

Cabinet

7 March 2019

Contract Standing Orders

Recommendation

That the revised Contract Standing Orders attached as an appendix are recommended to Council for approval.

1.0 Background

- 1.1. As a result of the Transformation Programme and changes at Senior Officer level, we have taken the opportunity to consider the Constitution (including Contract Standing Orders). Some changes have been required to ensure there is consistency of terminology and that the Constitution aligns with the new Operating Model. Delegations to Senior Officers have also been reviewed.
- 1.2 The review has not resulted in any changes to the balance between Member and Officer decision making, nor have the Contract Standing Orders as they relate to Members and Committees been altered (save to correct terminology in respect of posts and services and align decisions to the new operating model).
- 1.3 This reports focuses on the proposed changes to the Contract Standing Orders which are also being considered by Audit and Standards Committee and will be put to Council for approval, together with proposed changes to Financial Regulations and Officer (non-executive) delegations.

2.0 Contract Standing Orders

- 2.1 Contract Standing Orders set the minimum requirements to ensure the conduct of the Council's business is compliant with the law and carried out in an ethical way.

2.2 The opportunity has been taken to review Contract Standing Orders (CSOs) to take account of a number of changes. Some internal to the Council such as the officer management structure and the development of a new contract management framework. Others are externally driven by changes in the EU procurement processes to encourage moves towards e-procurement and electronic communications, plus a wish to maximise the use of the Council's electronic tendering system, streamline processes and reduce costs.

2.3 The key changes proposed are

- Threshold for ordinary contracts moving from £50,000 to £100,000
- Change to major contract threshold from £500,000 to £1,000,000 to align with changes to key decision regime previously agreed by Council
- Update of delegated authority table to reflect changes to thresholds
- Requirement to use electronic tendering systems
- Changes in responsibilities of officers to reflect the new officer management structure and the new contract management framework
- Tightened advertising requirements for contract opportunities and awards
- Incorporation of approved disposals by auction scheme

2.4 In the light of previous decision by Council to raise the key decision threshold to £1,000,000 we have reviewed the thresholds for minor, ordinary and major contracts. Previously major contracts have been defined as those required to be processed through the formality of the key decision regime. We consider this connection should remain and that major contracts should be contracts of £1,000,000 or more to align with the new definition. Similarly, the threshold for 'ordinary contracts' should be raised to £100,000. At the ordinary contract level formal tendering is required whereas for Minor Contracts (below £100,000) individuals can seek a minimum of 3 quotes rather than follow a full-blown tendering process. This keeps the process costs down. A lot of the Council's lower value purchases are in any event obtained via call-off arrangements from framework contracts set up by Central Government,

ESPO and other public sector consortia which have been the subject of a competitive tender process.

- 2.5 Over the last 12 to 18 months the Council has been undergoing a transformation and there have been significant changes to the officer structure. From 1 April 2019 the Council will move back to an officer structure, led by a Chief Executive supported by three Directorates each headed by a Strategic Director, and in turn supported by a number of Assistant Directors. In addition, the Council has agreed a new Contract Management Framework to strengthen the arrangements for monitoring contracts post award. We have also reconsidered the balance of responsibilities between the Strategic Directors and Assistant Directors.
- 2.6 Various statutory instruments in 2016 made changes to the EU procurement rules making electronic communication the default position for contracts subject to the EU rules. The Council has a well-developed e-procurement system which can deal with quotes as well as full-blown tendering processes. The previous version of CSOs encouraged electronic communications and tendering and we now consider it is appropriate for electronic communication to be the default position for the Council although it is recognised that some additional work will need to be done with those suppliers who have not yet used the system to encourage and explain how the system operates.
- 2.7 There are various safeguards which have been automatically built into the e - procurement system and this has allowed us to streamline and remove some of the previous requirements in CSOs – for example in relation to receipt of late tenders. The electronic system will not accept late tenders so there is no need to provide additional safeguards/advice within CSOs. Similarly, the receipt and opening of tenders is systematised and allows a safe way of ensuring proper records are kept. The e-procurement process allows for more devolved management of contracting processes due to the automatic safeguards in place.
- 2.8 We have tightened the minimum requirements for advertising opportunities and contract awards to meet the government requirements regarding openness and transparency and the increased requirements under the EU rules.
- 2.9 We have re-organised the section on the Contracting Process to more closely align with the order in which events may occur in a tendering process and also incorporated our scheme for disposals at public auction so that relevant material is in one place.

3.0 Next Steps

- 3.1 Over the next six-month period it is proposed to monitor and review the operation of the Constitution in light of the transformation programme and the implementation of the new operating model.
- 3.2 If further changes are felt to be necessary following that review a further report will be brought to Council in due course.

4.0 Timescales associated with the decision

- 4.1 CSOs will be considered also by Audit & Standards Committee on 7 March 2019. Any views of the Committee will be reported orally to the Cabinet with a view to seeking the approval of Council on 19 March 2019.
- 4.2 If approved by Council it is proposed that the changes take effect from 1 April 2019

Background papers

None

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The report was circulated to the following members prior to publication:

Local Member(s): N/A

Other members: N/A

APPENDIX

Contract Standing Orders

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

April 2019

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SECTION A

For clarity and pursuant to the Constitution of the County Council the role of Chief Finance Officer is executed by the Strategic Director for Resources and the role of Monitoring Officer is exercised by the Assistant Director - Governance and Policy

1 Scope and Purpose

1.1 Contract Standing Orders (CSOs) aim to promote good procurement practice, public accountability, deter corruption and provide protection for staff against allegations of impropriety.

1.2 All procurement and disposal procedures must:

- Achieve best value for money;
- Be consistent with the highest standards of integrity;
- Ensure fairness ~~in allocating public contracts~~;
- Comply with all legal requirements; ~~and~~
- Support the ~~council's~~ Council's corporate aims and policies;
- Comply with corporate policies and strategies and with the decisions of Corporate Board (or other officer boards authorised by Corporate Board), and with any other of the Council's properly constituted boards and committees acting within their jurisdiction ; and
- In relation to procurement of IT equipment, hardware and software specifically must comply with the Digital and ICT strategy and decisions taken by the Digital by Design Board

1.3 ~~_____~~ A relevant ~~contract~~ Contract for the purposes of CSOs is any arrangement made by, or on behalf of, the ~~council~~ Council for the carrying out of works or for the supply of goods, materials or services, for example:

- ~~_____~~ • ~~_____~~ the supply or disposal of goods;
- ~~_____~~ • ~~_____~~ hire, rental or lease of goods or equipment; and
- ~~_____~~ • ~~_____~~ the delivery of services.

1.4 ~~_____~~ “Contract” also includes arrangements where the ~~council~~ Council is supplying goods, works or services.

1.5 ~~_____~~ Contracts must comply with these CSOs, irrespective of the method of funding (e.g. capital, revenue, sponsorship, donations or ~~grant monies~~ grants from a third

party).

1.6 The following contracts are excluded from CSOs:

a. Contracts of employment which make an individual a direct employee of the ~~council~~;

Council;

b. Agreements for the acquisition, disposal, or transfer of land;

c. Contracts entered into by or on behalf of the ~~monitoring officer~~ Monitoring Officer for the appointment of ~~counsel~~ Counsel and/or ~~experts~~ Experts; or

d. Loans to banks or other financial institutions and investments made in accordance with the ~~treasury management strategy~~ Treasury Management Strategy.

~~2.~~ General Requirements

2.1 Classification and Valuation of Contracts

The following classifications apply for the purposes of CSOs:

o Minor contract – total value less than ~~£50~~ £100,000

o Ordinary contract —total value of ~~£50~~ £100,000 or more but below £1,000,000

o Major contract – total value of £1,000,000 or more

The total value of the contract should be calculated in accordance with the most appropriate of the following:-

Fixed

(a) fixed term contracts - the total price expected to be paid during the whole of the contract period, including possible extensions; or

Where

(b) ~~where~~ the contract period is uncertain, multiply the price expected to be paid each month by 48;

(c) If the purchase ~~involves~~ one of a series of ~~separate~~ regular transactions which are unlikely to last for more than 12 months for the same type of item, the '~~total value~~ Total Value' is the expected aggregate value of all of those transactions ~~in~~ over the ~~coming~~ next 12 months.

