

SECTION 3 – CONTRACT STANDING ORDERS

Council rules for buying and supplying goods, works, or services and for disposing of assets
Effective from 1 April 2019

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 for Governance & Policy.

SECTION A

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;
- Comply with all legal requirements;
- Support the 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 for the purposes of CSOs is any arrangement made by, or on behalf of, the 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 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 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;
- b. Agreements for the acquisition, disposal, or transfer of land;

- c. Contracts entered into by or on behalf of the monitoring officer for the appointment of counsel and/or experts; or
- d. Loans to banks or other financial institutions and investments made in accordance with the treasury management strategy.

2. GENERAL REQUIREMENTS

2.1 Classification and Valuation of Contracts

The following classifications apply for the purposes of CSOs:

- Minor contract – total value less than £100,000
- Ordinary contract – total value of £100,000 or more but below £1,000,000
- 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:

- a. fixed term contracts - the total price expected to be paid during the whole of the contract period, including possible extensions; or
- b. where the contract period is uncertain, multiply the price expected to be paid each month by 48.
- c. if the purchase involves a series of separate transactions for the same type of item, the 'total value' is the expected aggregate value of all of those transactions in the coming 12 months.
- d. for feasibility studies, it is the value of the scheme or contracts which may be awarded as a result.

An *officer* **must not** select a method of calculating the *total value* in order to void the 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 permitted by these CSOs.
 - b. Adequate resources should be identified to manage the procurement and any contracts awarded.
 - c. Any contract which exceeds the relevant EU threshold (or replacement threshold set by the UK government) must comply with any legal requirements 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 **and** any contract which exceeds the relevant EU threshold or UK equivalent. The procurement plan must be submitted to the chief finance officer and approved before the procurement process commences.

e. Only approved E-systems should be used, and advice should be sought from the 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.

f. The following are excluded from the requirement for competition:

- i. Purchases made via a 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*.
- ii. Contracts entered into through sub-regional working or collaboration with other local authorities or public bodies, where a competitive process has been followed that complies with the CSOs of the lead organisation 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 bodies which the 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 bodies;
 - The collaborating public bodies when acting together exercise the same kind of control over the service as they would over an in-house service;
and
 - There is no independent or private sector partner involved in the collaborative arrangement.
- iv. residential placements for an individual with a registered care provider of their choice under the Care Act 2014, or
- v. *personal care services* where, in the opinion of the appropriate assistant director, the particular needs of an individual require a specific social care package which is only available from one provider.
- vi. In relation to (iv) and (v) above the assistant director responsible for the delivery of the services must ensure that adequate records are maintained to demonstrate:
 - The contractor meets the relevant national minimum standards;
 - The contract is effectively managed in accordance with the council's contract management framework;
 - The reasons for the choice of contractor; and
 - Why these were best possible terms for the council in the circumstances.

2.3 Approvals

- a. All contracts must be appropriately authorised in accordance with the council's scheme of 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 (finance & property), 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 or the 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 including those let using an ESPO framework.
- f. Any *major contract* **must** comply with the key decision regime. When commissioning *major contracts*, the key decision is the proposal to begin a procurement process for a particular contract.
- g. The subsequent decision to award the *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:	Column 2:	Column 3:	Column 4:
	Authority to start process	Contract Terms	Authority to award contract	Contract Signing
Major Contracts More than £3,000,000	Cabinet or leader. This will be a key decision. This authority will also generally give the strategic director delegated authority to award the contract.	Monitoring officer unless standard terms and conditions have already been approved.	Generally covered by column 1. If bids exceed the original estimates by 10% or more then <u>you must</u> report back to leader or cabinet before award.	Send to monitoring officer 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	Leader, deputy leader or cabinet. This will be a key decision. This authority will also generally give the strategic director delegated authority to award the contract.	Monitoring officer 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 leader, deputy leader or cabinet before award.	Send to monitoring officer 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 or person authorised in writing by him/her.	Monitoring officer unless standard terms and conditions have already been approved.	Same as column 1.	Strategic director or above.
Ordinary Contracts £100,000 or more but below £500,000	Assistant director or third tier manager or person authorised in writing by him/her.	Monitoring officer unless standard terms and conditions have already been approved.	Line manager or above of person who gave authority to start the process (column 1).	Assistant director or above.
Minor Contracts Below £100,000	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 gave authority to start the process (column 1).	Third tier manager or cost centre manager or above.

