

PART 3G Contract Standing Orders 2020/21

Definitions

- 'Appropriate Officer' is the Chief Executive, Strategic Directors, Director, City Solicitor, the Chief Financial Officer (S151 Officer) or any other Officer designated by resolution of the Executive.
- 'Authorised Officer' is any Officer permitted by an Appropriate Officer to authorise orders and Contracts as per clause 2.5.
- 'Best Value for Money' is the optimum combination of whole life costs, quality and benefits, including economic, environmental and social value to meet the customer's requirement.
- 'Bradford District' is the geographical area administered by the Council.
- 'Call Off' is a separate purchase from an existing Framework Agreement that creates a binding Contract.
- 'Concession Contract' means Contracts for pecuniary interest, where the consideration is either; that the Supplier has the right to exploit the works / services that are the subject of the Contract, or where the Supplier has that right together with some payment from the Contracting Authority.
- 'Contract' means a formal agreement between the Council and any Supplier for:
 - the supply of works, goods or services including consultants
 - a call-off from a framework agreement
 - an arrangement where no payment is made but there is financial value to the Supplier e.g. a catering concession

For the purposes of these Contracts Standing Orders this definition does not include employment and property Contracts or grant agreements.

- 'Contracting Authorities' mean the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or on or several of such bodies governed by public law.
- 'Contracts Finder' is the government portal for information on public sector Contracts
- 'Contract Value' is, for works, goods or services the total monetary value over the full duration, including any extension options (not the annual value). For concession Contracts, or other Contracts with low, or nil cost to the Council the total pecuniary value must be considered.

- 'Contracts and Grants Register' the Council's database of all Contracts, commissioned activity, purchase orders, Framework Agreements, and other legally enforceable agreements with a value of £5,000 and above and grants of any value.
- 'Controlled Entities' a subsidiary company of the Council where the Council exercises control similar to that over its own departments, the subsidiary carries out at least 80% of its activity for the Council and there is no direct participation of private capital.
- 'Corporate Contract' is an agreement procured in consultation with and for the benefit of more than one Council department. More details can be found on Bradnet.
- 'Council' means the City of Bradford Metropolitan District Council.
- 'DPS or Dynamic Purchasing System' is an electronic procurement process for commonly used purchases that are generally available and is open throughout the Contract period to any new supplier that meets the selection criteria.
- 'Electronic Auction' is a procurement process whereby suppliers who have submitted admissible tenders can revise their original prices or values during the period of the auction.
- 'EU Thresholds' the financial threshold at which the Procurement Legislation are applicable.
 - As of 1st January 2020 these are:
 - Works - £4,733,252 and
 - Goods - £189,330.
 - Service - £189,330
 - Social and Other Specific Services (subject to the Light Touch Regime) - £663,540.
 - Concessions - £4,733,252
- 'Exception Log' a record held by the Chief Financial Officer of all Contracts valued at £25,000 and above awarded without competition because the Contract meets one or more of the requirements listed in CSO 20.1.
- 'Find a Tender' is the UK e-notification service in which all tenders, launched after 11pm 31st December 2020, from the public sector above relevant EU Thresholds must be published.
- 'Framework Agreement' an agreement which sets out the terms and conditions under which the Council can make specific purchases ("Call-Off") from a Supplier(s) to provide services, goods or works at agreed standards and prices. If the Council calls off services, goods or works from the Supplier then a binding Contract is formed.