(d) For feasibility studies, it is the value of the scheme or contracts which may be awarded as a result.

~~A contract manager~~ An Officer **must not** select a method of calculating the ~~total value~~ Total Value in order to ~~minimise~~ avoid the ~~application~~ requirements of these CSOs.

2.2 Guiding Principles

(a) All contracts must be let through a competitive process which meets the requirements of **Section C** unless an exemption has been granted or the arrangement is ~~otherwise authorised~~ permitted by these CSOs.

(b) Adequate resources should be identified to manage the procurement and any contracts awarded

(c) Any contract which exceeds the ~~applicable~~ relevant EU threshold ~~(or replacement threshold set by the UK Government)~~ must comply with any legal requirements ~~imposed by the EU procurement regime in the Public Contract Regulations or any replacement Regulations approved by the UK Government~~

(d) There must be a procurement plan for all ~~major contracts~~ Major Contracts and any contract which exceeds the ~~applicable~~ relevant EU threshold ~~or UK equivalent~~. The procurement plan must be submitted to the ~~head of finance~~ Chief Finance Officer and approved before the procurement process commences.

~~E-tendering and E-procurement is the preferred option over paper based systems.~~ (e) Only approved E-systems should be used and advice should be sought from the ~~strategic procurement manager~~ Head of Procurement on their use. The use of e-procurement technology does not negate the requirement to comply with all elements of these CSOs, ~~particularly those relating to competition and value for money.~~

(f) The following are excluded from the requirement for competition:

i. Purchases made via a ~~local authority~~ purchasing consortium (e.g. ESPO) accessible to local authorities, however, purchases above the *EU Threshold* will only be excluded if the consortium has let their contract in accordance with *EU Procedures* ~~on behalf of the council~~.

ii. Contracts entered into through sub-regional working or collaboration with other ~~local authorities~~ Local Authorities or public bodies, where a competitive process has been followed that complies with the CSOs of the lead organisation ~~will be deemed to comply with these CSOs provided the collaboration has let their contract in accordance with EU Procedures (where applicable)~~.

iii. Collaborative proposals for joint working or shared services with other public ~~authorities~~ bodies which the ~~head of law and governance~~ Monitoring Officer has approved as meeting the following conditions i.e.:-

- The ~~principal activity of the collaborative arrangement is~~ the provision of services back to the participating ~~authorities~~ bodies
- The collaborating public ~~authorities~~ bodies when acting together exercise the same kind of control over the service ~~provision~~ as they would over an in-house service ~~provision~~; **and**
- There is no independent or private sector partner involved in the collaborative arrangement.

for

iv. residential placements ~~sought~~ for an individual with a registered care provider of their choice under the ~~National Assistance~~ Care Act ~~1948~~ 2014, or

~~for personal care services v. Personal Care Services~~ where, in the opinion of the appropriate ~~assistant director~~, Assistant Director, the ~~particular~~ needs of ~~an~~ individual ~~require a~~ specific social care package which is only available from ~~a~~ one provider.

vi. In relation to (iv) and (v) above the ~~assistant director~~ Assistant Director responsible for the delivery of the services must ensure that adequate records are maintained to demonstrate:

- The ~~provider~~ contractor meets the relevant national minimum standards;
 - ~~Appropriate mechanisms for price review are in place~~
- The contract is effectively managed in accordance with the Councils contract management framework
- The reasons for the choice of ~~provider~~ contractor; and

➤ Why these were best possible terms for the ~~council~~Council in the circumstances.

2.3 Approvals

- (a) All contracts must be appropriately authorised in accordance with the ~~council's scheme~~Council's Scheme of ~~delegation~~Delegation before a procurement process (whether to be undertaken by negotiation or competition) is begun or a contract awarded.
- (b) Any proposal to let a contract with an estimated total value of £1,000,000 or more up to £3,000,000 can only be approved by the Deputy Leader, the Leader or Cabinet. See table below.
- (c) Any proposal to let a contract with an estimated total value of more than £3,000,000 can only be approved by either the ~~cabinet~~Cabinet or the ~~leader~~Leader. See table below.
- (d) All contracts should be in written form and once the terms and conditions are agreed should be submitted to the appropriate person for signature. The written formalities should be completed **before** the contract is due to start.
- (e) The table below sets out in more detail the approvals required. They apply equally to contracts that may be awarded through negotiation as they do to those awarded through competition. They also apply to contracts awarded from framework arrangements ~~or select lists~~ including those let using an ESPO ~~etc.~~ framework.
- (f) Any ~~major contract~~Major Contract **must** comply with the key decision regime. ~~In relation to letting major~~ When commissioning Major Contracts ~~contracts~~, the ~~key decision~~Key Decision is the proposal to begin a procurement process for a particular contract.
- (g) The subsequent decision to award the ~~major contract~~Major Contract to a specific contractor will not be a key decision provided the value of the contract does not vary above the original estimated value by 10% or more.

Total Contract Value	Column 1: <u>Authority to start process</u>	Column 2 <u>Contract Terms:</u>	Column 3: <u>Authority to award contract</u>	Column 4 <u>Contract Signing:</u>
Major Contracts More than £3,000,000	Cabinet or leader. <u>Leader</u> This will be a key decision. This authority will also generally give the strategic director. <u>Strategic Director</u> delegated authority to award the contract.	Assistant director governance & policy <u>Monitoring Officer.</u> unless standards <u>standard</u> terms and conditions have already been approved.	Generally covered by column <u>Column</u> 1. If bids exceed the original estimates by 10% or more than <u>then you must</u> report back to leader <u>Leader</u> or cabinet <u>Cabinet</u> before award.	Send to assistant director governance & policy <u>Monitoring Officer</u> for signing / sealing by designated officers. The relevant authority must be provided at the same time.
Major Contracts £1,000,000 or more up to £3,000,000	Relevant portfolio holder. <u>Leader, Deputy Leader or Cabinet.</u> This will be a key decision. This authority will also generally give the <u>strategic director</u> <u>Strategic Director</u> delegated authority to award the contract.	Assistant director governance & policy <u>Monitoring Officer</u> unless standard terms and conditions have already been approved.	Generally covered by column 1. If bids exceed original estimates by 10% or more then report back to Relevant portfolio holder <u>Leader, Deputy Leader</u> or leader <u>Cabinet</u> before award.	Send to assistant director governance & policy <u>Monitoring Officer</u> for signing / sealing by designated officers. The relevant authority must be provided at the same time.
Ordinary Contracts £500,000 or more but below £1,000,000	Strategic director <u>Director</u> or person authorised in writing by the strategic director. <u>him/her</u> . This will be a key decision.	Assistant director governance & policy <u>Monitoring Officer</u> unless standard terms and conditions have already been approved.	Same as column 1. If bids exceed original estimates by 10% or more then report back to Strategic Director. If bids exceed £1,000,000 the key decision regime must be complied with before an award can be made <u>Same as column 1.</u>	Strategic director or person authorised in writing. If over £1,000,000 send to assistant director governance & policy for signing / sealing by designated officers. The relevant key decision record must be provided at the same time. <u>Strategic Director or above</u>
Ordinary Contracts £50 £100,000 or more but below £500,000	Assistant director <u>Director</u> or third tier <u>Third Tier Manager</u> or person authorised in writing by the assistant director. <u>him/her</u>	Assistant director governance & policy <u>Monitoring Officer</u> unless standards <u>standard</u> terms and conditions have already been approved.	Line manager <u>Manager</u> or above of person who starts <u>gave authority to start</u> the process (column 1).	Assistant director <u>Director</u> or above.

<p>Minor Contracts</p> <p>Below £50100,000</p>	<p>Cost centre manager Centr e <u>Manager</u> or above.</p>	<p>Purchase order<u>Order</u> 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.</p>	<p>Line manager<u>Manager</u> or above of person who start<u>gave authority to start</u> the process (column 1)</p>	<p>Third tier manager <u>Tier 3 Manager, Cost Centre Manager</u> or cost centre manager or above.</p>
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2.4 Exemptions from CSOs

2.4.1— Any requirement of CSOs may be waived with the consent of both the ~~assistant director of finance & ICT~~Chief

Finance Officer and ~~assistant director governance & policy~~the Monitoring Officer subject to any legal restraints.

