

Police

Other Bodies/Individuals Considered by Contracts Coordinators at meetings on 12th October 2009, 1st December 2009 and 14th January 2010

FINAL DECISION **NO**

SUGGESTED NEXT STEPS: Details to be specified

Further consideration by this Committee

To Council For approval on 30th March 2010

To Cabinet For consideration on 11th March 2010

To an O & S Committee

To an Area Committee

Further Consultation

Agenda No 4

Audit And Standards Committee - 3rd February 2010.

Review of Contract Standing Orders

Report of the Strategic Director of Customers, Workforce and Governance

Recommendation

That the Audit and Standards Committee considers the results of the review of Contract Standing Orders and recommends to Cabinet and to Council that the revised Contract Standing Orders attached to this report at Appendix 1 are adopted subject to any minor amendments made by the Strategic Director of Customers, Workforce and Governance and the Strategic Director of Resources in advance of those meetings.

1. Background

- 1.1 As part of our commitment to ensuring that the Council maintains sound systems of corporate governance, the Council periodically reviews its Contract Standing Orders. Our last major review was carried out in 2007/08 and reported to elected members in February and March 2008.
- 1.2 The current review process commenced in October 2009 and has been carried out through the Contract Coordinators group. The group comprises representatives from each Directorate and includes nominated Directorate Contract Coordinators, Audit Officers, Legal Officers and the Strategic Procurement Manager. The group has met on three occasions to consider the proposed changes to Contract Standing Orders. All meetings have been well attended with positive and constructive suggestions made as to how we can improve Contract Standing Orders.
- 1.3 The review takes into account the following;
 - Recent procurement Policy Guidance issued by the Office of Government Commerce
 - The new Remedies Directive effective from 20th December 2009
 - Case law developments in the field of procurement particularly European case law
 - Comments from Directorate Contract Coordinators
 - Input from the Council's Audit and Risk Manager
 - Input from the Council's Strategic Procurement Manager

- 1.4 It should be noted that this review did not consider Schools' Contract Standing Orders. This needs to be picked up separately and a small working group is being established to take this work forward with the first meeting taking place later in February.

2. Proposed Amendments

- 2.1 Appendix 1 contains the proposed changes to Contract Standing Orders. The main amendments have been highlighted (underlined) so that they are easier to identify.

- 2.2 The main changes being proposed are as follows;

- 2.2.1 Greater emphasis in Sections 4 and 5 of planning ahead as regards the procurement process and any exemption requests. This includes a requirement to commence preparatory work as soon as authority to tender has been granted to enable timely corporate legal /financial /procurement input to be obtained as well as to consider at the outset the resources / capacity required to manage the contract after it has been let;
- 2.2.2 Clarification as to the criteria that can be applied at selection stage (PQQ) (Section 11) and evaluation stage (Section 12)
- 2.2.3 A change to the standstill period in Section 18 in light of the Remedies Directive – this is the period after the successful tenderer has been identified but before the contract can be awarded during which unsuccessful tenderers can mount a challenge
- 2.2.4 A requirement that for contracts where the total contract value is above £3 million the project governance/service monitoring arrangements have the prior written approval of the Strategic Director of Customers Workforce and Governance (Section 5.6).
- 2.2.5 Strengthening the rules around contract management requirements, particularly for major contracts where the total contract value is above £3,000,000. This includes the establishment of a senior officer contract management board (comprising a representative nominated each by the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources) to monitor the progress of all such contracts across the county once they have been let. The board would meet to consider reports from Heads of Service regarding issues such as the budget position, the monitoring arrangements in place and identifying any potential problem/ risk areas. The board could also keep under review the position on contracts starting without a contract being in place (see 2.2.6 below) and the position regarding exemption applications across the Council. The board would provide 6 monthly reports to the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources. A sample of the contracts considered by the board could then be considered as part of the CSO Audit. (Sections 3.1, 3.2 and 3.3).

- 2.2.6 Greater emphasis on the requirement for a signed contract to be in place before the contract start date and in the absence of which a formal authorisation process involving authorisation by the relevant Strategic Director for contracts below £1 million and by the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources (or their nominees) for contracts above £1 million before the contract can start. This process could then be considered as part of the regular CSO Audit. (Sections 3.1, 3.2, 3.3 and 35.1).
 - 2.2.7 Clarity around the requirements for risk registers to be maintained during the contracting process (Section 5.2).
 - 2.2.8 A review of the rules around supply contracts (Section 26) to ensure staff are aware that CSOs also apply to these types of contract.
 - 2.2.9 A new section on service contracts and the application of TUPE (Section 31)
 - 2.2.10 Clarification as to the contract value (£30,000 and under) at which Purchase Orders can be used (Appendix 1 of CSOs and 34.5). There are standard contract terms and conditions for Purchase Orders
 - 2.2.11 Introduction of a back-up authorisation process where the relevant Strategic Director is not available (eg authority to start the tender process and award contracts where the value of the contract is between £500,000 and £1m) (Appendix 2 of CSOs)
 - 2.2.12 Clarification that when the Council accepts grant money, we must comply with any procurement related grant conditions and if none, CSOs must be followed when spending that grant money (Section 32)
 - 2.2.13 Clarification around exemption applications where there is likely to be a subsequent related exemption request made (Section 7.3)
 - 2.2.14 Future proofing CSOs given the greater emphasis on collaborative procurement and shared service arrangements (Section 9)
 - 2.2.15 A new section on sponsorship and the guiding principles with a signpost to further guidance (Section 33)
 - 2.2.16 A change to the requirements on procurement plans for Major Contracts such that procurement plans must be approved by Strategic Procurement before the procurement process commences. Previously copies of the plan had only to be sent to Strategic Procurement (Sections 4.2 and 5.3).
- 2.3 Members will note that the above amendments are not as significant as those proposed during the last CSO Review process in 2007/08. Feedback from Contracts Coordinators is that the last review produced a set of CSOs which are easier to follow, with the Minor Contracts Procedure and the Scheme of

Delegation being particularly welcomed as bringing greater clarity to the contracting process. Whilst the CSO Audit (also on the agenda for this meeting) has identified a number of areas related to procurement which need strengthening, officers feel that work needs to be undertaken within Directorates further embedding CSOs and improving understanding rather than amending the content of CSOs themselves. The CSO Audit report makes reference to this.

3. Exemptions from Contract Standing Orders

- 3.1 The last review of CSOs undertaken in 2007/08 recommended a strengthened approach to dealing with exemptions from Contract Standing Orders.
- 3.2 Those officers responsible for considering exemptions have changed their approach as a result of this, for example, there have been more applications turned down or referred back to Directorates for further supporting evidence to justify the application. In turn, officers submitting applications are more aware of the supporting evidence required and Contracts Coordinators are more actively involved in the process.
- 3.3 As a result of this, the process is generally becoming more robust with early input from officers and Contracts Coordinators often requested and fewer last minute urgent applications being received.
- 3.4 None the less, as part of this review we have also considered the exemptions process. As a result the following proposals are recommended, however, these do not require any changes to Contract Standing Orders;
 - 3.4.1 That the exemption request form includes a box to allow for Contract Coordinators to make comments on the robustness of the application. A collaborative approach to exemptions over the past 12 months, working closely with Contracts Coordinators has proved very effective;
 - 3.4.2 That the application form requests the officer submitting the form to confirm that there are no conflicts of interest.
- 3.5 Our approach to exemptions and exemption activity across the Council will be kept under review with periodic monitoring reports to relevant Strategic Directors and Contracts Coordinators. The new senior officer Contract Management Board will also have a role to play in this respect.

