

## **SECTION 3 – CONTRACT STANDING ORDERS**

Council rules for buying and supplying goods, works, or services and for disposing of assets other than property.

*Effective from 1 January 2022*

For clarity, and pursuant to the Constitution of the County Council, the role of S.151 officer is exercised by the Executive Director for Resources and the role of Monitoring Officer is exercised by the Director of Strategy, Planning and Governance.

### **1. SCOPE AND PURPOSE**

- 1.1. As a body using public resources, the Council must set and follow the highest standards of financial control and stewardship. Contract Standing Orders (CSOs) provide Officers and Members with procedures to follow to ensure that the required standards are met.
- 1.2. CSO's are consistent with procurement legislation and the Council's Code of Corporate Governance and are considered by Audit & Standards Committee annually as part of the approval of the Annual Governance Statement.
- 1.3. CSOs set out procedures designed to ensure that the Council achieves value for money and social value, that it complies with statutory requirements, that its affairs are prudently managed and properly controlled.
- 1.4. Non-compliance with these rules could result in a legal challenge and may also constitute a disciplinary offence.
- 1.5. Prior to commencing a procurement /sale /contracting process on behalf of the Council, Officers should ensure that they have the authority to do so. Failure to do so may result in delay and/or the cancelling of procurement activity. Officers should check with Legal and Democratic Services if they are unsure of their authority.
- 1.6. The purpose of CSOs is to promote good procurement practice, public accountability, deter corruption and provide protection for the Council and its staff against allegations of impropriety. These CSOs set out and explain the Council's minimum requirements when contracting for goods, services and works.
- 1.7. CSOs must be read in conjunction with the Council's Financial Standing Orders. They apply to **all** spend with external suppliers regardless of type and regardless of the source of funding (e.g. capital, revenue, sponsorship, donations or grants from a third party). They apply to contracts let by the Council on its own behalf and when it is acting as a purchasing authority on behalf of others. Where the Council is taking part in procurement activity controlled by a partner authority, officers should satisfy themselves that any proposed process meets the Council's legal obligations and should speak to procurement and legal colleagues where they are unsure.
- 1.8. CSO's are designed to ensure that all procurement and disposal activity:

- Achieves best value for money;
- Is consistent with the highest standards of integrity;
- Generates market competition with a transparent, fair, and consistent approach;
- Complies with all legal requirements;
- Supports and complies with the council's corporate aims and policies; and
- Meets our diversity and sustainability objectives and ensures equality of treatment

## 2. WHEN DO CSO'S APPLY?

2.1. CSO's apply to all contractual arrangements entered into by the Council except for those specifically excluded at paragraphs 2.2 and 2.3 below. They apply to contracts where the council is receiving goods or services and to contracts where the council is supplying goods or services. Contracts must comply with CSO's irrespective of how they are funded. Procurement legislation covers contracts for services, works and supplies. This includes contracts for the provision of works (including design and execution of works), for the purchase, lease rental or hire of products (including installation) and for the provision of services generally, (subject to exemptions and relaxations for specific types of service activity that procurement can advise upon).

2.2. CSO's do not apply to the following activities or contracts which are covered by separate policies and procedures

- Contracts for fixed term or permanent appointments where individuals become employees of the Council (NB they will apply to contracts for services even if those services are supplied by a named individual and to contracts with employment agencies for the provision of staff) **see HR Policies**
- Agreements for the acquisition, disposal, or transfer of land **see Property Policies**
- Works placed with utility companies where there is no competition required or achievable
- Services to be delivered to the Council by the Council's in-house services (i.e. legal/payroll etc)
- Direct payments to customers **see Social Care policies**
- Non trade payments to third parties – i.e. insurance claims payments, pension payment, statutory payments to public bodies, compensation payments ordered by a court or tribunal **speak to Legal**
- Contracts entered into by or on behalf of the Monitoring Officer for the appointment of counsel, solicitors and/or experts in relation to or in contemplation of proceedings, or where procurement thresholds are not met; or
- Loans to banks or other financial institutions and investments made in accordance with the treasury management strategy **speak to Finance**

2.3. The following activities are also excluded from the requirement for competition:

- Purchases made via a purchasing consortium (e.g. ESPO) accessible to local authorities. However, purchases above thresholds set in Procurement Legislation will only be excluded if the consortium has let their contract lawfully and in accordance with requirements in force at the time.