2.4.2— An application for a waiver (exemption) shall be:

a) submitted on the approved '~~exemption form~~;Exemption Form'

b) set out the reason for requiring the waiver; and

c) show how the proposal complies with any applicable law, demonstrates propriety, value for money and ~~support for~~supports the council's objectives.

2.4.3 — Where an exemption from competition is necessary because of an unforeseeable emergency involving ~~immediate risk to persons, property or serious~~ disruption to ~~council~~Council services the relevant ~~strategic director~~Strategic Director and ~~assistant director~~Assistant Director must submit a report to the ~~assistant director finance & ICT~~Chief Finance Officer and the ~~assistant director governance & policy~~Monitoring Officer as ~~soon as practicable following the event.~~ Any ~~contract entered into for these purposes should be the minimum required to remove the immediate risk to persons or property or to reduce the disruption to~~ ~~council~~Council services to a manageable level.

2.4.4 — In cases of urgency if the contract is likely to exceed £1,000,000 then the urgent key decision regime must be complied with **before** any contract is entered into.

2.5 Contract Formalities and Sealing – Minimum Requirements

2.5.1– Contracts shall be signed by the ~~council~~Council as follows:

Major Contracts: ~~Under~~By affixing the ~~common seal of the council and Council~~ witnessed (signed) ~~by one designated officer~~Designated Officer **OR** ~~where there is no Seal affixed~~ signed ~~by at least two designated officers~~Designated Officers.

Ordinary Contracts: ~~Signed by strategic director or assistant director depending on value.~~

By affixing the common seal of the Council witnessed (signed) by one Designated Officer OR where there is no Seal affixed signed by a Strategic Director or above between £500,000 and £999,999 or by an Assistant Director or above if between £100,000 and £499,999.

Minor Contracts: Signed by ~~cost centre manager~~Tier 3 Manager, Cost Centre Manager or above.

2.5.2– A contract must be sealed where:

- The Council wishes to enforce the contract more than six years after its end;
- The price paid or received under the contract is nominal and does not reflect the value of the goods or services;

2.5.3 All contracts must be concluded formally in writing before the supply, service or construction ~~work begins, except in exceptional circumstances, and then only with the written consent of the assistant director governance & policy~~Monitoring Officer.

~~2.5.3-4~~ The ~~contract manager~~Authorised Officer is responsible for securing signature of the contract and must ensure that the person signing for the other contracting party has authority to enter into a legal agreement.

~~2.5.4~~ A contract must be sealed where:

- ~~The council wishes to enforce the contract more than six years after its end;~~
- ~~The price paid or received under the contract is nominal and does not reflect the value of the goods or services.~~

2.6 Contract Documents

2.6.1– All ~~contracts~~Contracts, irrespective of value, shall clearly specify:

- What is to be supplied; ~~– the specification~~
- The price to be paid and when;
- Appropriate performance indicators
- Clear dates and times for performance; and
- Liquidated damages and termination provisions.

2.6.2– The terms and conditions of all ~~contracts~~Contracts must have been approved by the ~~assistant director governance & policy~~Monitoring Officer either as a standard form contract for particular types of matters or through a specific approval.

2.7 Record Keeping

~~2.7– Contract managers~~ The Authorised Officer shall ensure that the following records are kept: in the Councils Contract Management System.

(a) Successful ~~tenders~~Tenders/Quotes - The contract and any relevant correspondence and records (e.g. any documents which might have a bearing on the way the contract is interpreted) for at least 6 years after contract comes to an end. If made as a deed / under seal they must be kept forever.

(b) Un-successful ~~or late~~tenders/Quotes – for at least 2 years from the date the contract starts.

2.8 Contract Management, Evaluation and Review

All contracts must be managed in accordance with the Councils contract management framework

2.8.1–~~Contract managers should, for~~ For all ~~ordinary~~Ordinary and ~~major~~contracts: Major Contracts,

- ~~Maintain~~ An up to date ~~- risk registers~~ register should be maintained throughout the procurement ~~process~~ - and during the life of the contract ~~periods~~;
- ~~Undertake appropriate risk assessments~~;
- For identified risks, ~~ensure~~ appropriate actions ~~are~~ should be put in place to manage them.
- And~~There~~ should ~~regularly monitor~~ be regular monitoring and ~~report~~reports

during the contract period on:

- performance;
- compliance with programme, specification, terms and contract conditions;
- estimated final cost compared to budgets;
- any value for money requirements; and
- user satisfaction and risk management.

~~2.8.2 In relation to all major contracts the contract manager must carry out the project management role or appoint a named person to carry out that role. The contract manager is responsible for ensuring that role is carried out effectively. The contract manager must prepare a business case at the outset. Adequate resources to manage such contracts, for their entirety, must be identified in the business case. If the business case is approved the contract manager must prepare a procurement plan and submit it for approval to the assistant director finance & ICT.~~

~~2.8.3 Where a major contract is to be re-let, the information required by CSO 2.8.1 above, should be made available to the relevant assistant director early enough to enable lessons learnt to be identified and inform the approach to re-letting the contract.~~

~~3. 2.8.2 Before commencing any procurement for a Major Contract or a contract above EU thresholds the following steps must be completed~~

- ~~○ A lessons learnt report should be considered to inform the tendering process~~
- ~~○ A business case must be approved.~~
- ~~○ A procurement plan must be approved by the Chief Finance Officer.~~

Section B Officers' Responsibilities

3.1 General

~~3.1.1.4~~ **All Officers and any agents or consultants acting on their behalf must comply with these CSOs, financial regulations, the Code of Conduct and with all legal requirements. They must also comply with codes of practice, guidance and instructions regarding contractual arrangements issued by the assistant director finance & ICT and assistant director governance & policy. Chief Finance Officer or Monitoring Officer.**

3.1.2 **All Officers** must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the officer to show that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour is a crime and will lead to disciplinary proceedings and possible dismissal. Gifts and Hospitality should only be accepted in accordance with the Gifts and Hospitality policy.

~~3.2. **Contract managers**~~
~~must in relation to contracts for which they are~~ **1.3 Authorised Officers** (those

responsible: for conducting a procurement process) must

Ensure a) ensure they have all appropriate approvals before seeking any quotes ~~or tenders, commencing any procurement process~~ or awarding a contract;

Seek b) seek all necessary legal, procurement, financial, risk management and technical advice in good time; ~~and~~

Ensure c) ensure there is sufficient budgetary provision before awarding any contract-

Comply d) comply with the requirements of these CSOs and observe any codes of practice guidance or instructions relating to contracting matters issued by the ~~assistant director governance & policy and assistant director finance & ICT~~ Monitoring Officer or Chief Finance Officer ;

Ensure e) ensure there is a procurement plan approved by the ~~assistant director finance & ICT~~ Chief Finance Officer for major contracts and contracts above the applicable EU threshold-

~~f. Carry out the project management role or appoint a person to do so in relation to any major contract.~~

Check f) check whether a suitable ~~corporate contract~~ Corporate Contract exists before seeking to let a new contract. Where a suitable ~~corporate contract~~ Corporate Contract exists that contract must be used;

Ensure council g) ensure Council suppliers have sufficient insurance cover appropriate to the contract in accordance with the ~~council's~~ Council's insurance guidance;

Maintain h) maintain details of all ~~ordinary and major~~ contracts they are responsible for in the ~~contracts management system~~ Contracts Management System;

Ensure i) ensure a record is kept for every ~~ordinary and major~~ contract of ~~the method for obtaining bids; any contracting decision~~ any Contracting Decision and the reasons for it; any exemption from CSOs together with the reasons for it; and ~~the award criteria~~ any Award Criteria;

Ensure j) ensure that where an employee of the ~~council~~ Council or its contractor may be affected by any transfer arrangement TUPE and related issues are considered before proceeding with inviting ~~tenders~~ Tenders or quotations.