4. Conclusions

- 4.1 Members of the Audit and Standards Committee are therefore asked to consider the contents of this report and recommend to Cabinet and to Council that the revised Contract Standing Orders attached to this report at Appendix 1 are adopted subject to any minor amendments made by the Strategic Director of Customers, Workforce and Governance and the Strategic Director of Resources in advance of those meetings.

David Carter
Strategic Director of Customers, Workforce and Governance

Shire Hall
Warwick
20th January 2010

APPENDIX 1

Revised Contract Standing Orders with Changes Highlighted

Contract Standing Orders

**Council rules for buying and supplying goods, works,
or services and for disposing of assets**

EFFECTIVE FROM 1 APRIL 2010

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Contract Standing Orders (CSOs)

Section 1 Purpose and scope

1 Purpose

The Council approves CSOs. The Procurement Code of Practice also forms part of CSOs and must be followed. The Council's Minor Contract Procedures contained at Appendix 1 must be followed for contracts below £30,000.

CSOs for Schools are contained in a separate document.

CSOs help us to:

- get value for money;
- keep within the law;
- maintain standards of conduct;
- be fair to our suppliers;
- protect our officers;
- show the public that we are honest; and
- meet the Council's corporate and directorate aims and policies.

2. Scope

CSOs must be followed for **all** contracts with outside organisations or people. Community, foundation and voluntary schools in Warwickshire are not classed as outside organisations.

A contract is any agreement to provide goods, works or services in exchange for payment. CSOs cover all types of contract including placing orders, loan or leasing arrangements, employing outside consultants and even cases where the Council is supplying goods, works or services, or disposing of assets (other than land) or spending grant income received from a third party.

3. Officers' responsibilities

3.1 Strategic Directors (for their Directorate)

- **To follow** CSOs and any codes of practice, guidance or instructions provided by the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources.

- **To follow** the Council's Contract Scheme of Delegation (Appendix 2).
- **To follow** all relevant UK and European laws.
- **To make sure** that all contracts comply with financial standing orders and that there are effective systems in place to control budgets properly.
- **To agree** with the Strategic Director of Resources how best to check the financial situation of suppliers to ensure that the Council manages risk effectively and to make sure that financial evaluations are undertaken in accordance with advice given by the Strategic Director of Resources.
- **To get** legal, financial, procurement and other advice in good time and to make sure that contracts are legal and we can carry out our duties under them.
- **To make sure** that their directorates have systems in place to avoid fraud and corruption.
- **To provide** any information which the Strategic Director of Customers Workforce and Governance or the Strategic Director of Resources needs to help us meet legal requirements and our own CSO procedures.
- **To appoint** a Contracts Co-ordinator for their directorate.
- **To record** all contracts with a total value of £10,000 or above within the Contracts Management System.
- **To make sure** that all relevant officers with powers to agree contracts have received corporate procurement training before receiving those powers.
- **To make sure** that all Council suppliers have in place sufficient insurance cover as appropriate to the contract in accordance with the Council's insurance guidance.
- **To make sure** that any of their officers involved in contract negotiations are sufficiently skilled and understand the legal parameters that apply to contract negotiations.
- **To attend** upon request (or arrange appropriate representation at) any meeting of the senior officer Contract Management Board established by the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources and/or to provide such information requested by the Board.
- **To approve** contracts starting before a signed contract is in place for contracts up to £1 million.

3.2 Strategic Director of Customers Workforce and Governance

- **To provide** codes of practice, guidance and instructions on any matters which are relevant to contracting arrangements.
- **To carry out audits** to assess whether directorates have used CSOs correctly and have also taken into account the Procurement Code of Practice and to report annually on the results.
- **To sign and record** in our central registers all contracts under seal **and** all major contracts.
- **To maintain** a record of all exemption applications made which have a total contract value of £10,000 or above.
- **To consult** the Strategic Director of Resources and recommend action if a directorate's arrangements for agreeing contracts have not met the requirements of these CSOs. This action may include reducing the value at which contracts are classified as minor, ordinary and/or major.
- **To approve** all contracts with a total value of £30,000 or above where we are the supplier.
- **To approve jointly with the Strategic Director of Resources** contracts starting before a signed contract is in place for contracts over £1 million.
- **To establish jointly with the Strategic Director of Resources** a senior officer Contract Management Board to monitor contractual arrangements.

3.3 Strategic Director of Resources

- **To provide** codes of practice, guidance and instructions on any matters which are relevant to contracting arrangements.
- **To make sure** that we get proper value for money.
- **To consult** the Strategic Director of Customers Workforce and Governance and provide guidance on any relevant financial matter.
- **To consult** the Strategic Director of Customers Workforce and Governance and recommend action if a directorate's arrangements for agreeing contracts have not met the requirements of these CSOs. This action may include reducing the level at which contracts are classified as minor, ordinary and/or major.
- **To approve jointly with the Strategic Director of Customers Workforce and Governance** contracts starting before a signed contract is in place for contracts over £1 million.

- **To establish jointly with the Strategic Director of Customers Workforce and Governance** a senior officer Contracts Management Board to monitor contractual arrangements.

3.4 Contracts Co-ordinator

Each directorate must have one member of staff to act as its 'Contracts Co-ordinator' and must tell the Strategic Director of Customers Workforce and Governance the name of that person. Each Contracts Co-ordinator is responsible for;

- monitoring compliance with Contract Standing Orders by their Directorates;
- ensuring that his/her directorate records details of all contracts that the directorate has let with a total value of £10,000 or above in the Contracts Management System and keeps the system up to date;
- approving applications for exemptions from their Directorate where the total value of the contract is below £10,000;
- acting as the point of contact for consultation on matters relating to procurement and contracting;
- disseminating information on procurement and contracting to relevant officers within their directorate; and
- submitting an annual report by 31 January each year to the Strategic Director of Resources (Strategic Procurement Manager) detailing the exemptions below £10,000 approved by their directorate in the previous calendar year.

3.5 Authorised Officers

Authorised Officers are those officers who are authorised by their Strategic Directors to carry out the day to day activities required to let a contract. They must;

- * make sure that they follow the Councils Contract Scheme of Delegation (Appendix 2);
- * make sure that where appropriate any requirements relating to key decisions and Forward Plan have been complied with (see paragraph 4.1 below);
- * make sure that any actions taken are within their powers;
- * check that there are sufficient funds in the budget to cover the financial commitment they are making both in the current and future financial years; and
- * provide details of all the contracts they are responsible for to their directorate's Contracts Co-ordinator.

3.6 Financial Services Managers

Financial Services Managers are responsible for approving applications for exemptions from their Directorate where the total value of the contract is below £10,000.

3.7 Cost centre managers

Cost Centre Managers must make sure they are familiar with their responsibilities which are clearly set out in the 'Cost Centre Manager's Guide'.

3.8 All officers

- * To understand the procedures they must follow when agreeing contracts and ordering goods, work or services for the Council.
- * To follow the code of conduct for employees (found in Managing People).
- * To declare to their line manager any interest which could influence their judgement in contracting matters. Officers must also record their interest and their partner's interest in the Staff Register of Interests which is updated annually.

Section 2 Steps Prior to Purchase

4. Approvals

4.1 The Council's Contract Scheme of Delegation (Appendix 2) sets out the approvals necessary for different types on contract.