- b. 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 always that the collaboration has let their contract lawfully and in accordance with procurement procedures in force at the time.
- c. Collaborative proposals for joint working or shared services with other public bodies which the Monitoring Officer has approved as meeting the following conditions:
  - 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.
- d. residential placements for an individual with a registered care provider of their choice under the Care Act 2014, or
- e. personal care services where, in the opinion of the appropriate director, the particular needs of an individual require a specific social care package which is only available from one provider.
- f. In relation to d and e above the 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.

2.4. If the contract is subject to the Public Contracts Regulations 2015 (PCR2015), or the Utilities Contracts Regulations 2015 (UCR2015), or the Concession Contracts Regulations 2016 (CCR2016) those regulations will apply in addition to CSO's. In the event of a conflict, the regulations will take precedence. Advice should be taken from Procurement and Legal as to whether the regulations apply before any procurement activity is commenced or contract awards are made.

### **3. OFFICER RESPONSIBILITIES**

- 3.1. Officers in Procurement and Legal are available to advise and assist officers with compliance with these CSO's.
- 3.2. All Officers and any agents, consultants or partners acting on their behalf MUST:

- Comply with these CSOs
- Comply with Financial Standing Orders
- Obtain necessary internal approvals in line with the Councils policies and procedures as published from time to time to ensure delegated authority is in place **before** commencing activity and ensure that there is budgetary provision before awarding any contract
- Take all necessary legal, financial, procurement or other professional advice **before** commencing activity and as required throughout the process
- Comply with the Code of Conduct for Officers
- Comply with all procurement legislation and any other legally binding requirements specific to their activity
- Comply with all codes of practice, guidance and instructions regarding contractual arrangements issued by the *s.151 officer and the Monitoring Officer*
- Ensure that any agents, consultants, or partners acting with or on behalf of the Council are also compliant
- Check with procurement whether a suitable Council contract or Framework Agreement already exists before seeking to let another contract
- Ensure council suppliers have sufficient insurance cover appropriate to the contract in accordance with the council's insurance guidance
- 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
- Keep all required records in accordance with CSO's and Contract Management Framework
- Ensure there is a procurement plan approved by the s.151 officer for major contracts and contracts above the applicable legislative threshold

### 3.3. Directors must:

- Ensure their staff comply with CSOs
- Ensure their staff are sufficiently skilled in procurement matters to fulfil the duties of their post and complete any required learning and development
- Ensure all records are kept as required by these CSOs
- Ensure contracts are executed in accordance with CSOs and constitutional delegations and that a copy is retained for safekeeping on the approved Council systems
- Ensure all exemptions requested and approved are recorded in accordance with CSO's

### 3.4. Executive Directors must:

- Ensure that any scheme of delegation within their directorate is clear about responsibilities in respect of CSOs and is lodged with the Monitoring Officer
- Approve any proposals by their directorate to provide services to external organisations
- Ensure all Directors within their directorate are sufficiently skilled in procurement matters to fulfil the duties of their post

### 3.5. The S.151 officer shall

- approve procurement plans for major contracts and contracts above procurement thresholds

### 3.6. The S.151 officer and Monitoring Officer may

- With the consent of each other (and only as permitted by these CSOs) waive any provision

- of CSOs provided the same does not contravene any legal, financial, or regulatory rules
- Delegate their powers under CSOs to another suitably qualified officer
- Issue codes of practice, guidance, and instructions on any matters relevant to these CSOs
- 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

### 3.7. The Monitoring Officer shall

- Approve contract terms and the form of contract to be used
- Ensure that a central register of all major contracts and contracts under seal is maintained
- Arrange for the safekeeping of original copies of contracts on council premises
- Ensure that a central register is maintained of all exemption applications relating to contracts of £100,000 or more

3.8. 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 prove that any gift or benefit received was received or approved in line with the Council's policy on gifts and hospitality which can be found at <https://democracy.warwickshire.gov.uk/documents/s21746/Part%2045%20Officers%20Code%20of%20Conduct.pdf>. Corrupt behaviour is a crime and will lead to disciplinary proceedings and possible dismissal.

3.9. Officers must comply with s117 of the Local Government Act 1972 in relation to the declaration of any interest in any contracts and with the provisions of the Bribery Act.