~~3.3~~ **Strategic directors**

2 Contract Managers must in relation to ~~their~~ directorate:

- ~~a. Nominate at least one member of their staff as the contracts *co-ordinator* for their directorate;~~
- ~~b. Submit the scheme of delegation for their respective directorate, including details of *contract managers* and their *contracts co-ordinators*, to the *assistant director governance & policy* and *assistant director finance & ICT* for approval;~~
- ~~c. Any delegation made does not prevent the strategic director from exercising those delegated powers his/herself.~~

~~Ensure all assistant directors and *contract co-ordinators within their directorate* they are sufficiently skilled in procurement matters to fulfil the duties of their post. responsible for carry out their responsibilities in accordance with the Contract Management Framework~~

3.43 Assistant Directors

must in relation to their ~~service~~ Service:

a) Ensure all ~~contract managers~~: officers

- Comply with CSOs;
- Are sufficiently skilled in procurement matters to fulfil the duties of their post;
and
- Complete any required learning and development.

~~b. Ensure the List of *contract managers* is maintained up to date and sent to the *assistant director governance & policy*;~~

b) Ensure there are effective systems in place to control budgets properly;

~~d. Ensure all major contracts have a named person to carry out the project management role for the entirety of the contract and that a business cases is prepared at the outset;~~

~~e. Ensure there are appropriate arrangements in place for the safekeeping of tenders until the appointed time of opening;~~

c) Ensure there are effective contract management arrangements in place for all ordinary and major contracts; and

contracts

~~g.-d) Provide any information requested by the assistant director finance & ICT and assistant director governance & policy regarding their contracts.~~

~~3.5 Strategic Director for Resources, Assistant Director Chief Finance & ICT and Assistant Director Governance & Policy Officer or the Monitoring Officer about their contracts.~~

~~3.5.1-4 Strategic Director for Resources~~

~~The strategic director for resources may exercise any of the powers and responsibilities of the assistant director finance & ICT and assistant director governance & policy Directors must in relation to contract standing orders except where he/she is not allowed to do so by law. their Directorate~~

~~3.5.2 The assistant director finance & ICT and assistant director governance & policy must report quarterly to the strategic director for resources relating to contracting matters and compliance with these contract standing orders and must provide any other information which he/she requests.~~

~~a) Nominate at least one member of their staff as *Contracts Co-ordinator*~~

~~b) Submit the scheme of delegation for their respective Directorate, including details of *Contract Managers* and their *Contracts Co-ordinators*, to the Monitoring Officer and Chief Finance Officer for approval;~~

~~Any delegation made does not prevent the Strategic Director from exercising those delegated powers his/herself.~~

~~c) Approve any proposals by their Directorate to provide services to external organisations~~

~~d) Ensure all Assistant Directors and *Contract Co-ordinators within their Directorate* are sufficiently skilled in procurement matters to fulfil the duties of their post.~~

3.5 Monitoring Officer and Chief Finance Officer

3.5.3 *Chief Finance Officer* and the Monitoring Officer may

~~(a) 3 The assistant director finance & ICT and assistant director governance & policy may:~~

~~with the consent of each other waive any provision of these CSOs subject to any legal constraints and may nominate other officers to exercise all or part of these powers on their behalf.~~

~~(b) Issue codes of practice, guidance and instructions on any matters which are relevant to contracting arrangements.~~

~~(c) Specify the approved learning and development requirements in procurement~~

matters that ~~officers~~Officers must complete to meet the minimum competency standards to fulfil their duties under CSOs.

3.5.4— ~~The assistant director finance & ICT may~~Chief Finance Officer shall

~~Veto the inclusion of any contractor in a contractor's list; or~~

(a) Approve procurement ~~plans for major contracts and contracts above the~~ applicable EU threshold.

3.5.5— The ~~assistant director governance & policy~~Monitoring Officer shall:

(a) Approve the form of contract to be used;

(b) Maintain central registers of all major contracts and all contracts completed under seal and arrange for the safekeeping of such contracts on ~~council~~Council premises; and

(c) Maintain a central register of all exemption applications relating to contracts ~~of £50~~
£100,000 or more.

3.6 **Contract ~~ee~~Co-ordinators**

shall, on behalf of their ~~directorate~~Directorate

a) Ensure details of ~~all ordinary and major~~ contracts are accurately recorded and maintained in the ~~contracts management system~~Contracts Management System;

b) Be authorised to approve exemptions from undertaking a competitive process for minor contracts;

c) Submit ~~an annual report by 31 March each year to the assistant director governance & policy~~ Monitoring Officer detailing any exemptions that they have approved.

Section C

— The Contracting Process

This section sets out in more detail the requirements to be met when dealing with a specific contract.

4. Steps Prior to Purchase

4.1 Before beginning a purchase, ~~contract managers~~Authorised Officers must:

- a) Assess the need for the expenditure;
- ~~b)~~ Define the objectives of the purchase;
- ~~c)~~ Calculate the ~~total value~~Total Value;
- ~~d)~~ Make sure that ~~the~~ appropriate ~~authority~~approval is in place to start the process and that the budget covers the whole-life financial commitment being made (including any consultant's or other external charges or fees);
- ~~e)~~ Make sure the ~~forward plan~~Forward Plan requirements have been followed where the purchase is a ~~key decision~~Key Decision;
- ~~f)~~ Ensure sufficient legal, procurement, finance, risk management and technical support is available throughout the entire procurement process;
- ~~g)~~ Ensure sufficient resources will be available (i.e. people with sufficient skills and capacity) to manage the contract once it has been let;
- ~~fh)~~ Ensure the ~~purchase is a major contract~~Council's requirements for data security and the General Data Protection Regulations are met
- ~~i)~~ Consider when commissioning services whether these could improve the economic, social and environmental wellbeing of the area (social value)

~~4.2~~ For Major contracts or contracts above the ~~applicable~~relevant EU threshold ~~submit~~

- ~~i.~~ Consider a lessons learnt report from the last tender process
- ~~ii.~~ Produce a business case for approval by the appropriate body
- ~~iii.~~ Submit a fully completed procurement plan for approval by the ~~assistant director finance & ICT~~Chief Finance Officer

~~4.2~~ Contract managers must:

- ~~ii-iv.~~ Where no suitable corporate contract exists ~~carry~~Carry out an options appraisal to decide the best way to achieve the purchasing objectives, including internal or ~~external~~ ~~sourcing~~, ~~partnering~~, and ~~collaborative~~ procurement arrangements with another public authority or government department;
- ~~iii-v.~~ Consult users where appropriate about the proposed procurement, contract standards, performance and user satisfaction monitoring;
- ~~vi.~~ Consult the market where appropriate in accordance with CSO 4.3
- ~~iv-vii.~~ Assess the risks and how to manage them;

v.viii. Agree with the ~~assistant director governance & policy~~ Monitoring Officer, the approved form of contract to be used or if none ~~for the type of purchase~~ the terms and conditions that are to apply to the proposed contract; ~~and~~

~~e. Set out these matters in writing and create an entry in the contracts management system for all ordinary and major contracts.~~

Pre-Tender Market Research and Consultation

4.3 ~~Contract managers~~ Authorised Officers may ~~consult~~ potential ~~suppliers~~ prior ~~to~~ the ~~issue~~ of ~~an invitation~~ Invitation to ~~tender in general terms~~ Tender about the nature, level and standard of the supply, contract packaging and other relevant matters. Records must be kept of this consultation.

4.4 ~~Contract managers~~ Authorised Officers ~~must not~~ once any consultation period under 4.3 has ended seek ~~or~~ accept ~~technical~~ advice ~~on~~ the preparation of ~~an invitation~~ the actual Invitation to ~~tender~~ Tender or ~~quotation~~ Quotation from anyone who may have a commercial interest in bidding for the contract as this may prejudice the equal treatment of all potential ~~tenderers~~ Tenderers and distort competition.

