount less than £25,000), these Standing Orders shall apply to all Contracts other than those relating to:
- (a) A Contract or series of Contracts not exceeding £25,000 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.

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STANDING ORDER 8.1: GENERAL

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.

8.1.5 Every Contract awarded by the Councils must comply with the Principles of decision making in Parts 3, 4 and 5 of the Constitution with due regard to the Member and Officer decision making processes. Further advice is available from Democratic Services or Legal.

8.1.6 **PRE-PROCUREMENT CONSIDERATIONS:**

8.1.6.1 Social Value:

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;

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8.1.6 PRE-PROCUREMENT CONSIDERATIONS:

- (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.

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

8.1.6.2 Key Decision:

At the point of considering the Contract documentation, Officers must also give consideration about whether a formal Key Decision notice is required on the Forward Plan and comply with the legislation under the Local Government Act 1972 (As amended).

Currently a key decision notice will be required as follows:

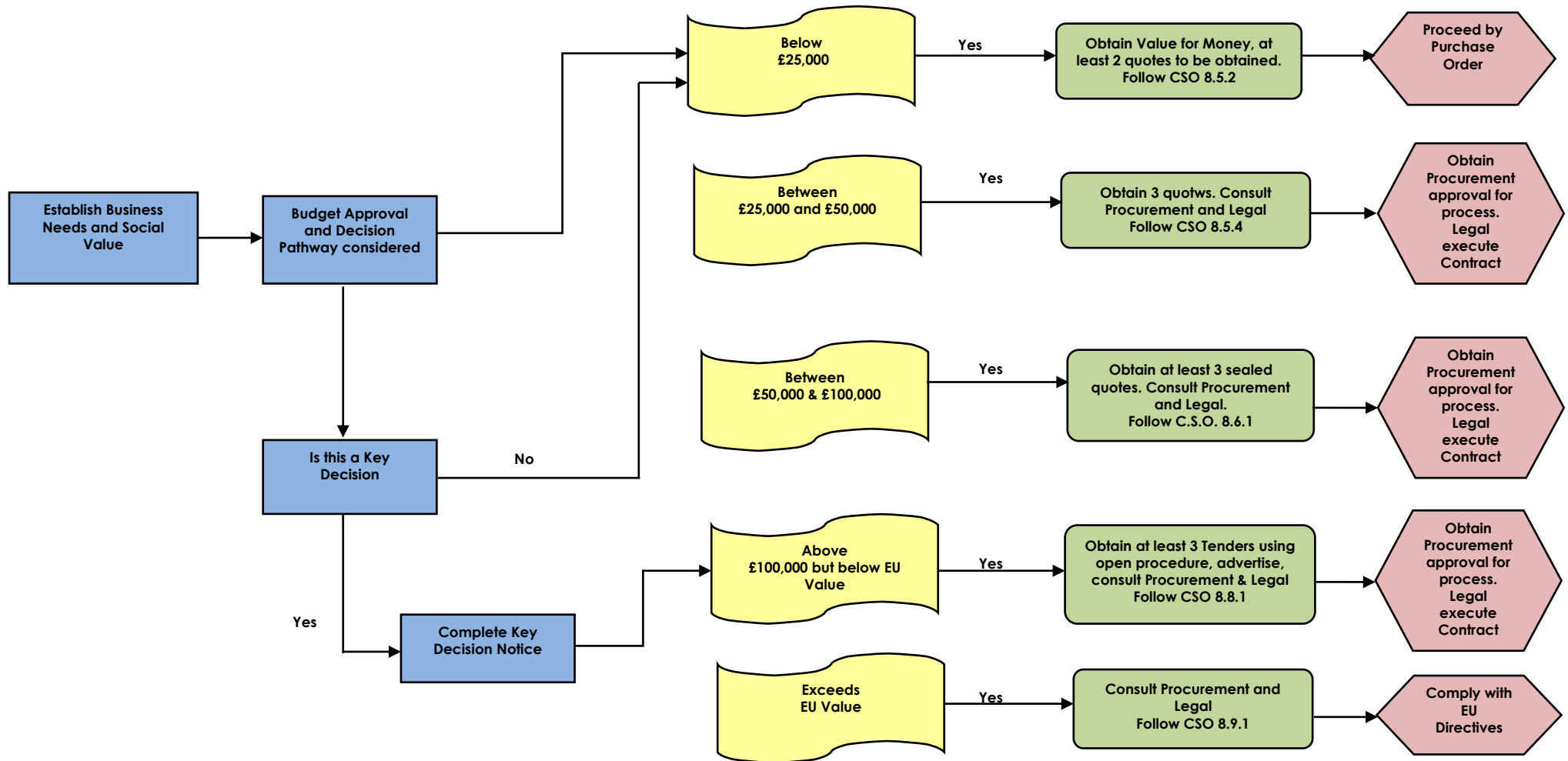
- For the letting/re-letting of contracts of value of £100,000 or more over the period of the contract, where provision has been made in the approved revenue budget; or
- For contracts associated with capital schemes, within the approved Capital Programme, in excess of £250,000;

