



# **CONTRACT STANDING ORDERS**

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## **1. INTRODUCTION**

- 1.1 These Contract Standing Orders (“**the CSO Rules**”) have been issued in accordance with Section 135 of the Local Government Act 1972 and are intended to promote good practice and public accountability and deter corruption. They provide a corporate framework for the procurement of all goods, services and works for the Council.
- 1.2 The CSO Rules are designed to ensure that all procurement activity is conducted with openness, probity and accountability.
- 1.3 Officers responsible for entering into contracts, purchasing or disposing must comply with the statutory requirements of both the European Union and the United Kingdom Government. Officers must also comply with the CSO Rules along with the Financial Regulations; the Code of Conduct; the Anti-Fraud, Bribery and Corruption Policy and the Procurement Strategy and Policies. Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.
- 1.4 Breach of the CSO Rules will be taken very seriously as they are intended to both protect public money and demonstrate that the Council takes its role as a guardian of public money extremely seriously. Should an Officer be found to be in breach of these rules then it may be treated as gross misconduct and could result ultimately in the dismissal of the employee. Similarly, anyone having knowledge of a failure to follow these rules must report a breach of these rules to the Monitoring Officer as soon as possible afterwards. Any failure to report a breach by a member of staff may also be treated as gross misconduct and could result in the Officer being dismissed.

## **2. AUTHORITY**

- 2.1 The first stage of procuring any contract is to ensure that Officers have sufficient approved funding for the potential procurement of goods or services. Authority for funding must be sought and granted where it is not accounted for within the department’s current budget. Officers must have regard to the Financial Regulations if the department’s current budget is insufficient.
- 2.2 Once the appropriate authority has been obtained, the delegated officer may then place orders within approved budgets and in line with the CSO Rules. If the proposed order exceeds the approved budget, the officer must obtain advice of Head of Resources and a supplementary budget estimate may be required.

## **3. DECLARATION OF INTEREST**

- 3.1 If it comes to the knowledge of a Councillor or Officer of the Council that a contract in which he/she has a financial, non-financial or personal interest has been or is proposed to be entered into by the Council, he/she shall immediately give written notice to the Monitoring Officer. Failure to do so is a breach of the Employee Code of Conduct and an offence in accordance with section 117 of the Local Government Act 1972.

- 3.2 An employee's interests shall not conflict with their public duty. An official position or information acquired in the course of employment should not be used to further personal interests or for the interests of others.
- 3.3 Officers should declare in writing to the Head of Service any interest which may be in conflict with their public duty. Any such declaration by a Head of Service should be made in writing. A copy of any declaration must also be sent to the Monitoring Officer.
- 3.4 Where the Monitoring Officer confirms that the interest declared prevents participation, the Officer or Councillor must not take part in the tender process except to the extent permitted by the Monitoring Officer.
- 3.5 Also refer to the relevant Council's policies relating to bribery, corruption and counter fraud.

#### **4. PREVENTION OF CORRUPTION**

- 4.1 Officers shall comply with the Employee Code of Conduct and must not invite or accept any gift or hospitality in respect of the award or performance of the contract. Officers will be required to prove that anything received was not received corruptly. High standards of conduct are mandatory. Corrupt behaviour may lead to dismissal and is a crime under the legislation referred to in CSO paragraph 4.4 below.
- 4.2 Officers should not accept significant personal gifts from contractors and outside suppliers. Token gifts of a very small value like pens marked with a company name, or calendars, which might be seen as advertisements, are acceptable.
- 4.3 Officers should notify the Head of Corporate Services of any gifts received 'out of the blue' other than the token gifts outlined above. The officer should record receipt of the gift and decide whether the gift should be returned or forwarded to a local charity.
- 4.4 The following clause (or suitable alternative drafted by the Council's legal department) shall be put in every written Council contract:

"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone on the Contractor's behalf does any of the following:

- i. Offer, give or agree to give to anyone, any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- ii. Commit an offence under the Bribery Act 2010 or Section 117 (2) of the Local Government Act 1972; or
- iii. Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees
- iv. Any clause limiting the Contractor's liability shall not apply to this clause."

## 5. PRINCIPLES

5.1 The CSO Rules apply to any arrangement, **of any value**, made by, or on behalf of, the Council for the carrying out of works, supplies, goods, materials or services.

5.2 The CSO Rules do not apply to contracts for the acquisition, disposal or transfer of land or of any interest therein, for the lending or borrowing of money, or for a contract of employment which makes an individual a direct employee of the authority. Other Council policies and rules may apply to these types of contract, such as the Financial Regulations and Recruitment Policies. Further guidance should be obtained from the Legal Team or Procurement Hub (via the Business Support Manager) as appropriate.