Prevention of Corruption

4.5 The following clause must be included in every ~~council~~ Council contract:

"The ~~council~~ Council may terminate this contract and recover all its loss if the ~~contractor~~ Contractor, its employees or anyone acting on the ~~contractor's~~ Contractor's behalf do any of the following things:

(a) Offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other ~~council~~ Council contract (even if the ~~contractor~~ Contractor does not know what has been done); or

(b) Commits an offence under the Bribery Act 2010 or s117(2) of the Local Government Act 1972; or

(c) Commits any fraud in connection with this or any other ~~council~~ Council contract whether alone or in conjunction with ~~council~~ Council members, contractors or employees.

Any clause limiting the ~~contractor's~~ Contractor's liability shall not apply to this clause".

~~5. Advertising and Framework Agreements~~

~~5.1 Advertising and assessing potential tenderers~~

~~5.1.1 The minimum advertising requirements are:~~

- ~~• All contracts above £50,000 must be published on the council's website.~~
- ~~• All contracts exceeding the applicable EU threshold must be published in Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED).~~

~~Advertisements for contracts exceeding the applicable EU threshold should not appear on the council's website until after they have appeared in the OJEU Journal.~~

~~5.1.2 Within reasonable costs contract managers should seek to maximise publicity to encourage competition. Examples of where further advertisements may be appropriate include portal websites specifically created for contract advertisements e.g. contract finder or national official journals.~~

~~5.1.3 Contract managers are responsible for ensuring that all tenderers for a contract are suitably assessed. The assessment process shall establish that all potential tenderers have sound economic and financial standing and sufficient technical ability and capacity to fulfil the requirements of the council.~~

~~5.2 Framework Agreements~~

~~5.2.1 The term of a framework agreement must not exceed four years without the written consent of the assistant director governance & policy. Also, an agreement must not be concluded with only two providers (i.e. it must be with either one or three or more providers) unless more than two were sought but only two met the award criteria.~~

~~5.2.2 Contracts based on framework agreements may be awarded by either:~~

- ~~• Applying the terms laid down in the framework agreement (where such terms are sufficiently precise to cover the particular call off) without reopening competition;~~
~~or~~
- ~~• Where the terms laid down in the framework agreement are not precise enough for the particular call off, by holding a mini competition in accordance with the following procedure:~~

~~• Inviting the organisations within the framework agreement who are capable of delivering the contract to submit written tenders;~~

- ~~• Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;~~
- ~~• Awarding each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement; and~~
- ~~• Observing the standstill period before finalising the award for contracts above the EU threshold.~~

6. Conducting a Purchase ~~or Disposal~~

65.1 Purchasing – Competition Requirements

65.1.1—Where the ~~total value~~Total Value for a purchase is within the values in the first column below, the ~~award procedure~~Award Procedure in the second column must be followed as a minimum.

Total Value	Award Procedure
Minor -- up to £10,000	One oral quotation <u>Quotation</u> confirmed in writing.
Minor - £10,000 to below £50 <u>£100,000</u>	Three written quotations <u>Quotations</u> of which <u>at least one</u> should be local if appropriate. Local means has a place of business in Warwickshire.
Ordinary & Major £50 <u>£100,000</u> or more	Invitation to tender <u>Tender</u> to at least three tenderers <u>Tenderers</u> . <i>If the contract value exceeds the applicable EU threshold the procedure must also be EU compliant.</i>

65.1.2— Where ~~the an~~ EU ~~Procedure~~compliant procedure (or UK replacement procedure) is required the ~~contract manager~~Authorised Officer shall consult the ~~head~~Head of ~~procurement~~Procurement to determine the method of conducting the purchase.

65.2 The Appointment of Consultants to Provide Services

65.2.1— Professional ~~consultants~~Consultants are subject to the same competition requirements as any other type of contract and must be selected and commissions awarded in accordance with these CSOs.

65.2.2 — The engagement of a ~~consultant~~Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided, the total cost to be paid and any stage payment arrangements. The engagement shall also be subject to completion of a contract of appointment. Self-employed consultants must not fall within the off-payroll working rules i.e. IR35.

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5.2.3— Records of consultancy appointments shall be maintained in accordance with these CSOs and entered on the Contract Management System

65.2.4 -Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the ~~council's insurance manager~~Council's Insurance Manager for the periods specified in the respective

agreement.

6. Advertising and Framework Agreements

6.1 Advertising the Opportunity

6.1 The minimum advertising requirements are

- All contracts with an estimated aggregate value above £100,000 must be published on the Council's website and in Contracts Finder
- In addition to the above all contracts exceeding the applicable EU threshold must be published in the Official Journal of the European Union (OJEU) or meet any replacement UK requirement
- Advertisements for contracts exceeding the relevant EU threshold should not appear on the Council's website or in Contracts Finder until after they have appeared in the OJEU.
- If you choose to advertise contracts below £100,000 you must also advertise on Contracts Finder

6.2 Framework Agreements

6.2.1 The term of a Framework Agreement must not exceed four years without the written consent of the *Monitoring Officer*.

6.2.2 Contracts based on framework agreements may be awarded by either

- Applying the terms laid down in the framework agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; **or**
- Where the terms laid down in the framework agreement are not precise enough by holding a mini competition in accordance with the following procedure:
 - Inviting the organisations within the framework agreement who are capable of delivering the contract to submit written tenders;

~~7. The Council as Fixing a Supplier – Providing Works, Goods or Services to External Organisations~~

~~7.1 The *assistant director finance & ICT* and *assistant director governance & policy* must be consulted where contracts to work for organisations other than the council are contemplated.~~

~~7.2 *Contract managers* shall produce robust business cases for the council acting as a supplier time limit which fully takes into account the costs to the council of delivering the goods, works or services concerned. The financial viability of such business cases must be approved by the *assistant director finance & ICT*.~~

~~7.3 Contract managers shall liaise with the council's insurance manager to ensure any potential liabilities are is sufficiently covered by the council's insurance policies.~~

~~7.4 Where the total value of the proposed long to allow tenders for each specific contract is likely to be £1,000,000 or more the key decision regime applies **and before** tenders are prepared the assistant director finance & ICT and assistant director governance & policy must jointly approve the business case including:~~

~~o Confirming the council can legally enter into to be submitted, taking into account factors such as the complexity of the subject of the contract; and~~

~~b. Accepting Awarding each contract to the legality of tenderer who has submitted the charging arrangements; and~~

~~c. Approving best tender on the terms and conditions basis of the proposed contract.~~

~~8. Disposal of Assets~~

~~8.1 Assets for disposal must be sent to public auction except where:~~

~~a. Better value for money is likely to be obtained by inviting quotations or tenders; or~~

~~o The prior approval of award criteria set out in the assistant director finance & ICT and assistant director governance & policy has been obtained to the selling of specified items on an auction website such as eBay; or framework agreement.~~

~~c. Specific disposal procedures have been agreed by the council for certain types of assets.~~

~~o 9 Observing a standstill period before finalising the award for contracts above the EU threshold.~~

7. Collaborative and partnership arrangements

~~9~~

~~7.1 In order to secure value for money the ~~council~~Council may enter into collaborative procurement arrangements. The ~~contract manager~~Authorised Officer must consult the ~~assistant director governance & policy~~Monitoring Officer and ~~head~~the Head of ~~procurement~~Procurement where the purchase is to be made using collaborative procurement arrangements.~~

~~97.2 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.~~

~~97.3 Collaborative arrangements between public authoritiesbodies for shared services where the aim of the arrangement is for the participating authoritiesbodies~~

to be provided with services by each other or through a *Teckal* company rather than by an external provider may fall outside the need for competition if the conditions in CSO 2.2(e) (iii) can be met.

~~10.~~

~~8~~ **Setting Standards and Award Criteria**

~~108.1~~ ~~1~~ The ~~contract manager~~ Authorised Officer must, before seeking ~~prices~~ bids, define ~~selection~~ the Selection and ~~award criteria~~ Award Criteria that are appropriate to the purchase and designed to secure an outcome giving value for money for the ~~council~~. ~~The basic criterion shall be:~~ Council.

8.1.2 Authorised Officers are responsible for ensuring that all Tenderers for a contract are suitably assessed. The assessment process shall establish that all potential Tenderers have sound economic and financial standing and sufficient technical ability and capacity to fulfil the requirements of the Council.