4.2 Before beginning a purchase, the Authorised Officer responsible for letting the contract must:

- make sure that the appropriate authority is in place to start the process and spend the money (see the Council's Contract Scheme of Delegation at Appendix 2);
- make sure that there is enough money in the budget to cover the total whole-life financial commitment being made (including any consultant's or other external charges or fees);
- make sure that the Forward Plan requirements have been followed where the purchase is a Key Decision. The definition of a Key Decision and the Forward Plan requirements can be found in the Council's Standing Orders that are contained in Part 3, Section 1 of the Constitution (Standing Order 12 and Standing Order 16);
- Prepare a procurement plan (and get it approved by Strategic Procurement), where required in accordance with paragraph 5.3

- Plan ahead in good time to ensure timely submission of any requests for exemptions from Contract Standing Orders. If an exemption request is not granted the Authorised Officer must ensure that there is sufficient time to carry out a proper procurement exercise.

5. General Requirements

Before beginning a purchase, the Authorised Officer responsible for it must also;

- 5.1 Carry out an options appraisal to decide what procurement method is most likely to achieve the procurement objectives;
- 5.2 Assess the risks associated with the purchase and how to manage them. The risk register must be kept under review and amended as necessary during the procurement process;
- 5.3 Prepare a procurement plan where the value of the purchase meets or exceeds the Major Contracts threshold or where the purchase poses a significant risk to the Council and get it approved by Strategic Procurement prior to the procurement exercise commencing;
- 5.4 For contracts with a total value of £10,000 or above, create an entry in the Contracts Management System and get a contract number. You can not let a contract which has a total value of £10,000 if it is not recorded in the Contracts Management System;
- 5.5 Consider whether the European Procurement Rules apply. If they do, you must inform the Strategic Director of Customers Workforce and Governance (Corporate Legal Services Manager) and the Strategic Director of Resources (Strategic Procurement Manager) before you start the tender process. You must also send a draft of your OJEU Contract Notice to Strategic Procurement for approval before it is submitted to the OJEU.
- 5.6 Ensure that for contracts above £3 million the project governance/ service monitoring arrangements have the prior written approval of the Strategic Director of Customers Workforce and Governance.
- 5.7 Plan ahead in good time in order to:
 - get any professional support required in sufficient time for it to be most effective (e.g. legal, procurement and financial support);
 - ensure the appropriate form of contract is selected and that it properly protects the Council's interests,
 - consider what resources are needed to manage the contract once it has been let (this means identifying people with sufficient skills and capacity);

Section 3 Conducting a Purchase

6. Deciding which procedure and competition requirements

6.1 Contract Procedure

The table below sets out which procedures must be followed for different contract values.

The Total Value of the contract is:

Yearly contract value x Contract period in years (including any extension periods). [link to worked example]

Total Value	Type of Contract	Procedure to Follow
Below £30,000	Minor	Minor Contract procedures (contained at Appendix 1)
£30,000 or above but below EU threshold for goods and services	Ordinary	Ordinary contract procedures (i.e. these CSOs including any specific requirements for Ordinary contracts).
The EU threshold for goods and services or above	Major	Major contract procedures (i.e. these CSOs including any specific requirements for Major contracts) and the EU procurement rules as appropriate (i.e. for goods and services contracts)
Any value contract where we are the Supplier	Supply	Supply contract procedures (section 26)
Any value contract where we are disposing of assets	Disposal	Disposal procedures (section 30)

Note: the current EU thresholds are set out in Appendix 3

6.2 Competition requirement

- all contracts must meet the requirements of CSOs
- All contracts with a total contract value of £2,000 or above must be competitively let unless you have obtained an exemption from CSOs (see Section 7)
- You must not enter into separate contracts or select methods of calculating Total Value in order to minimise the application of CSOs or EU Procurement Rules. EU guidance can be accessed through the Procurement Code of Practice.

7. Exemptions from Contract Standing Orders

7.1 We will only allow exemptions from Contract Standing Orders **in exceptional circumstances**. For contracts with a total contract value of £10,000 or above exemptions must be approved by the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources. For contracts with a total contract value of below £10,000 exemptions can be approved by your Directorate Financial Services Manager and Contracts Coordinator.

7.2 To apply for an exemption, you must fill in an Exemption Form which must be signed in accordance with the Council's Contract Scheme of Delegation (Appendix 2). It should then be sent to those with authority to approve exemptions as set out in the Council's Contract Scheme of Delegation. You must allow plenty of time for your application to be considered and to allow for tendering if your application is refused.

7.3 Your Exemption Form must clearly identify cases where there is likely to be a subsequent related exemption request made (e.g. where there is a Phase 1 funding bid made to a Government Department and subsequent phases are anticipated)

7.4 Examples of circumstances which **may** justify an exemption are:

- * **urgency** - real emergencies, not delays in making arrangements to agree particular contracts;
- * **no real competition** - the Strategic Director must use market analysis to explain why there is insufficient competition;
- * **extending an existing contract** - it must be in our interests to negotiate with the existing supplier;
- * **price control** – if the price is controlled by trade organisations or government order and there is no reasonable alternative;

- * **repairs or parts** – if the only option is to repair or buy new parts for existing equipment or buildings and there is only one supplier;
- * **a partnership arrangement** – if the supplier is making a large contribution to the funding, and the work, goods or services could not be provided as economically without that contribution.

7.5 For certain categories of contract, directorates may wish to apply for a block/blanket exemption. In such cases the justification for seeking such a blanket exemption must be clearly set out in the Exemption Form.

7.6 An exemption must also be obtained where you want to vary the insurance levels the Council requires contractors to have in place. An Insurance Exemption Form must be completed and the same process as set out at paragraph 7.2 above must be followed.

8. Drafting your contract specification

8.1 You must produce a description of the goods, services or works you need before you start the tender process (the specification). This will allow you to compare prices properly and once the contract has been let, will enable you to manage the contractor's performance.

8.2 The level of detail of your specification will depend on the value and type of goods, services or works you are buying.

9. Deciding which procurement method

9.1 To select your contractor you can either use;

- **Centrally approved contracts** - (e.g.. WCC, ESPO, OGC, any other regional or sub-regional collaborative procurement arrangements of which WCC is a part etc)._ Where these exist they **MUST** be used and you will be deemed to have complied with CSOs. Further details can be obtained from the Strategic Procurement Unit.
- **An external tender service** - i.e If it is more cost effective to use an organisation like ESPO to carry out the procurement process for you.
- **Approved supplier lists** - Where such a list is available. You must not use approved supplier lists for contracts governed by the EU Procurement Rules as these contracts must be advertised.
- **Conducting a competitive process** – i.e. if the above options are not suitable or cost effective. The rules set out in CSOs must be followed. Where there are different rules for different types or values of contract, these are set out in paragraphs 10 – 23 below.

10. Getting prices / advertising

There are different rules on whether you need to advertise and invite tenders depending on the type of contract concerned. These are set out below.