- 'Grant' for the purposes of these Contracts Standing Orders means a formal agreement giving financial assistance to an individual or organisation to assist in meeting its general purpose or objectives but where the specific supply of goods, works or services is not required in return. There should be award criteria, performance targets and conditions on how the money is spent and Officers should monitor these in accordance with the terms of the grant agreement.
- 'Light Touch Regime' applies to social and other specific services as listed in Schedule 3 of the Procurement Legislation.
- 'Local Supplier' is any supplier that provides works, goods or services from a location within the Bradford District or where a substantial number of any employees working directly on the Contract are resident in the Bradford District.
- 'Officer' means employee(s) of the Council.
- 'OJEU' is the Official Journal of the European Union which is the publication in which all tenders from the public sector above relevant EU Thresholds must be published.
- 'Procurement Legislation' means the EU Public Contracts Directive (2014), the Public Contracts Regulations 2015 which implement the Directive in UK Law, and any subsequent statutory amendment or re-enactment, or subordinate legislation that may be in place from time to time.
- 'Public Service Mutual' an organisation which has left the Council parent body but continues to deliver public services. Mutuals are organisations in which employee control plays a significant role in their operation.
- 'Quotation' a formal written offer to execute works, or provide services or goods at a stated price
- 'Sheltered Workshop' an organisation that employs a proportion of disadvantaged or disabled workers which allows the supplier to be eligible to bid for certain types of Contracts which can be specifically reserved to organisations meeting the criteria.
- 'SIRO' Senior Information Risk Owner is the person with overall accountability and responsibility for information governance.
- 'Supplier' an individual or organisation that Contracts with the Council to provide works, goods or services.
- 'Tender' a formal written offer to execute works, or provide services or goods at a stated price
- 'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 'Whole Life-Cycle Costs' is an estimate of the total costs of works, goods or services over their life. It is a combination of the purchase price, implementation and operating costs, procurement and Contract management costs, disposal costs less any residual value.
- 'YORtender' is the procurement portal used by the Council (www.yortender.co.uk)

1 Introduction

- 1.1 The purpose of Contract Standing Orders is to set clear rules by which the Council spends money on works, goods and services. The rules apply to any Contract entered into by the Council. The procurement process covers the full life cycle of activities starting with the identification of need, through to evaluation, purchasing and contract management. Procurement can range from purchasing day to day commodities to purchasing key strategic items such as large capital assets, or commissioning a service or buying an entire service.
- 1.2 Public procurement must be undertaken in accordance with principles enshrined in Procurement Legislation. The Council must always act to promote competition and to ensure that each procurement is conducted as an open, transparent and fair competition. The Council must avoid practices which may restrict or distort competition.
- 1.3 All values quoted in these Contract Standing Orders are exclusive of recoverable Value Added Tax (VAT).
- 1.4 Any dispute or difference as to the interpretation of these Contract Standing Orders shall be resolved by the City Solicitor.
- 1.5 The Chief Financial Officer shall undertake a formal review of Contract Standing Orders on an annual basis which will be reported to the Governance and Audit Committee.

2 Compliance with Contract Standing Orders

- 2.1 Failure to comply with these Contract Standing Orders can result in disciplinary action against the Officers concerned.
- 2.2 Every Contract made by or on behalf of the Council for works, goods and services and all Council employees engaged to act in any capacity to manage or supervise a Contract must comply with;-
 - Procurement Legislation
 - All relevant statutory provisions including the Public Contracts Regulations 2015, competition law and public services acts (e.g. Social Value, Care Act 2014)
 - The Council's Constitution including these Contract Standing Orders, the Council's Financial Regulations and the Council's Procurement Policies
 - The Council's strategic objectives and policies
- 2.3 All Council Officers and organisations engaged on the Council's behalf shall ensure that all procurement activity is undertaken with regard to high standards of probity and in a manner which avoids any conflicts of interest. The Council's Employee Code of Conduct must be followed at all times.
- 2.4 In applying these Contract Standing Orders, all Officers shall have regard to the duty of Best Value For Money under the Local Government Act 1999.