- ~~i.~~ 8.1.3 The criterion for award of a contract shall be the "most economically advantageous" (where considerations other than price also apply);
~~ii.~~ "lowest price" where payment is to be made by the council; or
~~iii.~~ "highest price" if payment is to be received.

~~If the first criterion is adopted, it". This~~ must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance, social value and any other relevant matters.

~~108.2~~ Selection and award criteria Award Criteria must not include:

~~>~~ Non-commercial considerations Commercial Considerations; or

~~>~~ matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.

~~108.3~~ ~~Any shortlisting~~ Shortlisting exercise must have regard to the financial and technical standards relevant to the contract and the ~~selection~~ Selection and ~~award criteria~~ Award Criteria.

~~10.4~~ ~~Full details about the scoring of a pre-qualification questionnaire (PQQ), including any weighting 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.~~

~~10.5 As soon as reasonably practical, the contract manager must notify those tenderers who are eliminated at the pre-qualification (selection) stage of a shortlisting process. The letter needs to give reasons why the tenderer was unsuccessful.~~

~~11.~~

9 Invitations to Tender / Quotations

~~11~~

~~9.1 All invitationsInvitations to tenderTender or quotationQuotation must:~~

~~a) _____ Specify the goods, service or works that are required, together with the terms and conditions of contract that will apply; and.~~

~~b) _____ State that the councilCouncil is not bound to accept any quotationQuotation or tenderTender.~~

~~11c) Include a reference and link to the Council's Whistleblowing Code.~~

~~9.2 — All tenderersTenderers invited to tenderTender or quoteQuote 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.~~

~~119.3_ All invitationsInvitations to tenderTender shall include:~~

~~a) _____ Clear instructions on how and where tendersTenders are to be submitted, together with the date and time by which they are to be received;~~

~~b) _____ A specification that describes the council'sCouncil's requirements in sufficient detail to enable the submission of competitive offers;~~

~~c) _____ A description of the award procedure and, unless defined in a prior advertisement, Award Procedure ;~~

~~d) _____ Full details of about how the award bids will be assessed including any weighting and sub-criteria in objective terms that apply and any "pass mark" for any stage of the procurement;~~

~~d. An outline of the method by which any arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa; and~~

~~_____ e) _____ Information on the council'sCouncil's policies and requirement on: as appropriate e.g.:~~

~~i. _____ Equalities;~~

ii. Complaints;

- i. ~~Sustainable procurement;~~
- ii. ~~Public interest reporting code (whistle-blowing);~~
- iii. ~~Business continuity;~~
- iv. ~~Risk; and~~
- v. ~~Special contract arrangements where contracts are awarded to sheltered workshops.~~

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iii. Sustainability

9.4 — All ~~invitations~~Invitations to ~~tender~~Tender shall state that any ~~tender~~Tender received after the date and time stipulated in the ~~invitation~~Invitation to ~~tender~~Tender might be rejected and not considered.

119.5 All ~~invitations~~Invitations to ~~tender~~Tender shall include requirements for ~~tenderers~~Tenderers to:

- a) Declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the ~~tenderer~~Tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose e.g. legal, financial advice etc); and
- b) Complete fully and sign ~~all tender documents including~~ a form of tender and certificates relating to canvassing and non-collusion.
- c) Submit ~~tenders~~Tenders to the ~~council~~Council on the basis that they are compiled at the ~~tenderer's~~Tenderer's expense.

119.6 — ~~An~~ The Councils approved ~~E-tendering~~ system ~~should~~must be ~~used~~ in ~~preference to any paper based arrangement for all competitive procurement activity unless agreed otherwise by the Head of Procurement or otherwise approved by these CSOs~~

119.7— No tender will be considered unless submitted in accordance with the ~~requirements of the e-tendering system. If a paper based system is being used tenders should be enclosed in sealed envelope or container which bears~~Conditions of Participation included within the word 'Tender' followed by the contract reference number and subject to which it relates but no other name or mark indicating the sender.Invitation to Quote/Tender

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10. Submission, Receipt and Opening of Tenders

~~4210.1~~ ~~_____~~ Tenderers must be given an adequate period in which to prepare and submit a ~~tender~~Tender, consistent with the complexity of the contract. The *EU Procedure* lays down specific time periods.

~~4210.2~~ All ~~tenders~~Tenders must be returned:

~~In accordance with the system requirements of an electronic tendering system, the Council's approved jointly by the assistant director finance & ICT and assistant director governance & policy (electronic tender process); or E Tendering system~~

~~b. To the respective assistant director or his/her nominee in a plain sealed envelope or container which bears the word 'Tender' followed by the contract reference number and subject to which it relates but no other name or mark indicating the sender (paper tender process).~~

~~10.3~~ Tenders received by fax or other electronic means (e.g. email) must be rejected. Quotations for ~~minor contracts~~Minor Contracts under £10,000 may be received by email.

~~12.3~~ Assistant directors are responsible for the safekeeping of ~~tenders~~ until the appointed time of opening. Each ~~tender~~, immediately on receipt, must be:

~~a. Suitably marked to indicate the date and precise time it was received (an approved electronic tendering system will automatically log these details);~~

~~b. Recorded in a tender record log, so as to provide a separate record of the precise time and date it was received (an approved electronic tendering system will automatically log these details); and~~

~~c. Adequately protected to guard against amendment of its contents.~~

~~d. Tenders returned via an approved electronic tendering system will automatically satisfy the requirements of (a),(b) and (c) above.~~

~~4210.4~~ ~~_____~~ Assistant directors must ensure that all ~~tenders~~ All Tenders are opened at the same session after the period for their submission has ended. ~~Tenders~~ must be opened in the presence of at least two officers. ~~In relation to major contracts one of the officers must be the assistant director governance & policy or his/her representative unless the tenders are returned via an approved electronic tendering system.~~

~~4210.5~~ ~~_____~~ Tenders returned via an approved electronic tendering system will automatically satisfy the requirements of CSO 12.6.

~~12.6~~ Upon opening the tenders, a summary of the main terms of each ~~tender~~ must be recorded on a tender Opening Control Sheet. Each ~~officer~~ must sign and date the tender Opening Control Sheet. 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.

~~12.7~~ The arithmetic in compliant ~~tenders~~Tenders must be checked. If arithmetical errors are found they should be notified to the ~~tenderer~~Tenderer, who should be requested to confirm their ~~tender~~. ~~If the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.~~Tender.

~~12.8~~ ~~Tenders received after the date and time stipulated in the invitation to tender should normally be rejected unless there are exceptional circumstances and may only be considered with the approval of the assistant director governance & policy.~~

~~13.~~

11 Clarification Procedures and Post-Tender Negotiations

~~1311.1~~ ~~_____~~ Providing clarification of an ~~invitation~~Invitation to ~~tender~~Tender to potential or actual ~~tenderers~~Tenderers or seeking clarification of a ~~tender~~Tender whether in writing or by way of a meeting is permitted.

~~1311.2~~ ~~_____~~ However, discussions with tenderers after submission of a ~~tender~~Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post tender negotiations) **must be the exception** rather than the rule. In particular, such negotiations must not be conducted ~~in~~during an EU Procedure (other than within the provisions of the EU negotiated Competitive With Negotiation (CWN) and ~~competitive dialogue~~Competitive Dialogue (CD) procedures) without the agreement of the ~~assistant director governance & policy~~Monitoring Officer.

~~13~~

~~11.3~~ ~~_____~~ If post tender negotiations appear necessary after a single stage tender or after the second stage of a two stage tender then you should take legal advice on whether negotiations are permissible. Normally such negotiations should be undertaken with all those who have met the selection criteria in the original process. During negotiations, the ~~council's~~Council's requirements set out in the original procedure should not be substantially altered. The prior approval of the ~~assistant director governance & policy~~Monitoring Officer is required to any proposal to negotiate in other circumstances.

14.12 Evaluation, Award of Contract and Debriefing Tenderers

~~1412.1~~ ~~_____~~ Apart from the debriefing required or permitted by these CSOs, the confidentiality of ~~quotations, tenders~~Quotations, Tenders and the identity of ~~tenderers~~Tenderers must be preserved at all times and information about one ~~tenderer's~~Tenderer's response must not be given to another during the evaluation process.