Contact Democratic Services for information and guidance about key decisions. If due notice has not been given, then there a high likelihood that when a contract is to be awarded there will be a delay whilst due public notice is given of the decision to be made.

The Decisions Pathway must also be completed if a member report is required, guidance on this is available from either the Policy Officer or Democratic Services can assist you with this.

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CONTRACT STANDING ORDER PROCESS MAP



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STANDING ORDER 8.2: AUTHORISATION OF CONTRACTS

8.2.1 The Director or their nominee shall have authority to enter into contracts under the scheme of Delegation provided that: ~~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
- (b) The Procurement team has confirmed that best value has been obtained for those contracts where the value exceeds **£25,000**.
- (c) The procurement portal is used to **carry out the procurement exercise** ~~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.
- (f) **The necessary notice(s) have been given in the Forward Plan of Key Decisions/28 Days' Notice and the requirements of the Member and Officer Decision making rules are complied with**

In all other cases, a written report shall be presented by the Director to the respective Executive or Executive 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).

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STANDING ORDER 8.2: AUTHORISATION OF CONTRACTS

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 an assessment should be undertaken in accordance with guidance provided at 8.12 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.

8.2.3 The approval of the relevant Executive 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;

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STANDING ORDER 8.3 : SPECIAL CIRCUMSTANCES OR EMERGENCIES

8.3.2 For Contracts over £100,000:

Approval of the Councils or the Executives or Executive 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 Executive 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.

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, Executives or appropriate Executive Members. The Director shall submit a report explaining the emergency to the next meeting of the Joint Strategic Committee or Executive.
- 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 Executive.
- Advice should be taken from the Monitoring Officer as to the requirement to make any public notice in the Forward Plan of Key Decisions/28 Day Notice.

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

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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:

~~Any officer that has awarded a contract with a value of £10,000 (net of VAT) or more, to a supplier of goods services or works, after obtaining quotations [or following a tender process or competition through a Dynamic Purchasing System], 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.~~

All Contracts (including those following a competition through a Dynamic Purchasing System) with a value of £10,000 (Net of Vat), must be sent to the Procurement Team for posting on the National Contracts finder so as to comply with the Government's guidance on transparency requirements.

STANDING ORDER 8.5: - CONTRACTS FOR A VALUE OR AMOUNT LESS THAN £25,000

8.5.1 Where possible a corporate Contract/**Framework or Dynamic Purchasing System** should be used where they exist, regardless of the value of the purchase.

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STANDING ORDER 8.5: - CONTRACTS FOR A VALUE OR AMOUNT LESS THAN £25,000

8.5.2 For Contracts less than £25,000:

For lower value purchases, ~~formal competitive quotes are not needed, though~~ it is recommended and 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 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 £25,000 BUT NOT EXCEEDING £100,000

8.6.1 Where the estimated value or amount of a Contract is more than £25,000 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 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.~~
- (a) ~~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.
- (b) Details of the quotes received and how the successful contractor was chosen should be submitted to the Procurement team for approval for all contracts.