- 2.5 An Appropriate Officer may permit, with limitations, other Officers to authorise orders and Contracts in their own names on behalf of the Council. Any orders or Contracts made shall remain the responsibility of an Appropriate Officer. Appropriate Officers must maintain an up to date record of Authorised Officers and submit a copy of the list to the Chief Financial Officer on an annual basis at the commencement of the financial year.
- 2.6 The Chief Financial Officer may delegate some, or part of their responsibilities set out in these Contract Standing Orders to Officers in their service area. A written record of this delegation should be kept for transparency and audit purposes.
- 2.7 All orders for works, goods or services must be placed using the Council's approved systems in advance of the invoice being received and coded to the appropriate account codes.
- 2.8 Miscellaneous payments must only be used where the payment is not as a result of a purchase (for example a refund or grant payment). Miscellaneous payments must not be used to:
- Pay suppliers for works, goods or services (including fees in relation to consultancy work and training), or
 - To reimburse employee expense claims or petty cash purchases
- 2.9 Non-compliance with Council's procedures and processes for the use of its requisition, ordering and payment systems may result in the Chief Financial Officer removing Officer access.
- 2.10 These Contract Standing Orders must be used, other than in exceptional circumstances which must be authorised by either:
- 2.10.1 The Executive; or
- 2.10.2 The Chief Financial Officer and the City Solicitor.
- after considering a report by an Appropriate Officer. The Appropriate Officer must retain written reasons of the decision.
- 2.11 Authorisation under Standing Order 2.10.2 will be reported to Governance and Audit Committee on a quarterly basis.
- 2.12 All Appropriate Officers are responsible for ensuring compliance by their staff and shall report all breaches to the Chief Financial Officer. All instances of non-compliance will be recorded by Procurement Services and be reported to Strategic Directors on a quarterly basis.
- 2.13 These Contract Standing Orders **do not** apply in relation to the procurement of legal services in respect of a specific matter for the purposes of
- Arbitration conciliation;
 - Judicial proceedings before the courts;

However, no such legal services shall be procured without the approval of the City Solicitor.

3 Social, Economic, Environmental and Ethical Considerations

- 3.1 In formulating proposals for a Contract, the Authorised Officer must consider the Public Services (Social Value) Act and follow requirements set out in the Council's Social Value and Inclusive Growth Policy.
- 3.2 Where appropriate and always subject to Procurement Legislation, the Authorised Officer should ensure that all requests for Tenders or Quotes are framed in such a way as to encourage Local Suppliers, small and medium sized companies (SME's) and third sector organisations such as social enterprises to bid. This may include dividing the Contract into lots.

4 Procurement Plans

- 4.1 After Council has agreed the Council's budget and before commencement of the financial year the Authorised Officer must prepare and maintain an annual procurement plan for all procurements of works, goods or services to be undertaken in the forthcoming financial year.
- 4.2 Procurement plans must be sent to the Chief Financial Officer in order that they can publish a Council wide procurement plan on the Council's website prior to the start of the financial year.

5 In-House Services and Existing Arrangements

- 5.1 In all instances the procurement of works, goods or services should be done through existing approved arrangements where they exist. These include:

5.1.1 In-house provision

5.1.1.1.

Where the Council has an in-house provision and the estimated Contract Value is less than the relevant EU Threshold external suppliers can only be used when the Appropriate Officer providing such in-house provision confirms that they are unable to meet the requirements on that occasion due to insufficient resources, skills or capacity

5.1.1.2

If the estimated Contract Value is more than the relevant EU Threshold the Appropriate Officer providing such in-house service may also be required to clearly demonstrate that they provide Best Value for Money.

5.1.2 Corporate Contracts, Framework Agreements or DPS awarded by the Council

5.1.2.1

The use of Council Corporate Contracts / Framework Agreements /DPS awarded by the Council shall be mandatory for all works, goods and services that have been included in the scope of those arrangements.

- 5.2 Information relating to the above arrangements will be published regularly on Bradnet.
- 5.3 Where an existing arrangement or in-house service exists and the Officer is seeking to procure outside of these arrangements, the Authorised Officer is required to maintain a documented audit trail to demonstrate the correct approval has been obtained to procure outside of these arrangements.
- 5.4 Other arrangements should be considered and used where it can be evidenced that they provide Best Value for Money:
 - Contracts, Framework Agreements or DPS established by central purchasing bodies (Crown Commercial Services, YPO etc.) or other public bodies
 - Collaborative or shared service arrangements with another public body
 - Alternative delivery vehicles such as Controlled Entities or Public Service Mutuals
 - Sheltered Workshops