~~1412.2~~ Quotations and ~~tenders~~Tenders must be evaluated in accordance with the ~~award criteria~~Award Criteria.

During this process, ~~contract managers~~ Authorised Officers shall ensure that

submitted tender prices are compared with any pre-tender estimates and that any significant differences are examined and resolved satisfactorily.

~~1412.3 — Where the total value is £50,000 or more, contract managers~~ For Ordinary and Major Contracts, Authorised Officers must advise all ~~tenderers~~Tenderers in writing of their award decisions. For contracts that are subject to the EU Procedure or UK replacement Procedure, this must be in the form of intention to award letters (award notification letters) that are issued simultaneously to all ~~tenderers~~Tenderers advising them of the intention to award the contract to the successful ~~tenderer~~Tenderer and providing them with a 'standstill period' of at least 15 days (10 days if notification letters are sent by ~~fax or electronic means~~via the Councils approved E tendering system) in which to challenge the decision before the contract award is confirmed.

~~1412.4 — Award—~~ For contracts that are subject to the EU Procedure or UK replacement procedure, the Councils 'intention to award notification ~~letters~~letter' standard template must ~~include~~be used which includes the following debriefing information, ~~and no additional details should be given without taking the advice of the assistant director governance & policy.~~

i. How the award criteria were applied;

ii. The name of the successful ~~tenderer~~Tenderer(s);

iii. The score/price of the tenderer, Tenderer, together with the score/price of the successful tenderer/Tenderer/s;

iv. Details of the reason for the decision, including the characteristics and relative advantages of the successful ~~tender~~Tenderer/s; and

v. Confirmation of the date before which the ~~council~~Council will not enter into the contract (i.e. the date after the end of the 'standstill period').

~~1412.5 — If a decision is challenged by an unsuccessful tenderer~~Tenderer, after the issue of an intention to award notification letter, then the ~~contract manager shall not award the contract but~~Authorised Officer shall immediately inform the ~~assistant director finance & ICT~~Chief Finance Officer and seek the advice of the ~~assistant director governance & policy~~Monitoring Officer on next steps. No contract may be awarded until the Chief Finance Officer and the Monitoring Officer are satisfied that the matter has been resolved.

~~1412.6 — Assistant directors~~Authorised Officers shall ensure that ~~contracts~~all the contract formalities are ~~awarded by completion~~completed following the award of the contract ~~formalities.~~ (See CSO 2.5)

13 Publication of Contract Awards

13.1 The award of all contracts over £5,000 must be published via the Councils contract management system

13.2 In addition the award of all contracts over £25,000 must be published on contracts finder

13.2 In addition the award of contracts above the relevant EU threshold must be published in OJEU

14. The Council as a supplier - providing works, goods or services to external organisations

14.1 The *Chief Finance Officer* and the *Monitoring Officer* must be consulted where work for an external organisation is contemplated.

14.2 Any proposals to work for an external organisation must be approved by the *Strategic Director* responsible for the service either through a business plan or otherwise.

14.3 *Authorised Officers* shall produce robust business cases for the Council acting as a supplier which fully takes into account the costs to the Council of delivering the goods, works or services concerned. The financial viability of such business cases must be approved by the *Chief Finance Officer*.

14.4 *Authorised Officers* shall liaise with the Council's Insurance Manager to ensure any potential liabilities are sufficiently covered by the Council's insurance policies.

14.5 Where the *Total Value* of the proposed contract is likely to be £1,000,000 or more the key decision regime applies **and before** tenders are prepared the *Chief Finance Officer* and the *Monitoring Officer* must jointly approve the business case including:

- a) Confirming the Council can legally enter into the contract;
- b) Accepting the legality of the charging arrangements; and
- c) Approving the terms and conditions of the proposed contract.

15. Disposals

15.1 Assets for Disposal must be sent to public auction except where:

- a) Better value for money is likely to be obtained by inviting Quotations or Tenders or
- b) The prior approval of the Chief Finance Officer and the Monitoring Officer has been obtained to the selling of specified items on an auction website such as eBay, or
- c) Specific disposal procedures have been agreed by the Council for certain types of Assets

16. Approved Scheme for Sale of Assets/Goods via Public Auction

16.1. Goods or assets may be disposed of via public auction, whether through electronic auctions such as ebay or otherwise, without further specific consent being sought provided the following conditions are met

- (a) The Council owns the item and has the right to sell it.
- (b) Appropriate market research has been carried out to establish the estimated value of the item
- (c) The estimated value of the item to be auctioned does not exceed £10,000
- (d) A reasonable reserve price is set for the item based on the estimated value
- (e) The item is withdrawn from sale if it does not reach its reserve price
- (f) The item is in good working condition and fit for purpose, and complies with relevant legislation, in particular;
 - i. Any electrical item bears a valid Electrical Safety Check label, completed by a registered electrician who is registered on the Kite Mark Scheme, the Electrical Safety Register or the Electric Safe Register. The date of the inspection on the label must not be more than 12 months prior to the date of sale
 - ii. Any item of furniture complies with the Furniture and Furnishings (Fire Safety) Regulations 2010. Any item of furniture, with the exception of mattresses and bed bases, will have a permanent label in compliance with the Regulations.
 - iii. Any computer or data storage device is adequately wiped of data, to ensure that no information, particularly personal data remains on the device.
- (g) When an item is disposed of, any listing or description of it must NOT give any indication that the Council provides any guarantee for the product or any promise to make good any defects. All items are to be carefully and truthfully described in detail and any known defects highlighted.

ITEM IS SOLD AS IS: SELLER DISCLAIMS ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR DESIGN

(h) A record of the steps taken under (a) to (g) is kept for a period of 2 years

16.2. Applications for approval of the disposal of goods/assets by auction which do not meet the above conditions should be made using the relevant exemption form i.e.

(a) An item with an estimated value of up to £100,000 to the Directorate Contract Co-ordinator

(b) An item with an estimated value of £100,000 or more to the Monitoring Officer and Chief Finance Officer

GUIDANCE NOTES

An individual purchasing goods at auction without the opportunity to inspect the goods may still have consumer rights i.e. that the goods -

- Are of a satisfactory quality
- Do what they are designed to do
- Are as described, matching any pictures or descriptions of them
- Are safe, under the Consumer Protection Act 1987

Other matters to be aware of

- Misrepresentation of goods - A customer is entitled to a refund on goods that have been misrepresented, for example, goods sold on the basis of features they do not have. Prosecution can also follow, if the misrepresentation is reported to Trading Standards.
- Faulty goods - It is the Council's responsibility to arrange for the collection of faulty goods, particularly large items. If a customer returns faulty goods within a reasonable time, the Council is obliged to give a refund, and not a credit note. If a repair of a faulty good is unsatisfactory, a customer is still entitled to a refund.
- Time to check goods –on-line auctions - Customers have the right to the time to check they are satisfied with their goods, though this can be just a week