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STANDING ORDER 8.6: - CONTRACTS FOR A VALUE OR AMOUNT EXCEEDING £25,000 BUT NOT EXCEEDING £100,000

- (c) 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)
- (d) All quotes received pursuant to this Standing Order shall either be:
 - opened using the Council's e-procurement portal or by other electronic means; 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.~~
- (e) 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.
- (f) 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 8.12.4.

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 on alternative methods of procurement.

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, a business case and procurement sourcing strategy should be approved by the Director or their delegated nominee. The business case and procurement strategy should highlight the requirements and businesses need for the contract, explain processes investigated and explain the need for the procurement and the recommended procedure.
- 8.8.2 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 8.10).

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

8.8.3 Where no suitable framework is available, the Director or their delegated nominee shall seek tenders in accordance with the procedure below obtain ~~at least 5 sealed tenders using either the open or restricted procedure, unless it is impractical to do so.~~

Open Procedure

8.8.4 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:

- 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, how and who to respond to and any other requirements

When using the open procedure please ask "suitable assessment" questions, and the questions can be related to appropriate selection issues. If in doubt please contact the Procurement team for advice or refer to the Procurement Toolkit which provides further guidance on the type of information that may be sought from potential bidders.

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.~~

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 as to the deadline for submission of tenders to this system.

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

- 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 8.12 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.
- 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/**Dynamic Purchasing Systems 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/**Dynamic Purchasing System** 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 submitted electronically via the specified e-tendering solution
- (c) The last date and time of day by which tenders must be submitted via the procurement portal
- (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.
- (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 (e-tendering)**

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 stored electronically by the e-tendering provider in a secure inbox until opened after the deadline.

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

8.11.3 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.

E-Auctions

8.11.4 Before proceeding with an e-auction the Procurement team must be consulted and their advice taken.

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STANDING ORDER 8.12 : ACCEPTANCE OF TENDERS

~~8.12.1 For the purposes of the Standing Order, "Tender" includes a written sealed quote.~~

~~8.12.2 Where tenders are issued without specifying that they may be subject to negotiation, the tenders submitted should be accepted or rejected as they stand.~~

8.12.1 Whilst a quotation may be negotiated, amendments to a tender response must follow rules in the Public Contract Regulations 2015 and advice should be sought from Procurement or Legal if any alterations are required.

8.12.2 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. Any comments, notes or scoring should be based on the advertised award criteria.

8.12.3 The evaluation team should be carefully considered and all members of the evaluation team must declare any conflicts of interests prior to commencing any evaluation.

8.12.4 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
- 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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STANDING ORDER 8.12 : ACCEPTANCE OF TENDERS

- 8.12.5 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.
- 8.12.6 ~~Scoring for each criteria (e.g. Health and Safety) shall be consistent across all tenders.~~ Assessment criteria must be consistent across all questions and all tenders. It is recommended that the template assessment criteria in the Procurement Toolkit is used wherever possible. Further advice on evaluation and assessment criteria are available from Procurement.
- 8.12.7 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.

STANDING ORDER 8.13: CONTRACT REGISTER

- 8.13.1 A register of all Contracts over **£10,000** 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.
- 8.13.2 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

STANDING ORDER 8.13: CONTRACT REGISTER

- Contract Extension period (if applicable)
- Contract Review Date
- Contract Value
- Irrecoverable VAT
- Supplier Name
- Supplier Type (legal standing of the organisation)
- Procurement process used

8.13.3 A regular report should be presented to the Council's Procurement Working Group by the Director for Service or his/her nominated representative identifying all those Contracts due to expire and the proposed action to be taken.