2.4 Exemptions from CSOs

2.4.1 Any requirement of CSOs may be waived with the consent of both the chief finance officer and 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';
- 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 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 services the relevant strategic director and assistant director must submit a report to the *chief finance officer and the 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 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 as follows:

- Major Contracts:* By affixing the common seal of the council and witnessed (signed) by one *designated officer* **OR** where there is no seal affixed, signed by at least two *designated officers*.
- Ordinary Contracts:* By affixing the common seal of the council and witnessed (signed) by on *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 third tier 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; and
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 *monitoring officer*.

2.5.4 The *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.

2.6 Contract Documents

2.6.1 All *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 must have been approved by the monitoring officer either as a standard form contract for particular types of matters or through a specific approval.

2.7 Record Keeping

2.7.1 *The authorised officer* shall ensure that the following records are kept in the council's contract management system:

- a. **Successful 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 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 council's contract management framework.

2.8.1 For all *ordinary* and *major contracts*:

- An up to date risk register should be maintained throughout the procurement process and during the life of the contract;
- For identified risks, appropriate actions should be put in place to manage them.

There should be regular monitoring and reports during the contract period on:

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

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; and

A procurement plan must be approved by the *chief finance officer*.

SECTION B

3. OFFICERS' RESPONSIBILITIES

3.1 General

3.1.1 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 *chief finance officer* and the *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.

3.1.3. Authorised officers (those responsible for conducting a procurement process) must:

- a. ensure they have all appropriate approvals before seeking any quotes, commencing any procurement process or awarding a contract;
- b. seek all necessary legal, procurement, financial, risk management and technical advice in good time;
- c. ensure there is sufficient budgetary provision before awarding any contract;
- d. comply with the requirements of these CSOs and observe any codes of practice guidance or instructions relating to contracting matters issued by the *chief finance officer* and the *monitoring officer*;
- e. ensure there is a procurement plan approved by the *chief finance officer* for major contracts and contracts above the applicable EU threshold;
- f. check whether a suitable *corporate contract* exists before seeking to let a new contract. Where a suitable *corporate contract* exists, that contract must be used;
- g. ensure council suppliers have sufficient insurance cover appropriate to the contract in accordance with the council's insurance guidance;
- h. maintain details of all contracts they are responsible for in the contracts management system;
- i. ensure a record is kept for every contract; any *contracting decision* and the reasons for it; any exemption from CSOs together with the reasons for it; and the *award criteria*;
- j. ensure that where an employee of the council or its contractor may be affected by any transfer arrangement TUPE and related issues are considered before proceeding with inviting *tenders* or quotations.

3.2 Contract managers must, in relation to the contracts responsible for, carry out their responsibilities in accordance with the contract management framework.

3.3 Assistant Directors must in relation to their service:

- a. Ensure all *officers*:
 - Comply with CSOs;
 - Are sufficiently skilled in procurement matters to fulfil the duties of their post;
 - Complete any required learning and development.
- b. Ensure there are effective systems in place to control budgets properly;
- c. Ensure there are effective contract management arrangements in place for all contracts; and
- d. Provide any information requested by the chief finance officer or the monitoring officer about their contracts.

3.4 Strategic Directors must in relation to their directorate:

- 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 chief finance officer and monitoring officer for approval;
 - c. Any delegation made does not prevent the strategic director from exercising those delegated powers him/herself.
- d. Approve any proposals by their directorate to provide services to external organisations; and
 - e. 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 Chief Finance Officer and Monitoring Officer

3.5.1 The chief finance officer and monitoring officer may:

- a. 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 must complete to meet the minimum competency standards to fulfil their duties under CSOs.

3.5.2 The *chief finance officer* shall:

Approve procurement plans for major contracts and contracts above the applicable EU threshold.

3.5.3 The *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 premises; and
- c. Maintain a central register of all exemption applications relating to contracts of £100,000 or more.

3.6 **Contract co-ordinators shall, on behalf of their directorate:**

- a. Ensure details of *all contracts* are accurately recorded and maintained in the 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 *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, *authorised officer* must:

- a. Assess the need for the expenditure;
- b. Define the objectives of the purchase;
- c. Calculate the *total value*;
- d. Make sure that the appropriate 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* requirements have been followed where the purchase is a *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;
- h. Ensure the 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 contract above the relevant EU threshold:

- i. Consider a lesson 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 chief finance officer;
- iv. 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;
- 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;
- vii. Assess the risks and how to manage them;

viii. Agree with the *monitoring officer*, the approved form of contract to be used or if none the terms and conditions that are to apply to the proposed contract.

Pre-Tender Market Research and Consultation

- 4.3** *Authorised officers* may consult potential suppliers prior to the issue of an invitation to 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** *Authorised officers* must not, once any consultation period under 4.3 has ended, seek or accept technical advice on the preparation of the actual invitation to tender or 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 and distort competition.