~~Definitions~~ Appendix

"Agent"	A person or organisation acting on behalf of the council <u>Council</u> .
"Contract Managers" <u>Authorised Officer</u>	Those officers authorised by their strategic directors to carry out the day to day activities required to let and manage a contract. <u>An officer responsible for conducting a procurement</u>
"Award Criteria"	The criteria by which the successful quotation <u>Quotation</u> or tender <u>Tender</u> is to be selected. (see further CSO 10 <u>12</u>)
"Award Procedure"	The procedure for awarding a contract as specified in CSO 14. _____
"Tenderer" <u>Any person who asks or is invited to submit a quotation or tender.</u>	
"Code of Conduct"	The ' Officers' <u>Officers</u> Code of Conduct' (see part <u>See Part</u> 4 section 4 of the council's constitution <u>).</u> <u>Constitution</u>)
"Consultant"	Someone engaged for a specific length of time to work to a defined project brief with clear outcomes to be delivered, and who brings specialist skills or knowledge to the role.
"Contracting Decision"	Any of the following decisions: <ul style="list-style-type: none"> • withdrawal of invitation<u>Invitation</u> to tender<u>Tender</u> • whom to invite to submit a quotation<u>Quotation</u> or tender<u>Tender</u> • Shortlisting • award of contract • any decision to terminate a contract.
"Contracts Co-ordinator"	Officers nominated by strategic directors <u>the Strategic Directors</u> in accordance with CSO 3. 6 <u>7</u> as the point of contact within their directorate for matters relating to procurement and contracting, and who are authorised to grant exemptions from competition for minor contracts.
"Corporate Contract"	A contract entered into directly by the council <u>Council</u> that can be utilised by all assistant directors <u>Assistant Directors</u> for the supply of the goods, works or services specified within its terms. Also, a contract which the head of finance <u>Chief Finance Officer</u> has confirmed may be legally utilised by the council <u>Council</u> either through a sub-regional collaborative arrangement, or through purchasing organisations such as the Government Procurement Service (formerly OGC Buying Solutions) and ESPO. <u>Crown Commercial Services (CCS) ESPO, SCAPE etc..</u>
<u>Contract</u>	<u>Those officers carrying out post award management of the</u>

<u>Managers</u>	<u>contract in accordance with the contract management framework.</u>
"Designated Officer"	The chief executive, the strategic director <u>Chief Executive, Strategic Director</u> for resources <u>Resources</u> and any other officer authorised by either or both of them-
"ESPO"	The Eastern Shires' Purchasing Organisation-
"EU Procedure"	The procedure required by the EU <u>or UK replacement</u> where the total value <u>Total Value</u> exceeds the EU <u>Threshold or any UK replacement</u> threshold-
"EU Threshold"	The contract value at which the EU public procurement directives <u>or UK replacement procedure</u> must be applied-
"Forward Plan"	The <u>forward plan, which is prepared on a rolling basis and contains matters which the</u> council <u>Council</u> has reason to believe are likely to be the subject of key decisions during the following four months.
"Framework Agreement"	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
" Assistant Director <u>Chief Finance & ICT</u> " <u>Officer</u>	The Assistant <u>officer to whom the statutory role is delegated (currently Strategic Director Finance & ICT</u> <u>Resources</u> or his/her specified nominee-)
" Assistant Director Governance & Policy " <u>Monitoring Officer</u>	The <u>The officer to whom the statutory role is delegated (currently Assistant Director Governance & Policy or his/her specified nominee-)</u>
"Invitation to Tender"	An invitation <u>Invitation</u> to tender <u>Tender</u> sent to tenderers <u>Tenderers</u> inviting bids for works goods or services-
<u>Key Decision</u>	<u>Decisions that are defined as Key Decisions in the Constitution</u> In relation to letting contracts, the key decision <u>Key Decision</u> is the proposal to let a contract for a particular type of work. The subsequent decision to award the contract to a specific contractor will not be a key decision provided the value of the

	contract does not vary above the estimated amount by more than 10% for contracts with a value of £1,000,000 or more.
"Major Contract"	A contract <u>Contract</u> that has a total value <u>Total Value</u> of £1,000,000 or more.
"Minor Contract"	A contract <u>Contract</u> where the total value <u>Total Value</u> is less than £50 <u>£100</u> ,000.
"Non-Commercial Considerations"	<p><u>(a) _____ the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ("workforce matters");</u></p> <p><u>(b) _____ whether the terms on which contractors contract with their sub- contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;</u></p> <p><u>(c) _____ any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;</u></p> <p><u>(d) _____ the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ("industrial disputes");</u></p> <p><u>(e) _____ the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;</u></p> <p><u>(f) _____ any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;</u></p> <p><u>(g) _____ financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;</u></p> <p><u>(h) _____ use or non-use by contractors of technical or professional services provided by the authority under the</u></p>

	<p><u>Building Act 1984 or the Building (Scotland) Act 1959.</u></p> <p><u>Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations for the purposes of s17(5) Local Government Act (LGA) 1988 and part 1 of the LGA 1999 (Best Value); or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (“TUPE”) may apply.</u></p>
<u>Officer</u>	<u>A person employed by the Council</u>
<u>Ordinary Contract</u>	<u>A Contract where the Total Value is £100,000 or more but is less than £1,000,000.</u>
<u>Pecuniary Interest</u>	<u>Any direct or indirect financial interest. An indirect interest is distinct from a direct interest in as much as it is not a contract to which the member or employee is directly a party. A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the greater) is not a pecuniary interest for the purposes of these CSOs</u>
<u>Personal Care Services</u>	<u>Services provided to people who have personal care needs as assessed by the Strategic Director for People. As such these Services can be provided to people of all ages whose needs may result from old age, physical disability, sensory loss, mental illness or learning disability.</u>
<u>Quotation</u>	<u>A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender)</u>
<u>Relevant Contract</u>	<u>A contract to which these Contract Standing Orders apply (see CSO 1</u>

<u>Selection Criteria</u>	<u>The criteria by which Tenderers are chosen to be invited to submit Quotations or Tenders</u>
<u>Shortlisting</u>	<u>The process of selecting Tenderers who are to be invited to submit Quotations or Tenders or to proceed to final evaluation as part of a Restricted, Competitive with Negotiation or Competitive Dialogue Procedure</u>
<u>Teckal company</u>	<u>A company which meets particular legal requirements relating to its ownership and activities i.e. wholly public sector owned and its main business is providing services to its members. Take legal advice on whether or not a proposal meets the requirements.</u>
<u>Tender</u>	<u>A Tenderer's proposal submitted in response to an Invitation to Tender.</u>
<u>Tenderer</u>	<u>Any person who asks or is invited to submit a Quotation or Tender</u>
<u>Total Value</u>	<u>As defined in CSO 2.1</u>
<u>TUPE</u>	<p>whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only; <u>Transfer of Undertakings (Protection of Employment) Regulations 2006 [SI2006 No.246]</u></p> <p><u>Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the Council are transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a 'contracting-out' or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that</u></p>

	<u>the rights of employees are transferred along with the business.</u>
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~~(c) any involvement of the business activities or interests of contractors with irrelevant fields of government policy;~~

- ~~(d) the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ("industrial disputes");~~
- ~~(e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;~~
- ~~(f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;~~
- ~~(g) financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;~~
- ~~(h) use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.~~

~~Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations for the purposes of s17(5) Local Government Act (LGA) 1988 and part 1 of the LGA 1999 (Best Value); or where there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") may apply.~~

"Officer"

~~A person employed by the council.~~

"Ordinary Contract"

~~A contract where the total value is £50,000 or more but is less than £1,000,000.~~

"Pecuniary Interest"

~~Any direct or indirect financial interest. An indirect interest is distinct from a direct interest in as much as it is not a contract to which the member or employee is directly a party. A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the greater) is not a pecuniary interest for the purposes of these CSOs.~~

"Personal Care Services"

~~Services provided to people who have personal care needs as assessed by the strategic director for people. As such these services can be provided to people of all ages whose needs may result from old age, physical disability, sensory loss, mental illness or learning disability.~~

"Quotation"

~~A quotation of price and any other relevant matter (without the formal issue of an invitation to tender).~~

"Relevant Contract"

~~A contract to which these contract standing orders apply (see CSO 1).~~

"Selection Criteria"

~~The criteria by which tenderers are chosen to be invited to submit quotations or tenders.~~

"Shortlisting"

~~The process of selecting tenderers who are to be invited to submit quotations or tenders or to proceed to final evaluation.~~

"Teckal company"

~~A company which meets particular legal requirements relating to its ownership and activities i.e. wholly public sector owned and its main business is providing services to its members. Take legal advice on whether or not a proposal meets the requirements.~~

"Tender Record Log"

~~The logs kept by heads of service to record details of tenders received (see CSO 12).~~

"Tender"

~~A tenderer's proposal submitted in response to an invitation to tender.~~

"Total Value"

~~As defined in CSO 2.1.~~

"TUPE" Transfer of Undertakings (Protection of Employment) Regulations 2006 [SI2006 No.246]

~~Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the council are transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a 'contracting out' or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along~~

with the business.