5.3 The following key principles apply to any procurement:-

5.3.1 All procurements must:-

- realise value for money by achieving the best combination of highest quality of outcome and minimum whole life costs;
- achieve the highest standards of integrity;
- ensure fair and equal treatment of contractors;
- operate transparently, subject to any requirement for confidentiality;
- be in accordance with advice from the Legal and Procurement Hub and as directed by the Head of Corporate Services;
- comply with all legal requirements, Council priorities and policies;
- ensure that non-commercial considerations do not influence any contracting decision, except on ethical grounds or in the case of the key principle 5.3.2.

5.3.2 For each procurement the Council must:

- consider how the proposed procurement may improve the economic, social and environmental wellbeing of the District and how the Council can secure that improvement in carrying out the process of procurement
- ensure the contractor complies with relevant health and safety legislation and best practice in relation to the contractor's work force and business
- when there will be a TUPE transfer of Council staff, take steps to ensure that those staff are expressly given the right to join and participate in a trade union
- consider whether to carry out any community consultation on the proposed procurement.

5.3.3 All contracts must be in writing and in accordance with paragraph 23 of these CSO Rules.

**5.3.4 All contracts must be entered into prior to the commencement of the undertaking or the delivery of the goods or the performance of the services.**

5.3.5 All contracts must be entered onto the Council's contract register and must be effectively monitored throughout the contract period. See paragraph 26 of these CSO Rules for further information. All current contracts above the de-minimus amount of £250 should be recorded on the Contracts Register.

## **6. WAIVERS**

6.1 Contracts made by the Council must comply with the CSO Rules and the Procurement Strategy. However, if the Procurement Process in paragraph 12 cannot be completed for an unforeseen reason, the process may be waived in accordance with below.

6.2 Waivers can only be considered in exceptional circumstances, and only if the procurement is under the EU Procurement Threshold. Considering a waiver must be risk based and always last resort after all other options have been considered.

6.3 A waiver must be approved by the relevant Head of Service in writing following advice from the Legal Team. The Head of Service must complete a Delegated/Urgent Decision Record and this must be kept with the contract documents. (link)

6.4 Waivers may be considered in, but not limited to, the following circumstances:-

6.4.1 Where the purchase of supplies or the execution of works or services involve specialist or unique skills or knowledge;

6.4.2 where the Council require upgrades to existing software packages or require repairs to, or parts for, existing machinery or equipment that are specific to that machinery or equipment;

6.4.3 the purchase of supplies or the works or services to be carried out constitute a valid extension of an existing contract provided that:-

(a) the original contract was procured through a best value exercise; and

(b) the original contract permitted such an extension; and

(c) there is budget approval in place for the extension; and

(d) the extension does not exceed the anticipated value of the original contract

6.4.4 if the Council has already engaged with an organisation for a similar and related procurement provided that the Council will not be exposed to unacceptable risk and there is significant benefit to extending the contract to cover this additional requirement;

6.4.5 where, after advertising in accordance with the CSO Rules, it has not been possible to obtain competitive prices for works, supplies or services.

6.4.6 in relation to time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this.

6.4.7 if works, supplies or services are urgently needed for the immediate protection of life or property or to maintain the immediate functioning of a public service that the Council is responsible for, on the basis of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services.

6.5 If unusual circumstances arise that are not listed in paragraph 6.4, the Head of Service may consider a exceptional waiver agreement with the Head of Finance and Head of Corporate Services. If a Head of Service approves a exceptional waiver, they must prepare a Delegated/Urgent Decision Record setting out full details of the particular circumstances, the reasons for requiring a waiver of the procurement process and provide a risk assessment. The Delegated/Urgent Decision Record must be kept with the contract documents and a copy sent to the Head of Corporate Services.

6.6 The Procurement Hub will have an overview of approved waivers to identify potential improvements to the Contract Standing Orders.

## **7. FRAMEWORK AGREEMENTS**

7.1 **Before considering a Framework Agreement a Business Case is to be submitted for CLT’s approval.**

7.2 A framework agreement is an agreement between the Council and other suppliers for the provision of goods, services or works. The framework agreement contains agreed terms with a specific period of time and for estimated quantities. Where framework agreements are on behalf of several organisations (including the Council, which must be specifically mentioned in the framework agreement or clearly identified), the Council may then place orders against the framework if and when required during the contract period. A framework allows for the Council to contract from the framework (to ‘call off’) either:-

- by applying the terms laid down in the framework agreement without reopening competition, provided that the terms laid down in the framework agreement are sufficiently precise as to cover the call off; or
- by holding a further competition if the terms in the framework agreement are not precise or complete enough for the particular call off, provided that the Council invite bids from the relevant organisations within the framework. The Council must give an appropriate time period for organisations to respond, taking into account the circumstances and complexity of the contract and must award the contract to the bidder who has submitted the best bid based on the award criteria set out in the framework agreement.

## **8. SPONSORSHIP**

8.1 Sponsorship agreements, at their simplest, involves the payment of a sponsorship fee in exchange for publicity related benefits.