Prevention of Corruption

- 4.5** The following clause must be included in every council contract:

"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the 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 contract (even if the 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 contract whether alone or in conjunction with Council members, Contractors or employees.

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

5. CONDUCTING A PURCHASE OR DISPOSAL

5.1 Purchasing – Competition Requirements

- 5.1.1** Where the *total value* for a purchase is within the values in the first column below, the *award procedure* in the second column must be followed as a minimum.

Total Value	Award Procedure
Minor – up to £10,000	One <i>quotation</i> confirmed in writing.
Minor - £10,000 to below £100,000	<i>Three written quotations of which at least one should be local if appropriate. Local means has a place of business in Warwickshire.</i>

Ordinary & Major - £100,000 or more	<i>Invitation to tender to at least three tenderers. If the contract value exceeds the applicable EU threshold the procedure must also be EU compliant.</i>
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5.1.2 Where an EU compliant procedure (or UK replacement procedure) is required the *authorised officer* shall consult the head of procurement to determine the method of conducting the purchase.

5.2 The Appointment of Consultants to Provide Services

5.2.1 Professional *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.

5.2.2 The engagement of a *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.

5.2.3 Records of consultancy appointments shall be maintained in accordance with these CSOs and entered on the contract management system.

5.2.4 *Consultants* shall be required to provide evidence of and maintain professional indemnity insurance policies to the satisfaction of the council's insurance manager for the periods specified in the respective agreement.

6. Advertising and Framework Agreements

6.1 Advertising the Opportunity

6.1.1 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;
 - 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; and
 - Awarding each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the framework agreement.
 - Observing a standstill period before finalising the award for contracts above the EU threshold.

7. Collaborative and Partnership Arrangements

7.1 In order to secure value for money the council may enter into collaborative procurement arrangements. The *authorised officer* must consult the *monitoring officer* and the *head of procurement* where the purchase is to be made using collaborative procurement arrangements.

7.2 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.

7.3 Collaborative arrangements between public bodies for shared services where the aim of the arrangement is for the participating bodies 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.

8. Setting Standards and Award Criteria

8.1 Overview

8.1.1 The *authorised officer* must, before seeking bids, define the *selection* and *award criteria* that are appropriate to the purchase and designed to secure an outcome giving value for money for the 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.

8.1.3 The criterion for award of a contract shall be the “most economically advantageous”. 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.

8.2 *Selection and award criteria* must not include:

- *Non-commercial considerations; or*
- matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.

8.3 Any shortlisting exercise must have regard to the financial and technical standards relevant to the contract and the *selection and award criteria*.

9. Invitations to Tender / Quotations

9.1 All invitations to tender or quotation 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 council is not bound to accept any *quotation* or *tender*.

9.2 All tenderers invited to *tender*, or *quote* must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

9.3 All invitations to *tender* shall include:

- a. Clear instructions on how and where tenders are to be submitted, together with the date and time by which they are to be received;
- b. A specification that describes the council's requirements in sufficient detail to enable the submission of competitive offers;
- c. A description of the *award procedure*;
- d. Full details about how the bids will be assessed, including any weighting and sub-criteria that apply and any “pass mark” for any stage of the procurement;
- e. Information on the council's policies as appropriate, e.g.:

- i. Equalities;
- ii. Complaints;
- iii. Sustainability

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

9.5 All invitations to tender shall include requirements for 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 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 a form of tender and certificates relating to canvassing and non-collusion.

c. Submit tenders to the council on the basis that they are compiled at the tenderer's expense.

9.6 The council's approved E-tendering system must be used for all competitive procurement activity unless agreed otherwise by the head of procurement or otherwise approve by these CSOs.

9.7 No tender will be considered unless submitted in accordance with the conditions of participation included within the invitation to tender / quote.

10. Submission, Receipt and Opening of Tenders

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

10.2 All *tenders* must be returned in accordance with the system requirements of the council's E-tendering system.

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

10.4 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.

- 10.5 The arithmetic in compliant *tenders* must be checked. If arithmetical errors are found they should be notified to the *tenderer*, who should be requested to confirm their *tender*.

11. Clarification Procedures and Post-Tender Negotiations

- 11.1 Providing clarification of an *invitation to tender* to potential or actual tenderers or seeking clarification of a *tender* whether in writing or by way of a meeting is permitted.
- 11.2 However, discussions with tenderers after submission of a *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 during an *EU Procedure* (other than within the provisions of the EU Competitive with Negotiation (CWN) and Competitive Dialogue (CD) procedures) without the agreement of the *monitoring officer*.
- 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 requirements set out in the original procedure should not be substantially altered. The prior approval of the *monitoring officer* is required to any proposal to negotiate in other circumstances.