## 4. GENERAL REQUIREMENTS

### 4.1. Classification 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

### 4.2. Valuation of Contracts

The estimated value of a procurement is the total amount payable, net of VAT, including any form of option and any renewals of the contracts as explicitly set out in the procurement documents.

The estimated 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; or

- 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
- d. for feasibility studies, it is the value of the scheme or contracts which may ultimately be awarded as a result

An *officer* **must not** select a method of calculating the value in order to avoid the requirements of these CSOs or procurement legislation.

A procurement **must not** be subdivided with the intention of preventing it from falling within CSO's or procurement legislation. The subdivision of contracts into smaller contracts or lots is only permitted where justified by objective reasons.

Where a procurement will result in contracts being let in "lots" or as a series of separate contracts that are similar or connected, advice **must be** taken from procurement and legal. The general rule is that the value in such cases is the total estimated value of all the related lots or contracts.

#### 4.3. What must I do?

All contracts must be let through a competitive process that meets the requirements of Section C unless an exemption has been granted or the arrangement is permitted by these CSOs. The level of competition and the process required is determined by Procurement Legislation and the Council's Code of Corporate Governance.

Adequate resources must be identified to manage the procurement and any contracts awarded.

There must be a procurement plan for all major contracts and for any contract the value of which exceeds the thresholds set by Procurement Legislation.

No procurement may commence until the procurement plan has been submitted to and approved by the S.151 Officer or their nominated representative.

All references to value within CSOs are to value excluding any Value Added Tax applicable to the contract levied by government.

#### 4.4. How do I start a procurement?

As the Authorised Officer you should familiarise yourself with the requirements of CSO's and ensure you have the approvals required by paragraph 4.5 below. The Council must advertise, procure, and award contracts in accordance with all procurement legislation and statutory guidance in force from time to time.

Additional rules will apply to any procurement subject to funding by EU or central

government bodies. Where grant funding of any kind is used to fund a procurement advice must be taken from Legal Services to ensure compliance of the proposed activity.

If during the course of a procurement an issue arises upon which these CSO's are silent the matter shall be reported to the Monitoring Officer or their nominated representative for determination.

Procurements above the Procurement Threshold will always be conducted electronically using the Council's approved e-tendering portal by the Procurement Team unless the Service Manager – Contract Management and Quality Assurance or their nominated representative(s) give(s) prior consent in writing. Procurements below the Procurement Threshold will be conducted using an appropriately robust process in line with the provisions of CSO's and confirmed as acceptable by the Procurement Team.

In order to commence the process, you must be the Authorised Officer and you must take advice from Procurement on the following:

- Pre-procurement;
  - Options appraisal
  - Market engagement and
  - Procurement strategy
- Strategic sourcing
- Spend and supplier intelligence and development and management of opportunities for innovation in supply chain
- Transactional, operational, and administrative procurement activity and the use of the electronic tendering system

The Authorised Officer must also take advice from Legal Services on

- All legal, regulatory, and constitutional aspects of the procurement process; and
- The content and form of any contract before it is made available to bidders (whether or not a formal tender is being carried out) and/or to be entered into on behalf of the Council

#### 4.5. Necessary Approvals

- a. **Before a procurement is commenced and/or a contract is awarded**, all contracts and activity **must** be appropriately authorised in accordance with the council's scheme of delegation and project governance framework (where applicable) and in line with the table below.
- b. Any proposal to let a contract with an estimated total value of between £1,000,000 and £3,000,000 can **only** be approved by the deputy leader, the leader or cabinet (see table below). Authority must be obtained before a procurement commences.
- c. Any proposal to let a contract with an estimated total value of more than

£3,000,000 can **only** be approved by the cabinet or the leader (see table below). Authority must be obtained before a procurement commences.