8.2 Sponsorship agreements must be entered into in compliance with these CSO Rules and the Council’s Sponsorship Policy.

<b>Contract Type (Risk)</b>	<b>Total Value</b>	<b>Procurement Process</b>	<b>Advertising requirements</b>
<b>Sponsorship Agreement</b>	<b>ALL</b>	<b>Head of Service approval Refer ALL decisions over £25,000 to the relevant Committee</b>	<b>Council's website Other appropriate channels as advised by Head of Service</b>

## 9. CONCESSION CONTRACTS

- 9.1 Concession contracts are contracts for a financial interest, where the ‘payment’ is either that the contractor has the right to exploit (profit from) the contract works/services, or that the contractor has such right together with some payment from the Council. The operating risk which comes from exploiting the works or services must pass to the contractor, and this risk must be more than a slight possibility of loss and involve real exposure to the changes of the market. Officers must contact the Legal Team for assistance if they are unsure whether they are dealing with the procurement of a concession contract.
- 9.2 The CSO Rules and Financial Regulations apply to all concession contracts.
- 9.3 Depending on the contract value, concession contracts may also be subject to the Concession Contract Regulations 2016. The current EU threshold for concession contracts is £4,551,413.00. If a concession contract is valued at under this threshold, further advice must be obtained from the Procurement Hub, who will approve the appropriate procedure to follow. If a concession contract is valued at over this threshold, the procedure set out in the Concession Contract Regulations 2016 must be followed - officers must obtain further Legal and Procurement advice.

<b>Contract Type (Risk)</b>	<b>Total Value</b>	<b>Procurement Process</b>	<b>Advertising requirements</b>
<b>Concession Contracts (Low/Medium)</b>	<b>0.01p up to £4,551,413*</b>	<b>Invitation to tender (See paragraph 12.4 of Contract Standing Orders)</b>	<b>Council’s website Contracts Finder Source Derbyshire</b>
<b>Concession Contracts (High)</b>	<b>£4,551,413*</b>	<b>The EU Threshold Level Procurement Procedure must be followed: See paragraph 12.5 of Contract Standing Orders</b>	<b>Council’s website Contracts Finder Source Derbyshire The official Journal of the European Union (OJEU/Tenders Electronic Daily (TED))</b>

\*EU Thresholds as at 1 January, 2018

## 10. JOINT VENTURES AND PARTNERSHIPS

- 10.1 The CSO Rules apply to any proposal for the Council to become involved in a joint venture, collaboration or partnership with third parties (whether with private or publicly funded providers), including the monitoring of any such arrangement.
- 10.2 Where purchases are proposed using arrangements with another local authority, government department, health authority, primary care trust, statutory undertaker or public service purchasing consortium the Head of Corporate Services must be consulted and procurement and legal advice must be obtained.



- 10.3 The risks and resources required to undertake the relevant tasks and roles must be assessed before the project commences.
- 10.4 Both the CSO Rules and the conditions of grant relating to procurement of goods and services must be followed if the procurement exercise is being undertaken and European Regional Development Funds or other grant funding is being claimed. If there is any conflict between the CSO Rules and the funder's conditions of grant, then the stricter requirement will prevail.
- 10.5 The partnership agreement must be signed in writing setting out the respective roles and responsibilities.
- 10.6 The partnership must remain under review and appropriate accounting and audit arrangements must be put in place.

## **11. VALUING THE CONTRACT**

- 11.1 In estimating relevant contract values, officers shall have regard to aggregation rules - this means the whole of the value or estimated value for a single contract, purchase or disposal calculated as follows:-
1. where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period
  2. where the purchase involves recurrent transactions in the coming twelve months, by taking the total price which might be paid during that period;
  3. where the contract is for an uncertain duration, by multiplying the monthly payment by 48.
- 11.2 Officers shall also have regard to a contract whole life cost when estimating the contract value. Whole life cost is the value expected to be paid for the contract duration. A three year contract valued at £20,000 per annum would equate to a £60,000 whole life cost.
- 11.3 An officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of the CSO Rules.
- 11.4 All contracts must set out that payment will be paid in Great British Pounds (GBP). Payments shall not be made to a contractor in any other currencies.

## **12. THRESHOLDS AND PROCEDURES**

- 12.1 Officers should consider whether procuring within paragraphs 7 of these CSO Rules would be applicable to their particular procurement.
- 12.2 Where the estimated total value for a contract is within the values in the second column of the table below, as a minimum requirement, the procurement process in the third column must be followed. Officers should take procurement advice from the Procurement Hub via the Business Support Manager or their appointed advisor currently Derbyshire County Council.