12. Evaluation, Award of Contract and Debriefing Tenderers

- 12.1 Apart from the debriefing required or permitted by these CSOs, the confidentiality of *quotations*, *tenders* and the identity of *tenderers* must be preserved at all times and information about one *tenderer's* response must not be given to another during the evaluation process.
- 12.2 Quotations and *tenders* must be evaluated in accordance with the *award criteria*. During this process, *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.
- 12.3 For *ordinary* and *major* contracts *authorised officers* must advise all 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* advising them of the intention to award the contract to the successful *tenderer* and providing them with a 'standstill period' of at least 15 days (10 days if notification letters are

sent by the council's approved E-tendering system) in which to challenge the decision before the contract award is confirmed.

12.4 For contracts that are subject to the EU Procedure or UK replacement procedure, the council's 'intention to award notification letter' standard template must be used, which includes the following debriefing information:

i. How the award criteria were applied

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

iii. The score of the *tenderer*, together with the score of the successful *tenderer*;

iv. Details of the reason for the decision, including the characteristics and relative advantages of the successful *tender*; and

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

12.5 If a decision is challenged by an unsuccessful *tenderer*, after the issue of an intention to award notification letter, then the *authorised officer* shall immediately inform the *chief finance officer* and seek the advice of the *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.

12.6 *Authorised officers* shall ensure that the contract formalities are completed following the award of the contract (see CSO 2.5).

13. Publication of Contract Awards

13.1 The award of all contracts over £5,000 must be published via the council's contract management system.

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

13.3 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, wither 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: THE 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 chief finance officer and the monitoring 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 description 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.

Appendix: Definitions

Agent	A person or organisation acting on behalf of the council.
Authorised Officer	An officer responsible for conduction a procurement.
Award Criteria	The criteria by which the successful <i>quotation</i> or <i>tender</i> is to be selected. (see further CSO 12).
Award Procedure	The procedure for awarding a contract as specified in CSO 14.
Chief Finance Officer	The officer to whom the statutory role is delegated (currently Strategic Director for Resources or nominee specified in writing).
Code of Conduct	The 'Officers' Code of Conduct' (see part 4 of the council's constitution).
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.
Contract Managers	Those officers carrying out post award management of the contract in accordance with the contract management framework.
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> • withdrawal of invitation to tender • whom to invite to submit a quotation or <i>tender</i> • shortlisting • award of contract • any decision to terminate a contract.
Contracts Co-ordinator	<i>Officers</i> nominated by the strategic directors in accordance with CSO 3.7 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 that can be utilised by all assistant directors for the supply of the goods, works or services specified within its terms. Also, a contract which the <i>chief finance officer</i> has confirmed may be legally utilised by the council either through a sub-regional collaborative arrangement, or through purchasing organisations such as the Crown Commercial Services (CSS), ESPO, SCAPE, etc..
Designated Officer	The chief executive, the strategic director for resources and any other officer authorised by either of them.
ESPO	The Eastern Shires' Purchasing Organisation.
EU Procedure	The procedure required by the EU or UK replacement where the <i>total value</i> exceeds the <i>EU threshold</i> or any UK replacement threshold.
EU Threshold	The contract value at which the EU public procurement directives or UK replacement procedure must be applied.
Forward Plan	The forward plan, which is prepared on a rolling basis and contains matters which the council 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.	
Invitation to Tender	An invitation to tender sent to tenderers inviting bids for works goods or services.	
Key Decision	Decisions that are defined as key decisions in the constitution. In relation to letting contracts, the key decision 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 that has a total value of £1,000,000 or more.	
Minor Contract	A contract where the total value is less than £100,000.	
Monitoring Officer	The officer to whom the statutory role is delegated (currently Assistant Director for Governance & Policy or nominee specified in writing).	
Non-Commercial Considerations	(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");
	(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;
	(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.	
OJEU	The Official Journal of the European Union, or any alternative location for advertisement of tender opportunities specified by government for use after 29 March 2019.	
Ordinary Contract	A contract where the total value is £100,000 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	The criteria by which tenderers are chosen to be invited to submit	

Criteria	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 as part of a Restricted, Competitive with Negotiation or Competitive Dialogue Procedure.
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	A tenderer's proposal submitted in response to an invitation to tender.
Tenderer	Any person who asks or is invited to submit a quotation or tender.
Total Value	As defined in CSO 2.1.
TUPE	<p>Transfer of Undertakings (Protection of Employment) Regulations 2006 [SI2006 No.246]</p> <p>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.</p>