- d. The approvals required are set out in the table below. They apply to all contracts regardless of the procurement process followed. They also apply to contracts awarded from framework arrangements including those let using an ESPO framework or an internal council procured framework. Where proposing to use a framework arrangement you **must** check with Legal Services and/or Procurement whether (a) the framework is valid and properly procured, (b) able to be utilised for the purpose proposed and (c) that your proposed process meets the requirements of the framework in question. Failure to do so may leave the Council at risk of a challenge and lead to delays and failures in service provision.
- e. 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. Appropriate approvals **must** be obtained at that stage and not wait until award.
- f. 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.
- g. All contracts should be in writing.
- h. The terms and conditions of any contract must be approved in accordance with the table below.
- i. All contracts must be submitted to the appropriate person for signature in accordance with the table below.
- j. The written formalities should be completed **before** the contract is due to start.
- k. Letters of intent will only be used in exceptional circumstances and where approved by the s151 Officer in consultation with the Monitoring Officer

Total Contract Value	Column 1:	Column 2:	Column 3:	Column 4:
	Authority to start process	Approval of Contract Terms	Authority to award contract	Contract Signing
Major Contracts  More than £3,000,000	Cabinet or leader.  <b>This will be a key decision.</b>  This authority will also generally give the Executive	Monitoring Officer unless standard terms and conditions have already been approved as suitable by legal services.	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.



	Director delegated authority to award the contract.			
<b>Major Contracts</b>  <b>£1,000,000 or more up to £3,000,000</b>	<p>Leader, deputy leader or cabinet.</p> <p><b>This will be a key decision.</b></p> <p>This authority will also generally give the Executive Director delegated authority to award the contract.</p>	Monitoring Officer unless standard terms and conditions have already been approved as suitable by legal services.	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.
<b>Ordinary Contracts</b>  <b>£500,000 or more but below £1,000,000</b>	Executive Director or person authorised in writing by him/her.	Monitoring Officer unless standard terms and conditions have already been approved as suitable by legal services.	Same as column 1.	Executive Director or above.
<b>Ordinary Contracts</b>  <b>£100,000 or more but below £500,000</b>	Director or third tier manager or person authorised in writing by him/her.	Monitoring Officer unless standard terms and conditions have already been approved as suitable by legal services.	Line manager or above of person who gave authority to start the process (column 1).	Director or above.
<b>Minor Contracts</b>  <b>Below £100,000</b>	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.

#### 4.6. What if I want to change my contract?

- You must take advice from Legal Services if:
  - You wish to amend a contract;
  - you wish to assign or novate a contract; or
  - you wish to terminate a contract before the expiry of the contractual term
- Where a variation means that the value of a contract would exceed the threshold set in Procurement Legislation, or where there is any material change to the contract, the contract must be treated as a new procurement under CSO's
- A change will not be deemed material if the value of the modification is both below the threshold set by procurement legislation and below 10% of the original contract value after indexation, or if permitted by the terms of the contract originally procured
- The authorisation needed for any change will be dependent upon the value of that change in line with financial delegations
- Officers must be satisfied that they have sufficient budget to cover any variation and that the variation is lawful, reasonable in all the circumstances and will achieve value for money
- A copy of all variations must be kept with the original contract and provided to procurement for inclusion on CSW-jets.

#### 4.7. Exemptions from CSOs

- a. Any requirement of CSOs may be waived with the consent of both the s.151 officer and the Monitoring Officer subject to any legal restraints.
- b. Where a proposed contract is likely to exceed any legislatively binding procurement threshold in force at that time, no exemption can be authorised if such an exemption would result in a breach of procurement legislation.
- c. An application for a waiver (exemption) shall be:
  - submitted on the approved 'exemption form'
  - set out the reason for requiring the waiver; and
  - show how the proposal complies with any applicable law, demonstrates propriety, value for money and supports the council's objectives.
- d. 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 Director and Executive Director must submit a report to the s.151 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.

- e. 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.

#### 4.8. Contract Formalities, Signing and Sealing

- a. 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 the contract value is between £500,000 and £999,999 and there is no seal affixed, signed by a Executive Director or above  OR  where the contract value is between £100,000 and £499,999 and there is no seal affixed, by a Director or above.
Minor Contracts:	By affixing the common seal of the council and witnessed (signed) by one designated officer  OR  Signed by third tier manager, cost centre manager or above.

- b. A contract **must** be sealed where:

- The council wishes to enforce the contract more than six years after its end;

Or

- The price paid or received under the contract is nominal and does not reflect the value of the goods or services.

- c. 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.
- d. 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.
- e. The Council will undertake signing of contracts via docusign where practicable. Sealing must be done physically, and seals witnessed by an appropriately authorised officer. Legal Services maintains the record of authorised officers. All documents sealed must be recorded within the register held by Legal Services.

