

Ward: All

## **Proposed Revision of Joint Contract Standing Orders**

### **Report by the Director for Digital and Resource**

#### **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 Cabinet 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 and Audit Committee in June 2013.
- 2.3 Since then, there have been some changes in Procurement Legislation, best practice and more importantly, the way we need to work to ensure Best Value or Money and Contracts are delivered successfully. There have also been changes to the management structure which has prompted these changes.

#### **3.0 Proposals**

- 3.1 Attached at Appendix 2 is a table of the key changes to the Joint Contract Standing Orders.
- 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 Agreement of the revised set of Joint Contract Standing Orders will improve the internal control environment of both Councils as the revisions address any concerns raised by Audit.

## **4.0 Legal Implications**

- 4.1 The Contract Standing Orders are made in pursuant to Section 135 of the Local Government Act 1972 which empowers Local Authorities to make Standing Orders with respect to contracts generally and places a duty on Local Authorities to make Standing Orders with respect to making by them, or on their behalf, of contracts for the supply of goods and materials or for the execution of work.
- 4.2 In addition, the Joint Contract Standing Orders includes guidance which is designed to ensure officers act legally when procurement, works, goods and services.

## **5.0 Financial implications**

- 5.1 Agreement of a revised set of Joint 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 The Joint Governance Committee is asked to recommend to both Adur and Worthing Councils that the revised Joint Contract Standing Orders be approved.**

### **Local Government Act 1972**

#### **Background Papers:**

Appendix 1 - Joint Contract Standing Orders

Appendix 2 – Joint Contract Standing Orders Key Changes and Reasons

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## **Schedule of Other Matters**

### **1.0 Council Priority**

- 1.1 This will enable the Councils to ensure best practice in procuring goods, service and works and to ensure “Best Value for Money” is achieved.

### **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 An updated Joint Contract Standing Orders will enhance the Council’s reputation for financial probity.

### **8.0 Consultations**

- 8.1 These revised Joint Contract Standing Orders have been circulated to the Council’s Leadership Team for comment prior to submission to the Joint Governance Committee for approval.

- 8.2 The Cabinet Members of Resources from Worthing Borough Council and Adur District Council have been consulted on the proposed Standing Orders.

### **9.0 Risk Assessment**

- 9.1 If the Joint Contract Standing Orders are not updated frequently to reflect updated Legislation there is risk of the Council procuring incorrectly and illegally.

### **10.0 Health & Safety Issues**

- 10.1 Matter considered and no issues identified

## **11.0 Procurement Strategy**

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

## **12.0 Partnership Working**

12.1 The Joint Contract Standing Orders are suitable for the complex environments resulting from partnership working.

# **JOINT COUNCILS**

# **CONTRACT - STANDING ORDERS**

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# **ADMINISTRATIVE PROCEDURES**

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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). Such an agreement will exist whether made orally or in writing.

Where the contract has not been properly procured, for example, when the public procurement regime has not been followed, the contract can be challenged by unsuccessful tenderers.

If the contract has not been properly formed difficulties can arise, where for example disputes arise as to the precise terms of an oral contract.

#### **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 £50,000; and above £50,000.

#### **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.



# **ADMINISTRATIVE PROCEDURES BEST PRACTICE MANUAL**

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## **INTRODUCTION**

### **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.

# ADMINISTRATIVE PROCEDURES BEST PRACTICE MANUAL

		Pre Procurement Discussion	Social Value	How many quotes?	Contact Legal	Advertise	Specification	Value for Money	Evaluate	MEAT* Evaluation	Procurement Approval	Legal to Approve & Execute
	<b>Include ALL costs</b>											
	£5K or Less	?	?	?	?	?	✓	✓	✓	?	?	?
	>£5k but £10k or <	?	?	2	?	?	✓	✓	✓	?	✓	?
	>£10k but £25k or <	?	?	2 (Written)	?	?	✓	✓	✓	?	✓	?
	>£25k but £50k or <	?	?	3 (Sealed)	✓	?	✓	✓	✓	✓	✓	✓
	> £50k but < £100k	✓	?	ITT	✓	?	✓	✓	✓	✓	✓	✓
	<£100k but >EU Limit	✓	✓	ITT	✓	✓	✓	✓	✓	✓	✓	✓
	> EU Limit	✓	?	EU ITT	✓		✓	✓	✓	✓	✓	✓
	Framework	✓	✓	MC	✓	X	✓	✓	✓	✓	✓	✓
✓	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**