6 Estimating Contract Values

- 6.1 The method for determining the estimated total value of a Contract / income Contract, should be based on the total amount (net of VAT) which the Council expects to pay and / or any other forms of remuneration the Council, Contractor (or a third party) will receive by operation of the Contract over the term of the Contract. Such calculation must include, where relevant any maintenance and on-going support costs. (Example calculation: Estimated Contract Value = (Annual Cost + other forms of remuneration) x Contract Length)).
- 6.2 In determining the value of a Contract, the Council must also include the potential value of any options to extend that may be built into the Contract and take into consideration the value of all lots where the Contract is going to be broken into lots.
- 6.3 When determining the value of a Framework Agreement the anticipated value of all spend through that Framework Agreement including the spend of any other Contracting Authorities who are able to access the Framework Agreement must be taken into consideration.
- 6.4 Officers must ensure that estimated values are **not** disaggregated in an attempt to avoid the applicability of these Contract Standing Orders. Requirements must be calculated based on all Council spend (i.e. the corporate requirement rather than an individual service areas need)

- 6.5 Where a proposed procurement includes two or more types of provision (i.e works, goods or services) the procedure followed shall be based on the provision that characterises the main subject of the Contract in question.

7 Pre-Procurement Requirements

- 7.1 All procurement processes and documentation will be proportionate to the total value of the Contract and the nature of the works, goods or services.
- 7.2 Before commencing procurement activity for Contracts valued at £25,000 and above the Authorised Officer must undertake the following:

7.2.1 Report to Overview and Scrutiny Committee Contracts valued £2m and above

For Contracts with a total estimated value of £2m and above report details to the relevant Overview and Scrutiny Committee using the standard Committee report template. Reports are to be taken at an early stage once Officers have a draft procurement strategy and specification to allow members to consider matters. For clarity, details of call-off Contracts from a Framework Agreement or DPS do not need to be separately reported providing the original Framework Agreement or DPS has been reported except where the relevant Overview and Scrutiny Committee request a separate report.

7.2.2 Market Engagement

Carry out, where appropriate, pre-procurement engagement with the market (including talking to suppliers, clients and other stakeholders) to understand the availability, strengths and weaknesses of markets and to develop the specification and the Best Value for Money procurement and contractual approach. Pre-engagement with the market must be done in such a way that ensures the subsequent procurement process remains open, fair and transparent with no Supplier gaining an unfair advantage which would distort competition.

7.2.2.1 Advice must be sought from Procurement Services where it is proposed to use a Prior Information Notice (P.I.N.)

7.2.3 Route to Market

Consider the most appropriate route to market including whether a Framework Agreement, DPS or Electronic Auction is appropriate and would deliver Best Value for Money seeking advice from the Head of Procurement where necessary

7.2.4 Specification Development

Be satisfied that a written and clear specification has been prepared which will form the basis of the Contract.

7.2.5 Risk Assessment

For all Contracts with an estimated Contract Value of more than the EU Threshold for goods and services, or where there is a significant supply

risk (identified using a procurement risk assessment form available on Bradnet) a documented risk log must be maintained by Officers.

7.2.5.1 Any Officer conflict of interests should be dealt with as part of the risk assessment process.

7.2.6 Equality and Diversity Implications

Consider at the outset any equality and diversity implications that may require an equality impact assessment to be undertaken

7.2.7 Service Transfer or Strategic Partnership Development

Before commencing any process for procuring Contracts which involves a proposed service transfer or the development of a strategic partnership, the Authorised Officer must consult the Chief Financial Officer.