Type of Contract	Minimum Procedure
<p>Minor Below £30,000 < than £2,000</p> <p>£2,000 or above but < £10,000</p> <p>£10,000 or above but < £30,000</p>	<p>You must follow the Minor Contract Procedures contained at Appendix 1 A single oral quotation is acceptable (confirmed in writing if greater than £500) however a second quotation should be considered</p> <p>At least 2 written quotations must be obtained before an order is placed through WCC financial systems. Fax / e-mail quotes are permissible</p> <p>At least 3 written quotations must be obtained using the WCC standard quotations template before an order is placed through WCC financial systems. A Contracts Management System (CMS) entry is required</p>
<p>Ordinary £30,000 or above but below EU threshold for goods and services</p>	<p>You must tender. You must advertise on the Council's web-site (Tender's Available page) and invite to tender. You should also consider advertising more widely (e.g. external trade or professional journals). You should assess the cost and benefits of using such advertising media.</p>
<p>Major but not EU (this applies to works contracts only) Above the EU threshold for goods and services but below the EU threshold for works.</p>	<p>You must tender. You must advertise on the Council's web-site (Tenders Available page) [link to application form and Supply2Gov] and invite to tender. For higher value contracts you should advertise more widely (e.g. external trade or professional journals) unless there are valid reasons for not doing so (such as the cost vs benefits of using such advertising media).</p>
<p>EU contracts (whether goods, services or works)</p>	<p>You must advertise in the EU Journal and invite to tender. [Link to appropriate website] You must also advertise on the Council's web-site (Tenders Available page). [Link to application form]</p>

11. Selection / Shortlisting Tenderers

- 11.1 Contracts that are subject to the EU procurement rules (and other contracts where that is appropriate) generally follow a two-stage process;
- **Stage 1; selection (shortlisting).** This stage uses a Pre-Qualification Questionnaire ('PQQ') to short-list those tenderers who you want to invite to submit a tender. Essentially, at this stage you are looking at the background and status of the tenderers themselves to see if they have the capacity to deliver the contract; and
 - **Stage 2 ; evaluation (award).** This will usually lead to the award of the contract. It is at this stage that any contract specific proposals (e.g. price and how the contract will be delivered) are assessed. This stage is limited to assessing the merits of the tender, not the ability of the tenderer. Evaluation is dealt with in more detail at 12 below.

Note that the “**selection**” and “**evaluation**” stages have distinct processes and criteria, even if both are carried out at the same time using a one-stage process. One-stage processes are best used where the contract requirements are specialist and the number of potential bidders is relatively limited.

You must seek advice from Strategic Procurement on selection and evaluation criteria for contracts above the EU threshold.

- 11.2 The EU rules say that at Stage 1 (selection) you may only consider those matters which are relevant to the performance of the contract in question (e.g. financial standing, expertise, experience and technical capacity). You **CAN NOT** consider the suppliers' proposals as to *how* the contract would be delivered.
- 11.3 Where you are advertising for suppliers, **you must agree in full and record your method for selecting short-listed tenderers before you advertise.** This includes any sub-criteria. When deciding your method, you must;
- Treat all tenderers in the same way ;
 - Keep the process simple and clear; and
 - Record and retain all documentation relating to your selection decisions.
- 11.4 Full details about the scoring of a PQQ, including any weightings and sub-criteria, must be made known to suppliers, as must any “pass mark” for the PQQ. Suppliers should be given details if an unsatisfactory answer to any PQQ questions may lead to exclusion, irrespective of the score on the rest of the PQQ.
- 11.5 Subject to any timeframes set out in the EU procurement rules you must give tenderers a reasonable amount of time to properly complete the PQQ.

- 11.6 The receipt and opening of PQQs should be formally recorded, dated and signed by 2 Directorate officers.
- 11.7 You should not normally accept the submission of a late PQQ except in the same circumstances where a late tender would also be accepted (see paragraph 15 below).
- 11.8 Once a supplier has been selected through the selection stage, they are deemed to be suitable to undertake the contract and you cannot then evaluate them on the same criteria at the evaluation stage (Stage 2) unless there are exceptional circumstances (e.g. a change in a supplier's financial standing). For contracts at or above the EU thresholds you must take advice from Legal Services or Strategic Procurement.
- 11.9 A minimum number of short-listed suppliers are then invited to submit tenders. (See paragraph 13 below)
- 11.10 Where a tenderer fails the PQQ stage you must notify them following evaluation of the PQQs and the letter needs to give reasons why the tenderer was unsuccessful.

Standard letters are available in the Procurement Code of Practice.

12. Evaluation / Award

- 12.1 **Before you ask for prices** (whether by quotation or invitation to tender) **you must decide and record how you will assess the quotations or tenders that you receive.** Your criteria must be designed to ensure that the Council gets best value for money.
- 12.2 You must finalise any tender scoring system or similar tender evaluation model to be used prior to the issue of the invitation to tender and this information must be set out in full in your invitation to tender. This must include any sub-criteria. At the same time, you must also notify suppliers of any weightings to be used (including weightings for any sub-criteria). Evaluation methodology should also be disclosed. If a maximum score on any given question can only be obtained by a response which exceeds the specified requirement, tenderers should be advised of this. These rules apply to all contracts regardless of whether or not they are subject to the EU procurement rules. For further guidance on this contact Strategic Procurement or Corporate Legal Services [[link to PcoP](#)]
- 12.4 In deciding on your evaluation criteria you must follow any guidance contained in the Procurement Code of Practice in relation to service user/stakeholder engagement where this is relevant to the contract you are letting.

- 12.5 Strategic Directors must make sure that the evaluation criteria
- Do not prevent fair competition
 - Do not illegally discriminate between tenderers
 - Meet any relevant UK and EU laws
- 12.6 The basic evaluation criteria can be:
- Most economically advantageous tender (MEAT), where considerations other than price apply. This will be the most suitable criterion in most cases as it provides the Council with the greatest flexibility; or
 - Lowest price where the Council is the buyer;
 - Highest price where the Council is the seller
- 12.7 Where your evaluation criteria are based on the most economically advantageous offer, you may take into account relevant considerations such as quality, price, technical standards, aesthetic and functional characteristics, social and environmental considerations, practical considerations, after sales service, technical assistance, financial proposals, contract management, quality management proposals and delivery proposals. You cannot include as evaluation criteria any of the areas that should have been covered by the PQQ.

13. Inviting Tenders

- 13.1 Where you are advertising for tenderers, you must invite at least 3 tenderers to tender, (or 5 tenders if the EU Restricted Procedure rules apply).
- 13.2 You must send them an invitation to tender together with the contract documents and a tender form. Your invitation to tender must include information on the Council's policies and requirements on;
- Equalities
 - Sustainable Procurement policies
 - Public Interest Reporting Code (Whistle blowing)
 - Business continuity
 - Risk
 - Special contract arrangements following the OGC guidance where contracts are awarded to sheltered workshops

You must also include instructions on how and when they must return their tenders. A standard invitation to tender is available through the Procurement Code of Practice.

- 13.3 Subject to any timeframes set out in the EU procurement rules you must give tenderers a reasonable amount of time to properly complete the tender and you must factor a reasonable response time into your procurement timetable. What is 'reasonable' will depend upon a number of factors, e.g. the amount/complexity of the information that you require.

- 13.4 Invitations to tender can only be sent electronically if in accordance with guidance given by the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources.
- 13.5 During the period allowed for preparing tenders, you must record all your communications with tenderers. If a tenderer raises a query during this period, you must pass it on to all tenders together with your reply. Remember not to give the identity of the tenderer who has raised the query.
- 13.6 You must not pass on the names or details of suppliers to anyone at any time during the tendering process.

14. Returning Tenders

- 14.1 Tenders can be returned by hand or by post. Tell your tenderers to use postal services that provide them with proof of postage and the time of sending. For contracts with a total value of £10,000 or above tenders can only be received electronically if in accordance with guidance given by the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources.
- 14.2 For contracts with a total value of £10,000 or above you must not accept tenders sent by fax.
- 14.3 When you receive a written tender, stamp or write the date and time on the packaging. Do not open any of the tenders (whether received by hand, by post or electronically) until the final deadline for receiving them. Keep them in a safe place.
- 14.4 If you open a tender by mistake before the deadline, write down how this has happened. In the case of tenders received by post or hand, attach this to the packaging and re-seal the tender immediately. In the case of electronic tenders, keep a copy on the contract file. In all cases, do not tell anyone about the contents of the tender.
- 14.5 If you receive fewer tenders than expected, do not contact tenderers to ask whether they have sent one in.