#### **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 quotation and when it is appropriate to run a tender process:

**Quotation** - A quotation is appropriate when you are able to fully specify what it is you wish to purchase and the value of your purchase is below £50,000. This is because; a fixed 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 then ask the supplier to review what you require and if necessary to inspect any property or work area to check out what needs to be done. 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 £50,000. Liaising with the Procurement Department 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 £50,000 then obtaining quotations as detailed in these Contract Standing Orders is your best option.

There are also circumstances when you will spend less than £50,000 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 £173,934 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 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.

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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 8.17.1 (Contracts to be evidenced in writing) and Standing Order 8.4 (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 8.4 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

**STANDING ORDER 8.2: AUTHORISATION OF CONTRACTS**

- (b) The procurement team has confirmed that best value has been obtained for those contracts where the value exceeds £5,000.
- (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 Quotation regard must be had to whether the quotation fully meets the specification before it is evaluated on price. In accepting a Tender guidance is provided at 8.14 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 8.14 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 Part 8 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:

A Contract for any amount or value for the supply of goods or materials or for the execution of works or other services, certified by a Director in consultation with the Monitoring Officer or the S151 Officer as being required in an emergency, may be placed by them without Tenders having been invited; provided that:

- Where the Contract exceeds £100,000 for works expenditure, 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: - CONTRACTS FOR A VALUE OR AMOUNT LESS THAN £10,000**

8.4.1 Where possible a corporate or call-off contract should be used where they exist, regardless of the value of the purchase.

#### 8.4.2 For contracts less than £5,000:

For lower value purchases, formal competitive quotations are not needed, though it is good practice to obtain at least two quotations 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.



**STANDING ORDER 8.4: - CONTRACTS FOR A VALUE OR AMOUNT LESS THAN £10,000**

8.4.3 For contracts of £5,000 or more but less than £10,000:

At least two quotations 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 tenderer 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.

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

**STANDING ORDER 8.5: - CONTRACTS FOR A VALUE OR AMOUNT EXCEEDING £10,000 BUT NOT EXCEEDING £100,000**

8.5.1 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 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 quotations 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.

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#### **STANDING ORDER 8.5: - 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 quotations 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 tenderer was chosen should be submitted to the procurement team for approval for all contacts.
- (d) The requirement for written quotation 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 quotations (see Standing Order 8.9)
- (e) All quotations 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.
- (f) Quotations 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 quotation but in the case of a quotation 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.

8.5.2 For all contracts **over £100,000** the remainder of the Contract Standing Orders

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#### **STANDING ORDER 8.6 : STANDING LIST (MAINLY APPLICABLE TO CONSTRUCTION CONTRACTS)**

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

#### **STANDING ORDER 8.7 : CONTRACTS FOR A VALUE OR AMOUNT EXCEEDING £100,000 BUT NOT EXCEEDING THE RELEVANT EU THRESHOLD**

8.7.1 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 (see Standing Order 8.9) then that framework may be used

8.7.2 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.

8.7.3 Details of the tenders received and how the successful tender was chosen should be submitted to the procurement team for approval. No order can be placed/contract executed until such time as approval from procurement team is received.

#### **Open Procedure**

8.7.3 The open procedure requires the publication of a notice on the Council's E-Procurement Portal, 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 time period (minimum of 14 days) within which interested parties may express an interest in tender; and
- ii) The method by which such interest shall be expressed

At the end of this period, an invitation to tender shall be sent to all parties who have expressed an interest, specifying a period of not less than three weeks for tenders to be returned.