7.2.8 TUPE implications

Consider at the outset any TUPE implications and schedule in seeking relevant legal and HR assistance

7.2.9 Data Protection

Identify all Contracts involving the processing of personal data, information security or data processing implications that may require additional schedules or terms and conditions considering the General Data Processing Regulation, the Data Protection Act, and the need to notify the SIRO

7.2.10 Social Value

Consider at the outset any implications from the Social Value Act in accordance with the Council's Social Value and Inclusive Growth Policy

7.2.11 Whole Life Costings

Prepare and document an estimate of the whole life-cycle costs including where appropriate any on-going costs and/or disposal costs and ensure that the cost is within the approved current and future budget provision for both capital and revenue expenditure

7.2.12 Evaluation Criteria

Ensure that all evaluation criteria including sub-criteria have been determined in advance, put in order of relative importance or weighting and published in the tender documentation. Selection criteria must be relative and proportionate following statutory guidance issued by the Secretary of State. Details of any financial assessment to be undertaken (CSO 19.8) and the form of contract to be applied (CSO 22) must be included in the tender documentation.

7.2.13 Electronic Documentation

Ensure that electronic versions of all the appropriate and approved forms of procurement documentation is available through an internet portal immediately on publication of any advert

- 7.3 Authorised Officers are responsible for arrangements to ensure the proper control and use of Council ordering and contracting procedures, in accordance with guidance issued by the Chief Financial Officer and the City Solicitor.
- 7.4 All procurement activity must be undertaken using the Council's standard template documentation unless prior approval has been obtained from the Head of Procurement.

8 Framework Agreements and Dynamic Purchasing Systems

8.1 Call-Off Arrangements

- 8.1.1 Where a Call-Off is proposed under an existing Framework Agreement or DPS that has been established by a consortium, collaboration, purchasing organisation or other public body, the Council may consider using this Framework Agreement or DPS if;
 - a. The Framework Agreement or DPS has been established by an entity, and via a process, which permits the Council to access those arrangements lawfully;
 - b. It is in the best interest of the Council to access the Framework Agreement or DPS, representing clear Best Value for Money, which must be documented for audit purposes.
- 8.1.2 Before undertaking a Call-Off under any Framework Agreement or DPS, thorough due diligence should be undertaken and advice sought from Procurement Services to confirm it is able to be used and whether it is appropriate to use it.
- 8.1.3 Call-Offs must be awarded based on the criteria identified in the Framework Agreement or DPS.
- 8.1.4 Where a Call-Off is undertaken via a direct award process (which is prescribed in the Framework Agreement), the Contractor must be requested in writing to supply a written submission, that is verified to confirm it can meet the requirements of the Council in accordance with the terms and conditions and pricing established in the Framework Agreement in advance of entering into a Contract unless otherwise prescribed in the Framework direct award call-off procedure.
- 8.1.5. Subject to the due diligence confirming the suitability of the Framework Agreement or DPS, it can be used as a potential route to market without going down one of the procedures outlined at CSO 10 to 13

8.2 Establishing a Framework Agreement / DPS

- 8.2.1 Where the Council is establishing a Framework Agreement or DPS which may be accessed by other Contracting Authorities the estimated Contract Value must take account of all potential work that may be put through the agreement and follow the procedures set out in these Contract Standing Orders.
- 8.2.2 If the Council is establishing a Framework Agreement or DPS in accordance with CSO 8.2.1 reference must be made within the procurement documents explaining that the Framework Agreement or DPS is intended for wider use, and advice should be sought from the City Solicitor's Office to ensure the terms upon which other Contracting Authorities access those arrangements are clear and offer appropriate protection to the Council.
- 8.2.3 In establishing a Framework Agreement, the total duration (including any extensions) cannot exceed four years except in exceptional circumstances relating to the subject matter of the Framework Agreement. Any proposal to establish a Framework Agreement with a duration exceeding four years should be referred to the Head of Procurement for advice.
- 8.2.4 Where, taking in to account the above, the estimated value of the Framework Agreement or DPS is estimated to be above the relevant EU threshold, the Authorised Officer must ensure that the names of the other public bodies are included in the OJEU / Find a Tender notice either individually or by identifiable class.
- 8.2.5 In establishing a Framework Agreement or DPS, the Council must ensure that the terms of the Framework Agreement or DPS make the process by which Contracts under the Framework Agreement or DPS are entered into, and the terms under which they will be entered, is explicitly clear.