#### 4.9. Contract Documents

- a. All *contracts*, irrespective of value, shall clearly specify:
  - What is to be supplied;
  - The price to be paid and when;
  - Appropriate performance indicators;
  - Clear dates and times for performance;
  - Liquidated damages (where relevant); and
  - termination provisions.
- b. The Monitoring Officer must approve the terms and conditions of all contracts either as a standard form contract for particular types of matters or through a specific approval. This clause is complied with by taking appropriate advice from Warwickshire Legal Services on the terms that are acceptable.

#### 4.10. Record Keeping

- a. *The authorised officer* shall ensure that the following records in relation to successful tenders and awarded contracts are kept in the council's contract management system for at least 7 years following the end of the contract if the contract is signed and 15 years if the contract is under seal:
  - A copy of the executed contract
  - Any relevant correspondence or documents which may have a bearing on how the contract is interpreted
  - A record of any exemptions exercised and the reasons for them
  - A copy of the tender documents and responses received (including award criteria and evaluation criteria)
  - A copy of the Contract Signature Form
  - Confirmation of authority to award

- Procurement documentation confirming tender and award as required to be published in line with any relevant procurement legislation from time to time in force
- b. The authorised officer shall ensure that unsuccessful tenders and quotes are kept in the council's contract management system for a period of at least two years from the commencement of the contract to which they relate.
  - c. *Originals* of signed contracts or deeds should be returned to Legal for secure storage unless otherwise agreed with the Strategy and Commissioning Manager for Legal and Democratic. Certified copies of contracts or deeds will be provided to the relevant service areas once executed.

#### 4.11. Contract Management, Evaluation and Review

- a. All contracts must be managed in accordance with the council's contract management framework
- b. As a minimum and subject any additional requirements within the contract management framework 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.
- c. 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 s.151 officers.

## 5. STEPS PRIOR TO PURCHASE

### *The Contracting Process*

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

5.2. 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 including adherence to the requirements of the Capital Project framework or Change Programme framework
- e. Where necessary make sure that a procurement plan is in place
- f. Make sure that the budget is available and approved to cover the **whole-life financial commitment** being made (including any internal and external charges or fees);
- g. Make sure the *forward plan* requirements have been followed where the purchase is a *key decision*;
- h. Ensure sufficient legal, procurement, finance, risk management and technical support is available throughout the entire procurement process;
- i. Ensure sufficient resources will be available (i.e. people with sufficient skills and capacity) to manage the contract once it has been let;
- j. Ensure the council's requirements for data security and information governance (including but not limited to the General Data Protection Regulation) are met;
- k. Consider, when commissioning services, whether these could improve the economic, social, and environmental wellbeing of the area (social value).

5.3. For major contracts or contract above the Procurement Threshold :

- a. Ensure that the matters at 4.1 have been complied with; and
- b. Engage with procurement before any activity is undertaken to ensure compliance with procurement legislation
- c. Consider any lessons learnt report from previous relevant tender processes;
- d. Produce a business case for approval by the appropriate body;
- e. Submit a fully completed procurement plan for approval by the s.151 officer;
- f. Carry out an options appraisal in conjunction with legal and procurement 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;
- g. Consult users where appropriate about the proposed procurement, contract standards, performance, and user satisfaction monitoring;
- h. Consult the market where appropriate and permitted by legislation in accordance with these CSOs and the advice of procurement
- i. Assess the risks and how to manage them;
- j. 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.

5.4. The **Public Services (Social Value) Act 2012** requires the Council to consider at the pre-procurement stage:

- How the proposed procurement might improve the economic, social, and

- environmental well-being of the area;
- How the Council may act with a view to securing that improvement in conducting the process of the procurement; and
- Whether it should undertake any community consultation on the above.

Officers must consult the Procurement Team for advice on specifying requirements under Social Value and how to evaluate this as a part of any bids received.

### ***Pre-Tender Market Research and Consultation***

- 5.5. 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.
- 5.6. Advice should be taken from procurement and/or legal services before any market engagement activity
- 5.7. Authorised Officers must not, once any pre-tender market research or consultation period 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***

- 5.8. The following clause (or suitable equivalent wording approved by Legal Services) 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".*

## **6. CONDUCTING A PURCHASE OR DISPOSAL**

### **6.1. Purchasing – Competition Requirements**

6.1.1 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.