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#### **STANDING ORDER 8.7 : CONTRACTS FOR A VALUE OR AMOUNT EXCEEDING £100,000 BUT NOT EXCEEDING THE RELEVANT EU THRESHOLD**

##### **Restricted Procedure**

8.7.4 The restricted procedure, where a number of tenderers are selected from those who express an interest, is identical to that for open tendering, except that:

- a) The public notice shall state that a restricted tendering procedure will be used;
- b) The public notice should specify that information is to be provided by interested parties for the short-listing process and that this shall be by their completion and return of a pre-qualification questionnaire;
- c) At the end of the period specified in the public notice, an invitation to tender shall be issued to tenderers selected by means of pre-determined, objective selection criteria (or all of them where less than five entrants meet the criteria). The invitation to tender should specify a period of not less than three weeks for tenders to be returned.

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.

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 8.14 Acceptance of Tenders.

The invitation to tender shall also include (where possible) the terms and conditions that will apply to the Contract.

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### **STANDING ORDER 8.8 TENDERING PROCEDURES FOR CONTRACTS ABOVE THE RELEVANT EU THRESHOLD**

- 8.8.1 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.
- 8.8.2 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.
- 8.8.3 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 8.9 : USE OF FRAMEWORK AGREEMENTS AND PROCUREMENT FROM CONSORTIA ORGANISATIONS**

- 8.9.1 Consortium organisations and framework agreements can be used when it can be demonstrated that good value for money can be achieved.
- 8.9.2 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 a 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.
- 8.9.3 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 r elation to the letting of Contracts as are contained in these Standing Orders.

### **STANDING ORDER 8.10 : SUBMISSION OF TENDERS OVER £100,000**

- 8.10.1 Where in pursuance of these Standing Orders 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,

**STANDING ORDER 8.10 : SUBMISSION OF TENDERS OVER £100,000**

- (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.
- (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.

**8.10.2 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.

8.10.3 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;
- Initialed by the Receiver *Officer*;
- Logged immediately upon receipt in the *Tender Record Book*.

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#### **STANDING ORDER 8.10 : SUBMISSION OF TENDERS OVER £100,000**

8.10.4 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.

#### **STANDING ORDER 8.11 : OPENING OF TENDERS (Postal)**

8.11.1 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.

8.11.2 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
- (b) The Director for Communities or an officer of the Council designated by him/her.

8.11.3 Ensure that all tenders correctly received are collected from the strong room when tender opening occurs.

#### **STANDING ORDER 8.12 : ELECTRONIC RECEIPT (E-TENDERING)**

8.12.1 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.

8.12.2 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.

8.12.3 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:

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#### **STANDING ORDER 8.12 : ELECTRONIC RECEIPT (E-TENDERING)**

##### **E-Auctions**

- 8.12.4 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 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 8.13 : REGISTER OF TENDERS RECEIVED**

- 8.13.1 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.
- 8.13.2 For all other tenders and quotations received is at or exceeds £5,000 for goods, services or works shall be recorded in a register maintained by the Procurement team.
- 8.13.3 Copies of the register shall be made available to the Councils' Procurement team.
- 8.13.4 Officers are required to formally record in writing their reasons for the acceptance of a late tender (see 8.14.2 and 8.14.3)

#### **STANDING ORDER 8.14 : ACCEPTANCE OF TENDERS**

- 8.14.1 For the purposes of the Standing Order, "Tender" includes a written sealed quotation.
- 8.14.2 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.



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#### **STANDING ORDER 8.14 : ACCEPTANCE OF TENDERS**

- 8.14.3 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.
- 8.14.4 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.
- 8.14.5 Where tenders are issued without specifying that they may be subject to negotiation, the tenders submitted should be accepted or rejected as they stand.
- 8.14.6 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.
- 8.14.7 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.
- 8.14.8 Award must be based on a recognised assessment method, typically Officers should use the Most Economically Advantageous Tender (MEAT) or 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

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**STANDING ORDER 8.14 : ACCEPTANCE OF TENDERS**

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.