9 Concession Contracts

- 9.1 If the Authorised Officer is considering entering into an arrangement which could constitute a Concession Contract, early advice must be sought from Procurement Services and the City Solicitor.

10 Contracts valued up to £24,999

- 10.1 These Contract Standing Orders in general do not apply to Contracts with an estimated value of up to £24,999. However, this CSO 10, and the Contract Standing Order with regards to in-house and established Corporate Contracts referred to at CSO 5 **do apply**.
- 10.2 The Authorised Officer must be able to demonstrate Best Value for Money and **must use Local Suppliers** wherever possible. All Quotations must be in writing.
- 10.3 To comply with the Local Government Transparency Requirements, details of all Contracts awarded of £5,000 and above must be recorded on the Council's procurement portal, YORtender and on the Contracts and Grants Register.

Officers shall retain a written record of actions taken and the reasons using the pro-forma template available on Bradnet.

- 10.4 Pro-forma should be completed and details recorded on YORtender and the Contracts and Grants Register prior to a purchase order being created.

11 Contracts between £25,000 and £189, 329 (EU Threshold for Goods and Services)

- 11.1 Contracts that are estimated to be for amounts between £25,000 and £189,329 must be let on a competitive basis on YORtender. The Authorised Officer must determine the most appropriate procedure to undertake.

- 11.2 The Authorised Officer must either:

- 11.2.1 use a closed procedure inviting a minimum of four suppliers registered on YORtender including inviting Local Suppliers wherever possible, or

- 11.2.2 use an open procedure advertising the opportunity to the open market using both YORtender and Contracts Finder

- 11.3 When using the closed procedure, if the minimum number of Tenders cannot be obtained owing to insufficient suitable Suppliers prepared to tender, then the Authorised Officer must keep a record of this.

- 11.4 No pre-qualification questionnaire is permitted during the procurement. Suitable assessment questions to assess eligibility are part of the Council's template procurement documents and can be used as part of the overall quality evaluation. Suitability Assessment Questions may only be included within the procurement where they are

- a) Relevant to the subject matter of the procurement; and
- b) Proportionate

- 11.5 Only the winning bidder(s) will be required to submit certificates and documents as evidence of their legal and financial standing and technical or professional ability in addition to specific requirements relating to insurance, health and safety, equality, environmental management etc.

12 Light Touch Regime Contracts Valued £189,330 to the Light Touch Regime EU Threshold, Concession Contracts Valued £189,330 to the Concession EU Threshold, Works Contracts Valued £189,330 to the Works EU Threshold

- 12.1 The procurement of Contracts for the provision of Light Touch Regime Services, Concession Contracts and Contracts for works with a value between £189,330 and the relevant EU threshold may be undertaken in accordance with procurement procedures as outlined in CSO11.

- 12.2 Procurement of any such Contracts must, however, be let on a competitive basis, which is advertised to the open market, through YORtender and on Contracts Finder.
- 12.3 The most common procedures to be used for Contracts within these thresholds are processes broadly equivalent to the Open and Restricted procedures set out in the Procurement Legislation. Where consideration is given to any other procedure then early advice must be sought from the Head of Procurement.

13 All Contracts valued above the EU Threshold

- 13.1 Where the Contract Value is likely to exceed the relevant EU threshold it must be tendered in accordance with the relevant Procurement Legislation, unless it will be procured through an existing Framework Agreement or DPS agreement that has been established via a compliant EU procurement process.
- 13.2 Suppliers must be appointed by one of the procedures under CSO 14.
- 13.3 All Tenders must be advertised on the YORtender system and Contracts Finder. Standard template documentation must be used
- 13.4 All Tenders above the relevant EU Threshold must be advertised in the OJEU / Find a Tender.