Contract Type (Risk)	Total Value	Procurement Process	Advertising requirements
Goods only	upto £250 Single Purchase	Budget Holders Authorisation	None
Services and Works (Low)	0.01p up to £10,000	3 Quotes See paragraph 12.3 of Contract Standing Orders	Council's website Contracts Finder Source Derbyshire
Goods (Low)	£250 up to £25,000	3 Quotes See paragraph 12.3 of Contract Standing Orders	Council's website Contracts Finder Source Derbyshire
Services (Medium)	£10,001 but less than £181,302*	Invitation to tender (See paragraph 12.4 of Contract Standing Orders)	Council's website Contracts Finder Source Derbyshire
Works (Medium)	£10,001 up to £4,551,413*	Invitation to tender (See paragraph 12.4 of Contract Standing Orders)	Council's website Contracts Finder Source Derbyshire
Goods (Medium)	£25,001 but less than £181,302*	Invitation to tender (See paragraph 12.4 of Contract Standing Orders)	Council's website Contracts Finder Source Derbyshire
Supplies and Services (High)	£181,302* and above	The EU Threshold Level Procurement Procedure must be followed: See Paragraph 12.5 of Contract Standing Orders	Council's website Contracts Finder Source Derbyshire The official Journal of the European Union (OJEU/Tenders Electronic Daily (TED))
Works (High)	£4,551,413*	The EU Threshold Level Procurement Procedure must be followed: See paragraph 12.5 of Contract Standing Orders	Council's website Contracts Finder Source Derbyshire The official Journal of the European Union (OJEU/Tenders Electronic Daily (TED))
Social and other specific services (High)	£615,278*	The EU Threshold Level Procurement Procedure must be followed: See Paragraph 12.5 of Contract Standing Orders	Council's website Contracts Finder Source Derbyshire The official Journal of the European Union (OJEU/Tenders Electronic Daily (TED))

\*EU Thresholds as at 1 January, 2018

Risk	Example
Trivial	One off purchase under the value of £250
Low Risk - Goods	Purchase of tools, office Equipment
Low Risk – Services and Works	Consultant Services
Medium Risk - Goods	Larger Purchases – Vehicles, Machinery – any procurement over £25,000 but < £181,302
Medium Risk – Services and Works	Building Repair works – Any procurement over £10,000 but < £181,302
High Risk	Any procurement over £181,302

Please note the above 'risks' are for guidance only – if you are unsure please refer your query to either the Business Support Manager or the Legal Team

### 12.3 The Low Value Procurement Procedure

- Refer to the Council's Financial Regulations.
- **If the contract is uncomplicated and is of low business risk to the Council, three written competitive quotations must be obtained.** Please remember to include Council Departments within your three quotations if appropriate.

A quotation is a written priced offer to undertake a supply or service received in response to an invitation from an authorised officer. Quotations are processed routinely, as opposed to the sealed bids defined by the tender route.

The Officer must use the Council's Official Order, which must include the Council's [standard terms and conditions](#), through the Agresso system, to award the Order to the best quote. The Order is a legally binding contract and must be stored on Agresso, registered on the Contract Register in accordance with paragraph 26 and monitored in accordance with paragraph 28 of these CSO Rules.

- **If the contract is of a complex nature or carries a business risk, officers must consider the risk to the Council and document this in writing.** In order to assess business risk the Officer should give consideration to the purpose of the contract and any political sensitivity. For example; a minor works or maintenance contract may be low value but can carry a high business risk. If the works are not carried out correctly the Council's facility may need to be closed to the public whilst this is corrected or if the works are carried out dangerously, the Council could be liable for any personal injury sustained by a member of the public. Each outcome puts the Council at a high financial risk and carries a risk of bringing the Council into disrepute. Carrying out a tender process ensures that contractors are adequately evaluated to demonstrate performance, have suitable insurance and provides best value. Officers should obtain further advice if they are unsure how to assess risk for a project.
- **If the contract is of a complex nature or the risk is assessed as high, then the Medium Value Procurement Procedure must be followed;** formal contract documents must be put in place to safeguard the Council against those risks. Further advice should be obtained from the Procurement Hub, who will advise on the appropriate procedure to follow.

### 12.4 The Medium Value Procurement Procedure

- Refer to the Council's Financial Regulations.
- Prior advice on any medium value procurement must be obtained from the Head of Corporate Services, the Legal Team or the Procurement Hub, as appropriate.

- Subject to adequate provision having been made in the approved estimates, the appropriate Head of Service has authority to:-
  - invite tenders for the execution of works, including Schedules of Rates and Prices or the supply of goods, materials or services to the Council;
  - invite offers for the execution of works, the supply of goods, materials and services by the Council; and
  - enter into contracts or place orders on the Council's behalf accordingly
 provided that this authority shall not extend to any tender, contract or order where the original total estimated value exceeds the EU Threshold;
- A tender is a response to a written invitation from an authorised officer to price for a supply or service, received in a sealed envelope by a specific date, opened at an agreed time in accordance with the CSO Rules.
- The initiation to tender must be advertised in accordance with the "Medium Procurement Advertising" at CSO paragraph 13 below.
- Where a Head of Service invites tenders for the execution of works including Schedules of Rates and Prices and the supply of goods, materials or services he/she shall where practicable invite at least three alternative tenders.
- The award of a contract is based on a tender, which is the most economically advantageous tender in accordance with the pre-determined evaluation criteria. This can include assessment on the basis of price/cost as well as other methods equivalent to value for money, which can include social and environmental requirements provided they relate to the contract.