8.14.9 Weighting must be given to each criterion used, which reflect 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.

8.14.10 Scoring for each criteria ( e.g. Health and Safety) shall be consistent across all tenders and might be as shown below:

<b>SCORING CRITERIA</b>		
<b>0</b>	<b>UNACCEPTABLE</b>	The response to this question indicates a significant shortcoming, such that that the supplier has failed to meet the required standard.
<b>1</b>	<b>POOR</b>	The response fails to meet the requirement in many respects
<b>2</b>	<b>ACCEPTABLE</b>	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 shortfalls
<b>3</b>	<b>GOOD</b>	Meets or almost meets all aspects of the requirement
<b>5</b>	<b>EXCELLENT</b>	Meets all requirements and exceeds some

**STANDING ORDER 8.14 : ACCEPTANCE OF TENDERS**

Prices should be scored out of 100% in the first instance and then converted to the weighted overall score.

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 8.15 : CONTRACT REGISTER**

8.15.1 The Local Government Transparency Code 2014 stipulates that all Councils must display a complete list of their live contracts online for the public to view.

8.15.2 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.

8.15.3 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

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#### **STANDING ORDER 8.15 : CONTRACT REGISTER**

- Supplier Name
- Supplier Type (legal standing of the organisation)
- Procurement process used

8.15.4 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.

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

#### **STANDING ORDER 8.16 : NOMINATED SUB-CONTRACTORS**

8.16.1 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 8.17: CONTRACT DOCUMENTATION, CONDITIONS AND EXECUTION**

See also para. 8.1.2.

8.17.1 The formal advice of the Legal Department must be sought for the following contracts. This advice must be sought in good time:

- where the *Total Value* exceeds £25,000 for all contract

**STANDING ORDER 8.17: CONTRACT DOCUMENTATION, CONDITIONS AND EXECUTION**

- 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

8.17.2 Unless the Council, Cabinet or approved Cabinet 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
3. Contracts in excess of £25,000 must be in writing and in a form approved by Legal and must be executed by Legal.

8.17.3 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.

8.17.4 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 Department following consultation with the Section 151 Officer for the due performance of the Contract.

8.17.5 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 8.18 : STANDARDS**

8.18.1 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 8.19: CONTRACT PERFORMANCE**

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

8.19.2 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.

8.19.3 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 8.20: PREVENTION OF BRIBERY AND CORRUPTION**

8.20.1 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;

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#### **STANDING ORDER 8.20: PREVENTION OF BRIBERY AND CORRUPTION**

- 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 8.21: PREVENTION OF SUB-CONTRACTING**

8.21.1 There shall be inserted in every Contract a clause detailing the sub-contracting arrangements as set out in 8.13.

#### **STANDING ORDER 8.22 : ENGAGEMENT OF CONSULTANTS**

8.22.1 Please refer to Contract Standing Order 8.4 in order to ascertain which procurement process to use. If in any doubt, please contact the Procurement Team.

8.22.2 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 as though he/she were a Head for Service
- (b) At any time during the carrying out of the Contract, produce to any Head for Service or his/her representative, on request, all the records maintained by him/her in relation to the Contract; and

**STANDING ORDER 8.22 : ENGAGEMENT OF CONSULTANTS**

- (c) On completion of the Contract, transmit all such records to the Head for Service or to any other Head for Service duly authorised by the Council for this purpose.

8.22.3 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 Department.

8.22.4 Where the cost of the appointment of any consultant is likely to exceed £10,000 the following actions should be taken:

- (i) a business case be 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 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.