<b>Total Value</b>	<b>Award Procedure</b>
Minor – below £25,000	One quotation confirmed in writing.
Minor - £25,000 to below £100,000	Three written quotations of which at least one should be local if appropriate. Local means has a place of business in Warwickshire.
Ordinary & Major - £100,000 or more	Invitation to tender to at least three tenderers. If the contract value exceeds the applicable EU threshold the procedure must also be EU compliant

6.1.2 The authorised officer shall take appropriate advice from procurement to determine the method of conducting any purchase that exceeds threshold set within Procurement Legislation in force from time to time.

## **6.2. The Appointment of Consultants to Provide Services**

6.1.3 A Consultant is someone engaged for a specific length of time to work (or provide a service) to a defined project brief with clear outcomes to be delivered, and who brings specialist skills or knowledge to the role. A consultant is not an employee, a fixed term employee, a locum, an agency, or a temporary worker or someone engaged to provide general day to day activities within a service.

6.1.4 Contracts for consultancy services are subject to the same competition requirements as any other type of contract and must be procured in accordance with these CSOs.

6.1.5 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.

6.1.6 Self-employed consultants must not fall within the off- payroll working rules i.e. IR35. It is the responsibility of the authorised officer to ensure that all tax and legal advice regarding the terms of any consultancy appointment is taken in advance of the procurement activity and actioned.

6.1.7 Records of consultancy appointments shall be maintained in accordance with these CSOs and entered on the contract management system as for any other contract.

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

## **7. Transparency**

7.1. All spend in excess of £500 must be published on the council's website and in addition, contracts over £5000 must also be published on the council's website.



## 8. Framework Agreements

8.1. The term of a framework agreement must not exceed four years without the written consent of the Monitoring Officer. Such consent will only be given where there is a legally permissible justification for a framework in excess of four years.

8.2. 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 and permit it this may be done without reopening competition); or
- Where the terms laid down in the framework agreement are not precise enough (or do not permit direct awards) by holding a mini competition in accordance with the terms of the particular framework or in accordance with the following procedure where the framework terms are unclear:
  - 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 where applicable

## 9. Collaborative and Partnership Arrangements

9.1. 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 Service Manager, Contract Management and Assurance where the purchase is to be made using collaborative procurement arrangements to ensure that all legal requirements are met and the Council has vires to undertake the arrangement.

9.2. Collaborative and partnership arrangements include but are not limited to examples of 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.

9.3. 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.

## 10. Setting Standards and Award Criteria

10.1. **Before seeking bids or commencing any procurement activity**, the authorised officer must define the selection and award criteria that are appropriate to the purchase ensuring that they are designed to secure an outcome giving value for money for the council.

- 10.2. 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.
- 10.3. 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.
- 10.4. Selection and award criteria must not include non-commercial considerations and must comply with procurement legislation at the time the procurement commences
- 10.5. Any shortlisting exercise must be carried out in accordance with the published terms of tender and have regard to the financial and technical standards relevant to the contract and the published selection and award criteria.

## **11. Invitations to Tender / Quotations**

- 11.1. All invitations to tender or quotation must:
- Specify the goods, service or works that are required, together with the terms and conditions of contract that will apply; and
  - State that the council is not bound to accept any quotation or tender.
- 11.2. **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.** All invitations to tender shall include:
- Clear instructions on how and where tenders are to be submitted, together with the date and time by which they are to be received;
  - A specification that describes the council’s requirements in sufficient detail to enable the submission of competitive offers;
  - A description of the award procedure;
  - 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;
  - Information on the council’s policies as appropriate, e.g.:
    - i. Equalities;
    - ii. Complaints;
    - iii. Sustainability

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

11.4. All invitations to tender shall include requirements for tenderers to:

- 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
- Complete fully and sign a form of tender and certificates relating to canvassing and non-collusion.
- Submit tenders to the council on the basis that they are compiled at the tenderer's expense.

11.5. The council's approved E-tendering system must be used for all competitive procurement activity unless agreed otherwise by the Service Manager, Contract Management and Assurance or otherwise approve by these CSOs.

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

## **12. Submission, Receipt and Opening of Tenders**

12.1. Tenderers must be given an adequate period in which to prepare and submit a tender, consistent with the complexity of the contract. Procurement legislation lays down specific time periods and processes that must be followed for procurements above the published thresholds at the time the procurement commences. Below thresholds contracts must still be treated in accordance with this clause 12.1

12.2. All tenders must be returned in accordance with the system requirements of the council's E-tendering system and/or as required in any specific documentation published.