## 12.5 **The EU Threshold Value Procurement Procedure**

- The EU Procurement Rules apply therefore the procurement process must comply with both the CSO Rules and with the Public Contracts Regulations 2015.
- Refer also to the Council's Financial Regulations.
- The Head of Service must have sought prior advice on the EU Procurement Rules, the form of tender, specification and evaluation criteria from the Head of Corporate Services and either the Procurement Hub or the Council's external procurement provider. A brief summary of the types of tender procurement options are noted below.
- Contract awards which are estimated to exceed the EU Thresholds in value or amount shall be subject to a provider pre-selection process (suitability assessment). Advice should be obtained from the Procurement Hub or the Council's external procurement provider.

- Procurement of the supply of services, goods or materials or the execution of work shall be advertised in accordance with EU Procurement Advertising set out in CSO paragraph 13 below and as appropriate for the individual procurement, a trade journal or local press may be required to allow the services market to be opened up to competition. Procurement advice must be obtained from the Procurement Hub or the Council's external procurement provider before sending any EU contract notices to the OJEU.

## 12.6 Tender Procurement Options

There are five tender procurement options which the Council may use. In summary they are:-

<b>Open</b>	All suppliers who request tender documentation will be invited to submit a tender by a set date. Following evaluation the contract will be awarded to the successful bidder. The open tender procedure is normally only used where the known marketplace is limited, and the Council needs to seek out extra interest, or where the timescale does not allow the two stage restricted tender procedure to be followed
<b>Restricted</b>	This is a two stage process. The first stage often involves a suitability assessment where a short list of suppliers is identified. In the second stage suppliers are invited to respond to an Invitation to Tender (ITT). The contracts are awarded to the successful supplier following analysis of the ITT.
<b>Competitive Dialogue</b>	This is used for more complex procurements. Following the OJEU Contract Notice and a selection process, the Council negotiates with companies to develop suitable solutions and to which chosen companies will be invited to tender. After the ITT has been issued no further negotiation is allowed, except discussion to clarify or fine tune the tender. An award is subsequently made.
<b>Negotiated</b>  (Competitive Procedure with negotiation)  (Negotiated Position without prior publication)	This provides for a selection to be made of those who respond to the advertisement and only they are invited to submit an initial tender to the contract. The Council may open negotiations with the suppliers to seek improved offers.  In certain narrowly defined permitted circumstances the contracting authority may also award a contract using the 'negotiated procedure without prior publication'. The Council approaches one or more suppliers seeking to negotiate the terms of the contract.

<b>Innovation Partnership</b>	This provides for a selection to be made of those who respond the advertisement. The Council uses a negotiated approach to invite suppliers to submit ideas to develop innovative products, services or works aimed at meeting a need for which there is no suitable existing products on the market.
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### **13. ADVERTISING**

- 13.1 The contract opportunity should be advertised in accordance with the relevant Tables at paragraphs 8, 9 and 12 and be based on the individual circumstances of the procurement and in accordance with the Procurement Strategy (which can be found on SIDD). The methods chosen must allow the market to be opened up to competition and the impartiality of the procurement to be reviewed. Advice should be obtained from the Procurement Hub
- 13.2 The advertisement will include details of contracts to be awarded and the award method.
- 13.3 Officers should obtain guidance on the advertisement requirements for any particular procurement from the Procurement Hub or the Council's external procurement provider

### **14. EVALUATION CRITERIA**

- 14.1 All evaluation criteria must have been determined in advance of requesting quotes or entering into the tender process. Evaluation criteria must be put into order of importance on the evaluation sheet.
- 14.2 All criteria must relate to the subject matter of the contract, be in line with the Council's corporate objectives and must be objectively quantifiable and non-discriminatory.
- 14.3 Weighting between price and non-price elements of the tender will be strongly influenced by the contract type goods or services. All contracts need to use a cost effectiveness approach to weight the importance of the non-price elements against cost to achieve the most economically advantageous balance between quality and price. Non-price elements of the evaluation criteria can include life cycle costing, equalities, business continuity, environmental and sustainability considerations.
- 14.4 The evaluation criteria must be published in the tender pack and the documentation should clearly explain to bidders the basis of how the decision will be made. It should be made clear how the evaluation criteria specified will be applied, the weightings to be attached to each criteria, how the criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

## **15. OBTAINING QUOTES**

- 15.1 All contractors invited to quote must be given an adequate period in which to prepare and submit a proper quotation, consistent with the complexity of the contract requirement (typically at least one week should be allowed for submission of a quote).
- 15.2 All contractors invited to quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.
- 15.3 The information provided within any quotation should be kept confidential and not shared with any other potential contractor.