15. Late tenders and PQQs

- 15.1 You should normally reject tenders and PQQs which you receive after the deadline.
- 15.2 In exceptional circumstances a Strategic Director can accept a late tender or PQQ. This only applies if:

* you have not opened any tenders or any PQQ; **and**

- * you have proof that the tender or PQQ was posted in enough time to meet the deadline. If the tender or PQQ is delivered by hand, the person delivering it must explain why it is late. Your Strategic Director or his/her authorised officer must be satisfied with the reason. You must record this reason; **and**
- * in the case of major contracts you must have the agreement of the Strategic Director of Customers Workforce and Governance.

15.3 If you decide to accept a late tender or PQQ, you must treat that tender or PQQ in the same way as all others. You must record full details of your decision to accept the late tender or PQQ on file.

15.4 If you decide to reject the late tender or PQQ, you should leave it on file, unopened at least until you have awarded the contract and the successful tenderer has accepted. At this stage, you can open the tender or PQQ and inform the tenderer that his bid was not considered because it arrived late.

16. Opening tenders

16.1 Before the deadline for return of tenders, you must agree a time for opening the tenders. Try to open the tenders as soon as possible after the deadline for returning them. If a delay becomes necessary, the Authorised Officer must agree to this and the reason must be recorded. Never extend the deadline for returning tenders or delay the time for opening them to allow for late tenders.

16.2 The Authorised Officer must make sure that the procedures for opening tenders are followed and that the correct records and documents are completed.

16.3 The opening requirements as set out in the table below must be followed

Type of contract	Opening requirements
Ordinary	Tenders opened in front of at least 2 officers from contracting directorate
Major or EU which has a total contract value above the EU threshold for goods and services including any call-off contract under a framework agreement	Tenders opened in front of at least 1 officer from the contracting directorate and 1 officer from Law and Governance authorised by the Strategic Director of Customers Workforce and Governance

- 16.4 You must open all tenders at the same session. Open them one at a time. Then each officer must sign and date them. Record the details of each tender on a tender return form. Each officer must sign and date the form.
- 16.5 The officers opening the tenders must sign the total price page. Where the prices are not contained in a single page or where other pages contain relevant pricing information (e.g. hourly or discounted rates), all relevant pages containing pricing information must be signed.
- 16.6 Once the tenders have been opened, store them again in a safe place.

17. Evaluating Tenders

- 17.1 Before assessing the tenders, you must check that each one meets your submission requirements (i.e. it is a compliant bid). You must also make sure that there are no major mistakes and that nothing is missing.
- 17.2 You must also check the accuracy of the figures in each tender. If you find minor mistakes which do not affect the overall price or the specification, contact the tenderer and ask them to confirm the correct figures in writing. Keep a record of all mistakes and attach it to the tender documents together with any corrections you have agreed with the tenderer.
- 17.3 Whichever contract award criteria you decided on (see paragraph 12), this is how you must evaluate. You must not change your evaluation criteria during the procurement process.
- 17.4 The Authorised Officer should accept the tender which offers the Council best value for money having assessed all the tenders against your chosen award criteria (see paragraph 12). This applies whether you get prices by quotes under the Minor Contract Procedures (see Appendix 1) or by more formal tendering processes.
- 17.5 The results of your assessment are strictly confidential, so you must not pass them on to anyone who is not involved in the evaluation process.
- 17.6 Subject to any more specific EU requirements, your assessment documentation must clearly show;
 - * the result of your assessment of each tender;
 - * a comparison of assessment results; and
 - * your recommendation for who should be awarded the contract.
- 17.7 The information referred to at paragraph 17.6 above, should be sent to the person with sufficient delegated authority to award the contract as set out in the Council's Contract Scheme of Delegation (contained at Appendix 2). You should always consider whether your recommendation for awarding the contract should be put before elected members (whether the Cabinet or the portfolio holders for Resources and Customers, Workforce and Partnerships acting jointly) **before** contacting the successful tenderer.

18. Notifying tenderers after evaluation

Contracts below the EU procurement thresholds

18.1 Notification -

- You must write and tell the successful tenderer your decision as soon as possible **after you have received all necessary approvals** (see paragraphs 3, 4 and 27).
- You must tell unsuccessful tenderers after you have told the successful tenderer and the successful tenderer **has accepted**.

Standard letters are available in the Procurement Code of Practice.

- 18.2 **Debriefings** - If unsuccessful tenderers ask why their tender was not successful, you can tell them in general terms about the areas of their tender which scored well and poorly in your assessment. You should do this within 15 working days of the request. Do not give them details of the other tenders. The name of the successful tenderer and the value of their bid will be made available to the public (see paragraph 20).

Contracts subject to the EU procurement rules (including contracts for Part B Services)

18.3 Notification –

- You must write and tell ALL tenderers, both successful and unsuccessful, of your decision as soon as possible **after you have received all necessary approvals** (see paragraphs 3, 4 and 27). Tenderers who are unsuccessful at PQQ stage must be told following evaluation of the PQQs (see paragraph 11.10).
- You must not enter into the contract with the successful tenderer until the end of the standstill period. **This period ends at midnight at the end of the 15th day after the day on which you send the decision letter referred to above. Where the last day of the standstill period is not a working day the standstill period is extended to midnight at the end of the next working day.**

- 18.4 Where you notify a tenderer who failed at ITT stage the letter must set out:
- * the award criteria;
 - * where scores are being used, the score the tenderer obtained (including any sub-criteria scores);
 - * where scores are being used, the score the winning tenderer obtained (including any sub-criteria scores);
 - * the name of the winning tenderer;
 - * the reasons for the decision, including the characteristics and relative advantages of the successful tender;
 - * a precise statement of the standstill period (including an explanation of the standstill period and the specific date and time it will come to an end)

* [if relevant, a statement about why the technical specifications were not met.]

Standard letters are available in the Procurement Code of Practice and they must be used.

- 18.5 **Debriefings** - You must provide a debriefing to any unsuccessful tenderer who requests one. The debrief must be provided within 15 days of the date on which the request is received in writing.
- 18.8 The debrief must inform the tenderer of the reasons why he was unsuccessful and, if the tenderer submitted an admissible tender, you must inform him of the characteristics and relative advantages of the successful tender and the name of the successful tenderer.

19. Clarification and Post-Tender Negotiations

- 19.1 Providing clarification to tenderers or seeking clarification from tenderers, whether in writing or during a meeting, is permitted.
- 19.2 However discussions with tenderers after submission of a tender and before contract award with a view to obtaining adjustments in price, delivery or content (post-tender negotiation) whether as part of a value engineering process or otherwise must be the exception rather than the rule. In particular such negotiations must not be conducted in an EU procurement where this might distort competition, especially with regard to price (NOTE - negotiation is permitted if using the EU Negotiated and Competitive Dialogue procedures. If you want to use one of these procedures advice must be obtained from Legal Services and Strategic Procurement).
- 19.3 In all cases, the Council's Guidance on Clarification and Negotiation must be followed.

20. Disclosure of tender information

- 20.1 You must not give tenderers or suppliers or anyone who has a financial interest in the contract any information about the bids or affairs of any other tenderer or contractor unless the law says you must do this. The information you receive is confidential.
- 20.2 Subject to paragraph 18 above, the only information you should make public is the name of the successful tenderer and the value of their bid. You must not release this information until the contract has been awarded and accepted.

20.3 Strategic Directors may decide to make public the value of the other bids received. This information should **not** include the names of the unsuccessful tenderers. However, it is good practice to let tenderers know how they performed in the competition and you may want to give them more information. If this information includes the names of unsuccessful firms, then it must be done in a way that does not link a firm to its bid. Strategic Directors should make sure that if they are planning to release any information, tenderers know this at the start of the process.