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#### **STANDING ORDER 8.23 : TERMINATION OF CONTRACTS OVER EU THRESHOLD**

8.23.1 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**

8.23.2 Contracts may be terminated by the appropriate Executive 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 8.24: EXTENSIONS TO CONTRACTS**

8.24.1 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**

**STANDING ORDER 8.24: EXTENSIONS TO CONTRACTS**

- 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 Departments that the total value of the contract including the value of the extension is not within 20% of the current EU Financial Threshold;
- 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 Executive Head of Corporate and Cultural Services

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#### **STANDING ORDER 8.24: EXTENSIONS TO CONTRACTS**

- 8.24.2 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 8.25 : VARIATIONS TO CONTRACTS**

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

- 8.25.1 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.
- 8.25.2 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 Legal Services prior to any action being taken in respect of the variation of the proposed variation.
- 8.25.3 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 Departments. If the value cannot be accommodated within existing budgets, then additional resources must be sought at the earliest opportunity.
- 8.25.4 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 Department 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 8.25 : VARIATIONS TO CONTRACTS**

- 8.25.5 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 Departments. The variation must be in writing and signed by both the Council and the contractor. Where the value of the contract variation exceeds £25,000 it must be executed in the Legal Department. The value of the variation must be assessed and authorised before signing the variation.
- 8.25.6 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**

- 8.26.1 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 Department or the Head of Financial Services approve another or another form of financial protection. The amount to be specified in each such contract shall be made available to the Legal Department or the Head of Financial Services upon request.
- 8.26.2 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.

### Joint Contract Standing Order Key Changes and Reasons

Original Wording	Recommended Changes	Explanation
	A simple matrix has been inserted which summarises the key requirements and procedures contained within the Contract Standing Orders	A quick reference guide on the key requirements making it easier for Officers
	A definition of a quotation and a tender has been inserted	This has always been a discussion point at training where there is always a confusion of which method to use.
Previous financial thresholds were less than £5,000, between £5,000 and £10,000, between £10,000 and £25,000, £25,000 and £50,000 and more than £50,000	Changes have been made between £25,000 and £100,000 which allows officers to where appropriate undertake a quotation exercise or a tender exercise. Two additional thresholds have been inserted; over £100,000 but less than the appropriate EU Threshold; and over the appropriate EU Threshold.	The two new thresholds have been inserted as it is imperative that we follow the EC Treaty regulations for contracts over £100,000 which puts the requirements on advertising and transparency. There is also a brief explanation on the EU Procurement Regulations and states that advice must be sought by the Procurement team for these high value contracts.
	The whole section on Standing Lists has been removed	This section has been removed with a clause inserted that this is now an out dated method of procurement and should not be used. There are alternative legal options which should be discussed with the Procurement Team.
	Rewording of the use of Framework agreements	This now reads correctly with the correct procurement advice on the use of Framework agreements
Price weighting minimum of 40% when evaluating	Change to 30%	It is felt that 40% is too high for some contracts if we are to seek best value for money, especially in the wellbeing sector.
	Scoring Criteria revised	This has been revised to adopt a uniform approach to scoring

Original Wording	Recommended Changes	Explanation
	Contract Register has been updated	This has been update to reflect the Transparency code. It is a legal requirement that we publish this information. Before this was never followed.
	A clause has been inserted to ensure a regular report is taken to the Procurement Working Group by the Director for Service or his/her representative to identify all those contracts due to expire and the proposed action to be taken.	This is to ensure that Procurement are not constantly “firefighting”, this follows a similar approach to Gateways so Procurement can be advised on contracts that are due to expire in a timely fashion and provide the correct advice. This will stop contracts being extended indefinitely and for us to take a strategic look on Contracts.
	A clause has been inserted for nominated sub-contractors to ensure that any sub-contractor is paid under the same payment terms as the main contractor.	This is essential for the SME market, where they are used as sub-contract. It will help these SME’s with their cash flow and ensure they are also being paid on time.
	Amended Contract Performance has been reworded	
	The section of extensions and variations to contracts has been reworded and tightened up.	This prevents any confusion on the difference between an extension and a variation.