12.3. Tenders received by fax or electronic means outside of the council's e-tendering system (e.g. email) must be rejected, save that quotations for minor contracts under £10,000 may be received by email.

12.4. All tenders are to be 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.

12.5. 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.

## **13. Clarification Procedures and Post-Tender Negotiations**

13.1. Providing clarification of an invitation to tender to potential or actual tenderers or seeking clarification of a tender prior to the closing date whether in writing or by way of a meeting is permitted.

13.2. 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) without the agreement of the Monitoring Officer.

13.3. 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 and no material change should be made to the risk profile of the contract. The prior approval of the Monitoring Officer is required to any proposal to negotiate in other circumstances.

#### **14. Evaluation, Award of Contract and Debriefing Tenderers**

14.1. 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.

14.2. 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.

14.3. For ordinary and major contracts authorised officers must advise all tenderers in writing of their award decisions. For contracts that are subject to Public Contract Regulations or other UK applicable procurement legislation 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.

14.4. For contracts that are subject to advertising and publication requirements within Procurement Legislation, the council's 'intention to award notification letter' standard template must be used, which includes the following debriefing information:

- How the award criteria were applied
- The name of the successful tenderer(s);
- The score of the tenderer, together with the score of the successful tenderer;
- Details of the reason for the decision, including the characteristics and relative advantages of the successful tender; and
- 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').

14.5. 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 s.151 officer and seek the advice of the Monitoring Officer on next steps. No contract may be

awarded until the s.151 officer and the Monitoring Officer are satisfied that the matter has been resolved.

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

## **15. Publication of Contract Awards**

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

15.2. The award of all contracts over £25,000 must be published on contracts finder. Publication will be undertaken by the Procurement Team.

15.3. The award of contracts above the relevant published procurement threshold applicable at the time of the commencement of procurement must be published as required by Procurement Legislation.

## **16. The Council as a Supplier - Providing Works, Goods or Services to External Organisations**

16.1. The s.151 officer and the Monitoring Officer must be consulted where work for an external organisation is contemplated.

16.2. Any proposals to work for an external organisation must be approved by the Executive Director responsible for the service and the approval recorded in writing in accordance with the Councils Standing Orders and Delegations.

16.3. A robust business case must be produced and approved by Commercial Delivery Group and Corporate Board before any arrangement is entered into where the council acts as a supplier. That business case must have input from Finance and take into account the full, whole life costs to the council of delivering the goods, works or services concerned and that appropriate insurance and contract terms can be agreed. The financial viability of such business cases must be approved by the s.151 officer. The key decision regime applies to the council providing services over £1,000,000 as well as to purchasing services over £1,000,000.

## **17. Disposals**

17.1. 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 s.151 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.

17.2. Goods or assets may be disposed of via public auction, including electronic auctions, 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 and verified by procurement officers;
- 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:
  - 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.
  - 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.
  - 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. The following or similar wording must be prominent within the listing or description

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.

17.3. Applications for approval of the disposal of goods / assets by auction which do not meet the above conditions should be made to the Exemption Panel who will liaise with the Monitoring Officer and s151 Officer as required.

17.4. 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

17.5. 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 conducting 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.
S.151 officer	The officer to whom the statutory role is delegated under the constitution
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.
Designated Officer	The chief executive, the Executive Director for resources and any other officer authorised by either of them.
ESPO	The Eastern Shires' Purchasing Organisation.
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 under the council's constitution
Non-Commercial Considerations	<p>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");</p> <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;</p> <p>any involvement of the business activities or interests of contractors with irrelevant fields of government policy;</p> <p>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");</p> <p>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; any political, industrial, or sectarian affiliations or interests of contractors or their directors, partners, or employees;</p> <p>financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;</p> <p>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.</p> <p>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.</p>
Officer	A person employed by the council.
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 Executive 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.
Procurement Legislation	The requirements of any and all relevant public procurement legislation in force within England from time to time including but not limited to the Public Contracts Regulations, the Concession Contracts Regulations, the Utilities Contracts Regulations (all as amended or replaced from time to time) together with any relevant codes of practice and/or statutory guidance
Procurement Threshold	The contract value at which the Procurement Legislation must be applied
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 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.
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	Transfer of Undertakings (Protection of Employment) Regulations 2006 [SI2006 No.246]