## **16. INVITATION TO TENDER**

- 16.1 All contractors invited to tender must be given an adequate period in which to prepare and submit a proper tender, consistent with the complexity of the contract requirement (typically at least four weeks should be allowed for submission of tenders). Where the Public Contract Regulations 2015 apply the Regulations lay down specific minimum time periods for tenders; advice on this can be sought from the Procurement Hub.
- 16.2 All contractors invited to tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.
- 16.3 All invitations to tender shall include:
  - a) the specification detailing the Council's requirements to enable the submission of competitive offers;
  - b) the Council's terms and conditions of contract that will apply;
  - c) a requirement for candidates to complete fully and sign or show acceptance of all tender documents;
  - d) a requirement for tenderers to declare that the content, price or any other figure or particulars concerning the tender have not been disclosed by the candidate to any other party;
  - e) a requirement that the tender shall be sent electronically using the Council's approved e-tendering portal;
  - f) a statement that failure to comply with any of the foregoing requirements will render a tender liable to disqualification;
  - g) details of the method as to how numerical errors discovered in the submitted tenders are to be dealt with (including whether the overall price prevails over the rates in the tender or vice versa);
  - h) the closing date and time for the receipt of tenders and confirmation that no tenders received after that date and time will be considered
  - i) a statement that the Council shall not be liable for expenses incurred in the preparation of tenders; nor shall the Council be bound to accept the lowest or any tenders submitted; nor shall the Council have to give reasons for the rejection of any tender and shall have reserved to them the right to invite fresh tenders should they consider that course desirable.

- 16.4 Where the Council encounters a system failure of the e-tendering portal which disadvantages any potential bidder from submitting their bid; the Council has discretion to extend the period of submission for tenders. Where the Council chooses to extend a deadline it is important that all bidders are treated equally and are aware of, and, given the extension. Where a bidder is at fault for failing to comply with a tender deadline the Council is under no obligation to extend the deadline but will consider each case on its merits and seek advice of the legal department.
- 16.5 All tenders shall be kept within the secure area of the Council's e-tendering portal until the time appointed for their opening.
- 16.6 The electronic receipt issued within the Council's e-tendering portal will be accepted as proof of an electronic submission.

## **17. CLARIFICATION PROCEDURES**

- 17.1 Clarifying an invitation to tender to potential or actual candidates or seeking clarification of a tender whether in writing or by way of a meeting is permitted, provided that any such clarification does not involve changes to the basic features of the bidding organisation's submission.
- 17.2 Where the circumstances so warrant a Head of Service in consultation with the Head of Corporate Services may postpone, for a reasonable period, the closing time and date for receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method and that no tenders have been opened.

## **18. POST TENDER NEGOTIATIONS**

- 18.1 Post tender negotiations must only be by exception and Officers must obtain appropriate Legal and Procurement advice. Post tender negotiations must be in accordance with principles as set out in EU Procurement Rules and the results from which shall be reported to the relevant Policy Committee before acceptance. Officers shall ensure that minutes of any meetings with Contractors are recorded and that actions are agreed in writing by both parties.
- 18.2 If the post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded and must be re-tendered.

## **19. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING OF ORGANISATIONS**

- 19.1 The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the procurement documents provided to tenderers.
- 19.2 Appropriate financial checks should be made for those contractors invited to bid. The Officer should liaise with the Council's Internal Auditor who will undertake financial and resource appraisals.



- 19.3 For procurements over the EU Threshold, the evaluation team appointed to evaluate tenders received must act under the main principle of independence. The evaluation team should therefore consist of authorised officers, which must include an officer from the contracting service area, other officers from independent service areas, a member of the Procurement Hub (via the Business Support Manager) and where possible should include a Finance Officer. Any officer who has any interest in the proposed contract (including any involvement in any product trials, etc.) must not be a member of the evaluation team.
- 19.4 If an error or discrepancy is identified on examining tender submissions, the tenderer is to be given details of such error or discrepancy and afforded an opportunity of confirming or withdrawing their tender. An exception to this may be authorised only by a Policy Committee after consideration of a report by the commissioning Head of Service concerned.
- 19.5 In accordance with the EU Public Sector Procurement Directive 2014/24/EU, any company responding to an EU tender shall be excluded from the tender process if it or its directors have been convicted of conspiracy, corruption, bribery, fraud or money laundering. Any instances where a service has information relating to these practices must contact the Chief Internal Auditor.
- 19.6 Before any notification of award is provided to the bidders the final evaluation sheet must be signed off by the relevant Head of Service.
- 19.7 The Council must notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as soon as reasonably possible. The notification of the award decision should advise the tenderer that they are successful without formally committing the Council to an implied form of contract. The notification should contain:-
- the award criteria
  - the score the tender obtained against those award criteria
  - the score of the winning tender achieved
  - the name of the winning tenderer.
- 19.8 Tenderers should be offered a debrief, whether successful or not, to assist them in preparing future bids. The relevant officer should also retain a record of all debrief requests and responses. (This will pre-empt any Freedom of Information requests).
- 19.9 If a standard form of contract is stipulated in the tender documents this should be prepared by Legal Team.
- 19.10 Works must not commence on site nor should services be provided until the formal contract is executed and all terms and conditions have been agreed between the parties concerned.
- 19.11 Where procurement has been subject to the Public Contracts Regulations 2015, there must be a standstill period of 10 days before a contract can be awarded. This is to allow an unsuccessful bidding organisation an opportunity to challenge the proposed decision to award. This period should be included in the procurement timetable before the contract can be awarded.