21. Keeping Written Records

21.1 Each directorate **must keep proper written records** of:

- * the different stages of the tendering process including all the quotes and letters you have received, and notes of phone calls and meetings about selecting suppliers;
- * the awarding of the contract;
- * any information provided to tenderers or contractors; and
- * any decisions made, together with the reasons for those decisions.

21.2 You must keep these records for the periods set out in paragraph 23.

22. Contracts Management System

22.1 Each Directorate must record in the Contracts Management System:

- complete details of all contracts with a total value of £10,000 or above it has agreed; and
- details of all contracts it has agreed where we are the supplier (see paragraph 26 below for further details).

22.2 In addition, each Directorate must make sure that all major contracts (contracts above the EU threshold for goods and services) are recorded in the Central Contracts Register maintained by Law and Governance.

23. Storing Documents

23.1 You must consider confidentiality when storing contracts and other information relating to tenders and agreements.

23.2 Subject to paragraph 23.3 you must store all contracts as set out in the table below.

	Successful Tenders	Un-successful or Late tenders
Minor	Keep the contract at least 6 years after Contract comes to an end. If made as a deed / under seal they must be kept forever.	At least 2 years from the date contract starts.
Ordinary and Major contracts	Keep the contract and any relevant correspondence and records (e.g. any documents which might have a bearing on the way the contract is interpreted) at least 6 years after contract comes to an end. <u>If</u> made as a deed / under seal they must be kept forever.	At least 2 years from the date the contract starts

23.3 Contracts made as a deed or under seal must never be thrown away.

23.4 You must not throw away contract documentation without the Strategic Director of Customer Workforce and Governance's permission if you are aware that a legal action or claim for personal injury or death either has been made or there is a possibility that such an action or claim will be made.

Section 4 Specific Types of Contract

24. Approved Supplier Lists

24.1 A Strategic Director may use approved supplier lists to:

- * choose tenderers to bid for a contract; or
- * buy one-off items.

You must not use approved supplier lists for contracts governed by the EU Procurement rules. These contracts must be advertised.

24.2 You must follow the Council's Contract Scheme of Delegation (Appendix 2) when setting up supplier lists.

24.3 Before drawing up an approved supplier list you should advertise and invite people to apply to become approved suppliers for the particular type of contract. You must also advertise on the Council's web-site (Tenders Available page). When considering whether to include someone on the list you must consider:

- * their past performance on similar contracts (quality and costs);
- * their technical capacity;
- * their specialist experience and skills in the type of products and services you are looking for;
- * their financial situation;
- * their other commitments; and
- * any other qualifications which are relevant, do not prevent fair competition and do not illegally discriminate between suppliers and are not evaluation criteria (see paragraph 12.7 above).

24.4 If you use an approved supplier list, you will need a system for selecting suppliers from the list. Your system must make sure that all suppliers on the list have the same opportunity over time to tender for work and must be approved by the Strategic Director of Customers Workforce and Governance (Corporate Legal Services Manager) and the Strategic Director of Resources (Strategic Procurement Manager).

24.5 Review your approved supplier lists every two years against the requirements set out above to assess whether a supplier should remain on or be added to the list. You should also consider whether there are any new suppliers to add to the list.

- 24.6 You should start new approved supplier lists after **advertising** at least every five years or earlier if the number of approved suppliers remaining on the list means there is little competition.

25. Framework Agreements

- 25.1 Framework agreements ('call-off contracts') allow the Council to fix terms and conditions in advance and to award contracts as and when they arise without needing to re-advertise or re-tender.
- 25.2 Framework agreements must be for a **maximum of four years (including any extensions)**. If you are in any doubt about their duration you should seek advice from the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources.
- 25.3 A Framework agreement needs to determine the price/pricing structure that will apply to "call off" contracts made under it. A framework arrangement is therefore much more than a pre-selection list.
- 25.4 The distinction between selection and evaluation criteria must also be maintained in cases where there is a "mini competition" amongst those suppliers on the framework who could potentially undertake the contract. You must ensure that the "evaluation criteria" for any mini-competition are the same as those used when setting up the initial framework and do not include "selection criteria".
- 25.5 You must follow the Council's Contract Scheme of Delegation (Appendix 2) when setting up framework agreements and call-off contracts.
- 25.6 Framework agreements are subject to all UK and EU procurement legislation and must also follow these Contract Standing Orders (including the Procurement Code of Practice). Framework guidance can be obtained through the Procurement Code of Practice

26. Contracts where the Council is the supplier

- 26.1 CSOs apply if we are supplying goods, work or services. Procedures will be different and will probably depend mostly on the person or organisation who is letting the contract.
- 26.2 The Strategic Director must keep a list of supply contracts and a list of the directorate's unsuccessful bids. He or she must record the details of all individual contracts with a total value of £10,000 or above and a global entry for all contracts below £10,000 in the Contracts Management System (see paragraph 22).

26.3 In addition, where the Council is the supplier:

- You must secure the appropriate approvals as set out in the Council's Contract Scheme of Delegation (Appendix 2)
- For contracts over £30,000, the Strategic Director of Resources must be satisfied that our bid is financially practical
- For contracts over £30,000, the Strategic Director of Customers Workforce and Governance must confirm that we can legally enter into the contract before we submit a tender. This includes considering the legality of the charging arrangements under the contract. Legal advice must be taken on this point.
- For contracts over £30,000, the Strategic Director of Customers Workforce and Governance must approve the terms and conditions
- For all value contracts, there must be enough insurance to cover any liability we may have under the proposed contract. You must seek advice from the Council's Insurance Manager.
- You must follow the rules in CSOs on non disclosure of tender information (paragraph 20), keeping written records (paragraph 21) storing documents (paragraph 23) and signing contracts (paragraph 31)

27. Loans and Leasing Arrangements

You must not make loans or leasing arrangements (e.g.. a contract for a photocopier), other than those purchased through centrally approved arrangements, **without approval** from the Strategic Director of Resources. You can apply to the Strategic Director of Resources through your financial services manager. Where you are unsure about the contract terms you should seek advice from the Strategic Director of Customers Workforce and Governance.

28. Appointing experts and consultants

28.1 **You need to be clear about the** status of people we use as experts or consultants. Employment status is not a matter of choice. You cannot simply decide to treat working arrangements as employment or self-employment. It depends on the work to be done and how much control we have over them.

28.2 Where individuals operate under a '**contract for services**' (as an independent contractor), these CSOs apply. Such individuals are self-employed and paid through Order and Payments. You must ensure that there is appropriate Professional Indemnity Insurance to cover the work of the consultant. Further advice on this can be obtained from the Council's Insurance Manager.

- 28.3 Where a person is taken on under a ‘**contract of service**’, the Council’s HR (recruitment) policies apply. Such individuals are employees of the Council and must be paid through Payroll.
- 28.4 There may be financial consequences where we get a person’s status wrong. Further guidance on appointing consultants can be found in the Procurement Code of Practice. Any penalties and backdated tax imposed by the HM Revenue and Customs will be charged to the Directorate concerned where it is clear that they have not followed guidance.

29. Collaborative and Partnership Arrangements

- 29.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must also follow these Contract Standing Orders.
- 29.2 Collaborative and partnership arrangements include joint working where one partner takes the lead and awards contracts on behalf of the other partners, long term collaborative partnerships, pooled budgets and joint commissioning.
- 29.3 Further guidance can be obtained from the Strategic Director of Customers Workforce and Governance. Partnership Guidance is also available through the Procurement Code of Practice and a Partnership Toolkit is available on the intranet.