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

STANDING ORDER 8.14: NOMINATED SUB-CONTRACTORS

8.14.1 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 **and his/her role** 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 **or as per the EU requirement of 30 days; whichever is quicker**

8.14.2 **There shall be inserted in every Contract a clause detailing the sub-contracting arrangements**

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STANDING ORDER 8.15: CONTRACT DOCUMENTATION, CONDITIONS AND EXECUTION

See also para. 8.1.2.

8.15.1 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

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

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 or his/her delegated nominee
3. Contracts in excess of £25,000 must be in writing and in a format approved by Legal and must be executed by Legal.

8.15.3 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.

8.15.4 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 this may be in the form of a performance bond or a parent company guarantee.

8.15.5 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."

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STANDING ORDER 8.16: STANDARDS

8.16.1 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. **At all times Legal should advise on the appropriate standards required.**

STANDING ORDER 8.17: CONTRACT PERFORMANCE

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

8.17.2 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.

8.17.3 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 8.18: PREVENTION OF BRIBERY AND CORRUPTION

8.18.1 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;

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STANDING ORDER 8.18: PREVENTION OF BRIBERY AND CORRUPTION

- 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 8.19: ENGAGEMENT OF CONSULTANTS

- 8.19.1 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 these Contract 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.
- 8.19.2 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.
- 8.19.3 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.
- 8.19.4 Where the cost of the appointment of any consultant is likely to exceed £10,000 £25,000 the following actions should be taken:
- (i) A business case should be made for each appointment of a consultant. As a minimum, this ~~(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. This business case should be approved by either the Chief Executive or the Director and his/her delegated nominee.

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STANDING ORDER 8.19: ENGAGEMENT OF CONSULTANTS

- (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 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.

8.19.5 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 Councils.

STANDING ORDER 8.20: TERMINATION OF CONTRACTS OVER EU THRESHOLD

8.20.1 No Contract which has been entered into under the authority (which can be given through the Consultation Procedure) of the Councils, Executives or appropriate Executive 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, Executives or appropriate Executive 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

8.20.2 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 8.21: EXTENSIONS TO CONTRACTS

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

- The extension is required to undertake an evaluation of the future requirement of the contract/service/service delivery;
- There has been no previous extensions of the original Contract (other than an extension which as an agreed contractual term of the original contract during a procurement process);

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STANDING ORDER 8.21: EXTENSIONS TO CONTRACTS

- The budget has been obtained and approved; and
- 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
- ~~The value of the extension does not exceed a sum which greater than:~~
 - ~~10% for works contracts; and~~
 - ~~The total value of the contract including the value of the extension is not within 20% of the current EU Financial Threshold as confirmed with the Procurement Team;~~

8.21.2 The terms of the contract extension must not breach the requirements of Regulation 72 of the Public Contract Regulations 2015, or the EU Treaty principles. Seek advice from Procurement or Legal if the proposed extension exceeds 25% of the total original contract price or could materially alter the nature of the contract.

- 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;
- The procurement for the original Contract complied with Contract Standing Orders

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STANDING ORDER 8.21: EXTENSIONS TO CONTRACTS

- ~~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.

8.21.3 In all cases, consideration should be given as to whether approval should be obtained from the **relevant Executive Member** ~~Joint Strategic Committee~~ before any extensions are granted.

STANDING ORDER 8.22: VARIATIONS TO CONTRACTS

The terms of the contract variation must not breach the requirements of Regulation 72 of the Public Contract Regulations 2015, or the EU Treaty principles. Seek advice from Procurement or Legal if the proposed variation exceeds 25% of the total original contract price or could materially alter the nature of the contract.

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

8.22.1 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.

8.22.2 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.

~~8.22.3 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.~~

8.22.3 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.

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STANDING ORDER 8.22: VARIATIONS TO CONTRACTS

- 8.22.4 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.
- 8.22.5 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 8.23: LIQUIDATED DAMAGES

- 8.23.1 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 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.
- 8.23.2 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.