## **20. NOMINATED SUB-CONTRACTORS**

- 20.1 In the CSO Rules any reference to a contract shall, where appropriate, also be taken to include a sub-contract.
- 20.2 The appropriate Head of Service or person nominated by him/her shall, after advertising the procurement, regardless of the value of the sub-contract, be authorised to nominate to the main contractor the person/organisation whose tender or quotation is, in his/her opinion, the most economically advantageous tender.
- 20.3 The terms of the invitation shall require an undertaking by the tenderer that if he/she is selected he/she will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her obligations under the main contract in relation to the work or goods included in the sub-contract.

## **21. RISK REGISTER**

For contracts where risk is evident and for all contracts over the EU Threshold in force from time to time, the Officer is required to produce and maintain a documented risk register for the procurement process and for the eventual contractual relationship.

## **22. GUARANTEE BONDS**

The Head of Service may as part of a risk assessment decision require the contractor to provide a performance bond. The Head of Resources approval must be sought where the bond provision is waived. Such an approval should be in writing and documented on the file.

## **23. CONTRACT DOCUMENTATION**

- 23.1 All contract documentation must be in writing, identify the terms and conditions that apply and be in a form approved and executed by the Head of Corporate Services.
- 23.2 The Council's terms and conditions must be used for all contracts. In exceptional circumstances the Council may be permitted to accept the Contractor's terms and conditions subject to such terms and conditions being approved by the Legal Section prior to any acceptance.
- 23.3 All contracts shall expressly prohibit the contractor from transferring, assigning or sub-letting the whole or any part of the contractor's contractual obligations without the prior written permission of the Council.
- 23.4 All contracts must specify that payments are to be paid in GBP.
- 23.5 All contracts must include the Council's standard provisions regarding freedom of information and data protection compliance.

- 23.6 All contracts must include the following provision “The Supplier/Contractor must comply with the Council’s Safeguarding Children and Vulnerable Adults Policy from time to time in force or, if the Supplier/Contractor has their own policy, this must have been approved as an adequate substitute by the Council”.
- 23.7 Every contract which is for the carrying out of works shall require the contractor to indemnify the Council against any claim which may be made in respect of personal injury to any person unless due to the negligence of the Council and against any claim for damage to property of third parties due the negligence of the contractor to the value approved by the Head of Resources. The contractor shall upon demand produce satisfactory evidence that he/she is insured against any such claims.
- 23.8 Wherever possible, Contracts shall require goods and materials used in their execution and all workmanship to be in accordance with a specified European Standard or British Standard implementing a European Standard. Only if no European Standard exists should a British or other Equivalent Standard be stated.
- 23.9 The contract shall specify the work, materials, matters or things to be furnished, had or done, the price to be paid with a statement of discounts or other reductions and the time or times within which the contract is to be performed.
- 23.10 A contract for the supply of goods or materials shall provide that if a contractor fails to deliver part or all of the goods or materials within the time(s) specified the Council may determine the contract either wholly or in part and purchase other goods or materials of the same or similar description to make good such default, or in the event of the contract being wholly determined to acquire goods or materials remaining to be delivered.
- 23.11 The contract shall also provide that the amount by which the cost of purchasing other goods or materials exceeds the corresponding amount which would have been payable to the contractor shall be recoverable from the contractor.
- 23.12 Where appropriate, and as advised by the Legal Team, a contract shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed. If advised appropriate, the amount of liquidated damages to be specified in each such contract shall be determined by the Head of Service in consultation with the Head of Corporate Services
- 23.13 A contract to be entered into on a supplier’s terms or negotiated terms must not be signed unless and until the Head of Corporate Services has confirmed acceptance of the contract terms.

## **24. SIGNING THE CONTRACT DOCUMENTATION**

- 24.1 All contracts must be signed by the Council before the contract provisions begin. The hard copy contract documentation, along with confirmation of authority to enter into the contract (including any delegated urgent decision

record, where appropriate) must therefore be passed to the Legal Team for signing as soon as possible.

- 24.2 Where a contract is to be signed underhand, electronic signatures may not be used where statute imposes a requirement for the document to be in writing and signed. Advice should be sought from the Legal Team where there is uncertainty. Examples include property transactions, transfer of securities, assignments of copyright etc.
- 24.3 Where the contract is to be the form of a deed, the contract must be signed under the Council's seal and attested as required by the Constitution.
- 24.4 A contract must be executed as a Deed where:
- the Council wishes to enforce the contract for more than six years after it ends;
  - the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
  - if the contract is for goods over £25,000;
  - if the contract is for services of any value;
  - the Head of Corporate Services so directs.