30. Asset Disposal

- 30.1 You must obtain value for money where you wish to dispose of surplus or obsolete stocks/stores or assets.
- 30.2 Unless you can demonstrate that you are disposing of assets for local community benefit (e.g. a transfer of redundant computers to a voluntary or community sector organisation) you must demonstrate value for money. This could be by;
- Disposing via a public auction, or
 - Advertising in appropriate media, including the Council’s website and inviting interested parties to tender
- 30.3 When disposing of the Council’s assets you must
- Follow Council’s Contract Scheme of Delegation (Appendix 2)
 - Treat all tenderers equally & fairly
 - Seek legal advice if there are health & safety implications or if tenderers are seeking warranties
 - Keep all documentation relating to the process for at least 2 years from the date of the disposal
 - Keep proper written records of all disposals for at least 2 years from the date of the disposal

31. TUPE

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006. This law applies to service contracts and protects employees, whether ours or another's, and ensures that they transfer to the new provider..

TUPE can apply;

- *when the Council lets a service contract for the first time (i.e.. Where in-house service provision is outsourced)*
- *when the Council re-lets a service contract which has previously been let to another contractor;*
- *when the Council takes a service back "in house".*

Whenever you are letting a service contract, you must:

- take legal advice on the application of TUPE in good time;
- collect information about the staff who could transfer (the so-called "employee liability information") and, stating that the Council is not responsible for its accuracy, make this available to tenderers in the tender documents (having anonymised the staff concerned) – this will ensure that tenderers price properly for the work if the tenderers decide that TUPE will apply;
- consider the pensions implications of letting the contract, particularly where it involves employees who have worked for local government. This must be clearly understood before you go out to tender. The contract and tender documents must be properly drafted so that tenders can be properly priced. Legal advice must be obtained at the outset.

32. Grants

Where the Council wishes to spend grant money that it has received then the requirements of these CSOs will apply unless the grant terms and conditions state otherwise, in which case legal advice should be sought.

33. Sponsorship

Occasionally the question arises whether the Council can accept sponsorship from a third party in return for advertising. For example, advertising of a third party on roundabouts, bus shelters, benches etc.

You must seek legal advice where you are considering accepting sponsorship of any kind.

Any money received from a third party which is going to be spent by the Council on goods, services or works, must be spent in accordance with these CSOs.

Section 5 Written Contract and Other Formalities

34. Ordering and entering into a written contract

- 34.1 Once you have selected a supplier, you need to complete the contractual arrangements.
- 34.2 You must check whether there is an approved form of contract which has been approved by the Strategic Director of Customers Workforce and Governance.
- 34.3 For ordinary and major contracts, if you need to make changes to the terms and conditions of an approved form of contract, send your draft or details of the changes to the Strategic Director of Customers Workforce and Governance for approval.
- 34.4 All ordinary and major contracts must be in writing, must be entered on the Contract Management System and must meet the contract requirements set out in the Procurement Code of Practice. These contracts must be signed by all parties before the contract start date.
- 34.5 Minor contracts can use the Council's Purchase Order terms and conditions provided that the contract is not for:
- the services of a consultant;
 - software;
 - works,
- in which case specific advice must be sought from the legal or procurement teams.
- 34.6 Each Strategic Director must make sure that the contracts with his or her Directorate are;
- legal;
 - in line with financial regulations;
 - drafted properly;
 - appropriate; and
 - are able to protect our interests fully.

35. Signing Contracts

35.1 You must make sure that the contract is signed by a properly authorised officer as set out in the Council's Contract Scheme of Delegation (Appendix 2).

Contracts must be signed by all parties before the contract start date unless;

- for contracts below £1 million you have the prior written approval of your Strategic Director; and
- for contracts above £1 million you have the prior written approval of the Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources

35.2 All major contracts must be either;

- sealed by the Council and witnessed (signed) by a designated officer; **or**
- signed by **two** designated officers.

Designated officer means the Chief Executive, the Strategic Director of Customers Workforce and Governance and any other officer authorised by either or both of them.

36. Certified Contracts

If a supplier asks us to certify that the contract is legal, you must pass the contract to the Strategic Director of Customers Workforce and Governance before signing it. You must also send details of the approval for the contract and any other relevant documents.

37. Parent Company Guarantees and Performance Bonds

You must seek the advice of the Strategic Director of Resources on whether a parent company guarantee or performance bond is needed in cases where;

- there is doubt about the suppliers financial standing
- the contract poses a high risk to the Council

38. Contract Management

38.1 During the life of the contract, the Authorised Officer must manage the contract in respect of the following;

- Performance;
- Compliance with specification and contract;
- Cost;
- Any Best Value requirements;

- User satisfaction; and
- Risk management

38.2 Where the contract is to be re-let this information should be available early enough to inform the approach to re-letting the subsequent contract.

38.3 Where there is an intention to terminate the contract legal advice must be sought before this is done.

39. Declarations of interest

39.1 Officers must declare to their line manager any interest which could influence their judgement in contracting matters. Officers must also record their interest any interest held by a close family member in the Staff Register of Interests which is updated annually.

39.2 Where an officer has an interest which could influence their judgment in contracting matters, he/she must not take part in the contracting process.

39.3 All officers involved in contracting matters must have regard to the Employee Code of Conduct which can be found in Managing People.

40. Interpretation

Any generic reference to 'Strategic Directors' in these Contract Standing (as opposed to the Strategic Director of a specific Directorate) is to be interpreted as including the Chief Executive of the Council.

APPENDIX 1

MINOR CONTRACTS PROCEDURE WARWICKSHIRE COUNTY COUNCIL - MINOR CONTRACT PROCEDURES

These procedures apply to all contracts with a total aggregate value below £30,000

You should decide on your requirements for the goods, services or works (the specification) before you ask for quotations. You need to consider: -

- What you want
- When you want it
- Where you want it
- How many
- To what quality

A detailed specification should be included with the letter of invitation to quote for any requirement over £10,000.

Requirements for Minor Contracts which Officers MUST comply with: -

- These Minor Contract Procedures only apply to contracts with external organisations (i.e. not WCC schools)
- These Minor Contract Procedures apply to the employment of any external expert or consultant
- All officers of the Council must comply with the Council's code of conduct for employees (found in Managing People) when carrying out any procurement activity
- Where there is a recognised WCC, ESPO or OGC contract, you should use it - WCC, ESPO & OGC contracts are deemed to comply with these Minor Contract Procedures
- You must get proper value for money and consider the need for competition, efficiencies and savings at all times
- You must follow the Council's Scheme of Delegation for letting contracts
- Contracts with a total value expected to exceed £2,000 must be awarded under competitive conditions
- Where there is insufficient competition to allow the required number of quotes to be obtained, you may seek an exemption from Minor Contract Procedures, following the process set out in Contract Standing Orders. Exemption from Minor Contract Procedures will only be permitted in unusual circumstances.
- The Cost Centre Manager (CCM) must ensure that there is sufficient budget (in the current and future financial years) to cover the commitment being made.
- All bidders must be treated equally and fairly
- All written quotations must be opened at the designated time by at least 2 WCC officers
- Quotes must be assessed against your chosen award criteria. Your criteria should be determined before you ask for quotes
- Information received from suppliers is confidential and must not be disclosed to a third party
- Where it is recommended to accept a bid which is not the lowest then the reasons must be documented
- Purchase Order terms and conditions can be used unless the contract is for consultancy services, software or works when contract specific terms and conditions are required.
- WCC Officers MUST keep proper written records of all Minor Contracts
- Minor contracts should be kept for 6 years after the contract comes to an end, and documents relating to unsuccessful or late tenders for at least 2 years from the date the contract starts.
- The European Procurement Rules may still apply to minor contracts It is the responsibility of the officer undertaking the procurement to check whether the European Procurement Rules apply and if so, that they are complied with

Minor Contract Procedures – Decision Tree

This document should be read in conjunction with the Procurement Code of Practice and Contract Standing Orders. Cost Centre Managers must be familiar with both documents.