### **Contract Value Signatory/Execution Requirements**

<b>Contract Type (Risk)</b>	<b>Value</b>	<b>Requirement</b>
Goods	Up to £250	Formalised by the issue of an award letter (signed by the relevant Head of Service) and the subsequent issuing of a purchase order and the Council's standard Terms and Conditions
Goods	£251 up to £25,000	Formalised by the issue of an award letter (signed by the relevant Head of Service) and the subsequent issuing of a purchase order and the Council's standard Terms and Conditions
Goods	Over £25,001	Formal contract documentation signed as a Deed by the Head of Corporate Services
Services and Works	ALL	Formal contract documentation signed as a Deed by the Head of Corporate Services
Sponsorship Agreements	ALL	Formal contract documentation signed by the Head of Corporate Services
Concession Contracts	ALL	Formal contract documentation signed by the Head of Corporate Services

## **25. STORAGE OF CONTRACT DOCUMENTATION**

Once the hard copy contract documentation has been signed and dated (completed), the Officer must pass the documentation to the Legal Team for preparation of a completion note. The Legal Team will then arrange for the documentation to be stored in the Council's strong room, in accordance with the Council's Document Retention Policy.

## **26. CONTRACT REGISTER**

Following the distribution of the completion memorandum referred to at CSO paragraph 25, the Legal Team will liaise with Procurement Team to arrange for the contract details to be entered onto the Council's Contract Register.

## **27. RECORDS**

27.1 Contracting authorities are required by The Public Contracts Regulations 2015 to maintain comprehensive records of procurement activities, including:-

- a) the rationale for the procurement route taken
- b) the officer(s) undertaking the procurement process and taking the decisions
- c) a copy of the business case and risk assessment (where appropriate)
- d) names of bidding organisations, both successful and unsuccessful along with copies of all tenders and suitability assessment questions
- e) the selection decision and reasons for selection, criteria, weighting and scores
- f) copy of the award letter and other notification letters
- g) the contract details including the value, how this is broken down and calculated
- h) copy of the final contract
- i) copy of the contract review and management process including the officer responsible for on-going contract management
- j) reasons for abandoning a procedure.

## **28. CONTRACT SUPERVISION, MONITORING AND REVIEW**

28.1 The relevant contracting Head of Service must ensure the contract performance is supervised, monitored and reviewed.

28.2 If the Council appoint any person (not being an officer of the Council) to supervise a contract, then it shall be a condition of such appointment that in relation to such contract he/she shall comply with the CSO Rules and Financial Regulations as if he/she were a Head of Service of the Council.

## **29. VARYING THE CONTRACT TERMS**

Any changes to contract terms during the contract period are not permitted without prior approval from the Legal Team. A copy of the original contract must be supplied to the Legal Team for review. Any variations must comply with the CSO Rules or EU Regulations as applicable.

## **30. EXTENDING THE CONTRACT**

Extensions of the contract beyond the contract period originally awarded or indicated spend are not permitted without prior approval from the Legal Team. A copy of the original contract must be supplied to the Legal Team for review. Any extension must comply with the CSO Rules or EU Regulations as applicable.

## **31. PAYMENTS**

- 31.1 The Head of Resources shall be informed as soon as possible of all contracts, agreements, awards or other instruments involving the payment or receipt of money on behalf of the Council.
- 31.2 Payment to contractors on account of contracts shall be authorised only on a certificate signed by the duly authorised officer of the appropriate department showing the total amount of the contract, the value of the work executed to date, retention of money, amount paid to date, VAT and tax and the amount certified.
- 31.3 Every variation on a contract for building or construction works shall be authorised in writing by the appropriate Head of Service/Supervising Officer or other responsible officer nominated by him/her in writing for that purpose. A copy of the priced variation shall be forwarded to the Head of Resources promptly.
- 31.4 Changes which result in an increase in the amount of an accepted tender or estimate by 10% or £50,000 whichever is the lower, shall be reported to the relevant Policy Committee as soon as possible with an estimate of the probable new cost.
- 31.5 The final certificate on a contract or accepted estimate shall not be issued by the appropriate Head of Service until he/she has produced a detailed statement of account (the final account) together with such vouchers and documents as the Head of Resources may require relating to prime cost items, contingencies and provisional sums and particulars of additions and omissions, and the Head of Resources shall have audited the amount to be certified.
- 31.6 The Head of Resources shall to the extent he/she considers necessary examine final accounts and shall be entitled to make all such enquiries and receive such information and explanation in order to be satisfied as to the accuracy of the accounts.
- 31.7 Contracts which exceed the approved contract sum by more than 5% must be submitted, after agreement of the account, to the Policy Committee within three months to explain the reasons for the additional costs.
- 31.8 The duties of the Head of Service under this Rule shall be exercisable by any qualified, authorised Architect, Engineer or Surveyor when employed by the Council as a Consultant, where the circumstances require it when approved in the consultancy terms (or contract).

## **32. REVIEW AND AMENDMENT OF THE CSO RULES**

The CSO Rules shall be reviewed and updated on an annual basis.