1.	Is the total contract value greater than £30,000	Yes	These procedures do not apply – refer to Contract Standing Orders for details of how to proceed
		No	Continue to step 2
2.	Is there a WCC mandatory contract	Yes	Use the mandatory contract – WCC’s Purchase Order terms and conditions can be used except for contracts for consultancy services, software or works
		No	Continue to step 3
3.	Is there an ESPO contract available for WCC use	Yes	Use the ESPO contract
		No	Continue to step 4
4.	Is there an OGC or other Authority contract available for WCC use	Yes	Use that contract
		No	Continue to step 5
5.	Is the total contract value < than £2,000	Yes	Obtain a verbal quotation from at least 1 supplier (confirmed in writing if > £500) and place an order through WCC financial systems
		No	Continue to step 6
6.	Is the total contract value £2,000 or above but < £10,000	Yes	Obtain verbal quotations from at least 2 suppliers (confirmed by the suppliers in writing). Place an order through WCC financial systems.
		No	Proceed to step 7
7.	Is the total contract value £10,000 or above but < £30,000	Yes	Obtain at least 3 written quotations using the WCC standard quotations template and place an order through WCC financial systems. Enter details in Contracts Management System
		No	Go back to step 1

Summary of Requirements if steps 5 – 7 apply

Value	Requirements
< than £2,000	A single oral quotation is acceptable (confirmed in writing if greater than £500) however a second quotation should be considered
£2,000 or above but < £10,000	At least 2 written quotations must be obtained before an order is placed through WCC financial systems. Fax / e-mail quotes are permissible
£10,000 or above but < £30,000	At least 3 written quotations must be obtained using the WCC standard quotations template before an order is placed through WCC financial systems – CMS Entry Required
£30,000 or above	These minor contract procedures do not apply and you should refer to Contract Standing orders

APPENDIX 2

CONTRACT SCHEME OF DELEGATION

WCC as Customer or Partner

	DELEGATION			
Total Contract Value	Column 1 Authority to start process	Column 2 Contract Terms	Column 3 Authority to award contract	Column 4 Contract Signing
Major Contracts (Including contracts awarded from framework arrangements and select lists) exceeding £3,000,000	Cabinet. This will be a key decision. This authority will also generally give the Strategic Director delegated authority to award the contract (i.e. Column 3 authority)	Strategic Director of Customers Workforce and Governance, unless standard terms and conditions have already been approved by the Strategic Director of Customers Workforce and Governance,	Generally N/a as covered by Column 1. Cabinet authority to award the contract may need to be sought in exceptional circumstances	Send to Strategic Director of Customers Workforce and Governance to arrange signing / sealing. The relevant authority must be provided at the same time
Major Contracts (Including contracts awarded from framework arrangements and select lists) £1,000,000 and above but not exceeding £3,000,000.	The Portfolio Holders for Resources and Customers, Workforce and Partnerships (acting jointly). This will be a key decision. This authority will also generally give the Strategic Director delegated authority to award the contract (i.e. Column 3 authority)	Strategic Director of Customers Workforce and Governance, unless standard terms and conditions have already been approved by the Strategic Director of Customers Workforce and Governance	Generally N/a as covered by Column 1. Portfolio Holders authority to award the contract may need to be sought in exceptional circumstances	Send to Strategic Director of Customers Workforce and Governance to arrange signing / sealing. The relevant authority must be provided at the same time
Major Contracts (Including contracts awarded from framework arrangements and select lists) £500,000 and above but below £1,000,000	Strategic Director (or in exceptional circumstances such as his/her absence on leave a Head of Service who has had the prior written approval of that Strategic Director). This will be a key decision	Strategic Director of Customers Workforce and Governance, unless standard terms and conditions have already been approved by the Strategic Director of Customers Workforce and Governance	Strategic Director (or in exceptional circumstances such as his/her absence on leave a Head of Service who has had the prior written approval of that Strategic Director).	Send to Strategic Director of Customers Workforce and Governance to arrange signing / sealing. The relevant key decision record must be provided at the same time

	DELEGATION			
Total Contract Value	Column 1 Authority to start process	Column 2 Contract Terms	Column 3 Authority to award contract	Column 4 Contract Signing
Major Contracts (Including contracts awarded from framework arrangements and select lists) EU threshold for goods and services and above but below £500,000	Head of Service or above	Strategic Director of Customers Workforce and Governance, unless standard terms and conditions have already been approved by the Strategic Director of Customers Workforce and Governance	Head of Service or above	Send to Strategic Director of Customers Workforce and Governance to arrange for signing and sealing
Ordinary Contracts £30,000 and above but below EU threshold for goods and services	Third Tier Manager (i.e. officer who reports directly to a Head of Service) or above	Strategic Director of Customers Workforce and Governance unless standards terms and conditions have already been approved by the Strategic Director of Customers Workforce and Governance	Line Manager or above of person who starts the process (column 1)	Third Tier Manager or above
Minor Contracts Below £30,000	Cost Centre Manager or above	Cost Centre Manager or above – Purchase Order terms can be used unless the contract is for works, software or the services of a consultant, in which case legal or procurement advice must be taken.	Line Manager or above of person who starts the process (column 1)	Cost Centre Manager or above

WCC as Supplier/ WCC Disposing of Assets

Total Contract Value	Delegation			
	Authority to start process	Contract Terms	Authority to award contract	Contract Signing
Above the EU threshold for goods and services	Strategic Director provided Strategic Director of Customers Workforce and Governance is satisfied on the legality of the bid and the Insurance Team Leader is satisfied that the activity is covered by the Council's insurance	Strategic Director of Customers Workforce and Governance unless standards terms and conditions have already been approved by the Strategic Director of Customers Workforce and Governance	Strategic Director provided Strategic Director of Resources is satisfied that the bid is financially practicable	Send to Strategic Director of Customers Workforce and Governance to arrange signing / sealing
£30,000 and above but below EU threshold for goods and services	Head of Service provided Strategic Director of Customers Workforce and Governance is satisfied on the legality of the bid and the Insurance Team Leader is satisfied that the activity is covered by the Council's insurance	Strategic Director of Customers Workforce and Governance, unless standard terms and conditions have already been approved by the Strategic Director of Customers Workforce and Governance	Head of Service or above provided Strategic Director of Resources is satisfied that the bid is financially practicable	Head of Service or above
Under £30,000	CCM or above provided Insurance Team Leader is satisfied that the activity is covered by the Council's insurance	CCM or above Insurance Team Leader	CCM or above	CCM or above

Exemptions from CSOs

Total Contract Value	Authority to apply for exemption	Authority to Approve Applications for exemptions
£10,000 and above	Strategic Director or Head of Service	Strategic Director of Customers Workforce and Governance and Strategic Director of Resources (or his/her nominee)
Under £10,000	Cost Centre Manager or above	Directorate Financial Services Manager and Directorate Contracts Coordinator

Notes

- Other responsibilities are detailed separately in the Contract Standing Orders. These must be followed as applicable in addition to the stipulations of this Scheme of Delegation
- The Strategic Director of Customers Workforce and Governance and the Strategic Director of Resources may reduce the value of minor, ordinary and major contracts as detailed above if they conclude that a Directorate's arrangements for agreeing contracts have not met the requirements of the Councils CSOs.

APPENDIX 3

EU THRESHOLDS – 1st January 2010 to 31st December 2011

Type of Contract	EU Threshold (Aggregate value – see point 6.1)
Goods	£156,442
Services	£156,442
Works	£3,927,260