14 Procurement Procedures

- 14.1 The **open procedure** under which all those interested may respond to the advertisement by submitting a Tender. This is often the most expedient system and enables all of the Suppliers in the market that wish to engage in the process to submit a Tender. There is no pre-qualification or short-listing stage prior to invitation to tender (ITT).
- 14.2 The **restricted procedure** under which a selection process is made of those who respond to the advertisement and only they are invited to submit a Tender. This procedure can only be used for tenders above the EU Threshold for goods and services.
- 14.3 The following procedures apply to more strategic, complex or high value projects and must be done in consultation with the Head of Procurement as there are limited circumstances under which these processes can be used.
- 14.4 The **competitive dialogue procedure** under which a selection is made of those who respond to the advertisement and the Council enters into dialogue with potential bidders to develop one or more suitable solutions on which the chosen bidders submit a Tender. This can be used where the Contract is complex and cannot be purchased “off the shelf”.

- 14.5 The **competitive procedure with negotiation** under which a selection is made of those who respond to the advertisement and only they are invited to submit a Tender. The Council may then open negotiations to seek improved offers.
- 14.6 The **innovation partnership procedure** under which a selection is made of those who respond to the advertisement and the Council uses a negotiated approach to invite suppliers to submit innovative ideas to meet a need where there is no suitable existing “product” on the market. The partnership can be awarded to more than one supplier.
- 14.7 For Contracts for Social and Other Specific Services subject to the Light Touch Regime Authorised Officers have more freedom to design a procurement procedure that is broadly comparable to the procedures described in CSO14. Consideration should be given to the Cabinet Office’s guidance on procurement under the Light Touch Regime. The Head of Procurement must be consulted and the Authorised Officer must ensure that principles of transparency and equal treatment are observed.
- 14.8 The procedure to be undertaken as identified in this CSO 14 must be explained from the outset in the request for Tender and adhered to throughout.

15 Submitting and Opening Tenders and Quotations

- 15.1 Every invitation to tender or request for a quotation must state that a Tender or Quotation will only be considered if it is received by the specified closing date and time via YORtender, or for quotes below £25,000, at the specified date and time.
- 15.2 All Tenders or Quotations for each Contract must be opened by the Officer appointed by the Authorised Officer at a prescribed time.
- 15.3 The Authorised Officer must keep a record of all Tenders and Quotations.
- 15.4 The Authorised Officer shall after consultation with the Head of Procurement disqualify a Tender or Quotation which fails to comply with the requirements of this Contracts Standing Order (15.1) and must inform the bidder or Quotation provider, as soon as possible, stating the reason for the disqualification.

16 Evaluation

- 16.1 An evaluation panel must be convened for all evaluation processes undertaken. Representation on the panel must be from people who have knowledge of the subject area and be proportionate to the size and value of the procurement being undertaken.
- 16.2 For all Contracts, regardless of value, no person with a personal or financial interest in any of the bidders submitting a proposal should be involved in evaluating Tenders or involved in any way in influencing the decision as to which bidder is to be awarded a Contract. A declaration of interest form must

be completed prior to the commencement of the evaluation process and held on file by the Authorised Officer.

- 16.3 The evaluation of tenders **must** be in accordance with the evaluation criteria specified in the original tender documents. Under no circumstance should there be a deviation away from this.
- 16.4 Where a bidder submits a qualified or conditional tender, they must be given the opportunity to withdraw the qualification or condition without amendment to the bid submitted. If a bidder fails to do so their bid must be rejected unless it is dealt with as an alteration to their submission in accordance with CSO 17 below.
- 16.5 Where a Tender received appears to be abnormally low, the Council is under a statutory duty to request that the bidder concerned provides a full and detailed response to explain the price / cost proposed. Identifying and dealing with abnormally low bids shall be the responsibility of the Authorised Officer. The Council may reject an abnormally low bid, where the justification doesn't satisfactorily account for the low level of price. Where consideration is being made to the rejection of a bid on these grounds advice must be sought from the Head of Procurement and City Solicitor.

17 Errors in Tenders and Quotations

- 17.1 Prior to acceptance of any Tender or Quotation received, any arithmetic error or other minor discrepancy made in good faith can be corrected by the Head of Procurement after consultation with the Authorised Officer in one of the following two ways:
 - 17.1.1 The bidder shall be given details of the error(s) found during the examination of the Tender and shall also be given the opportunity of confirming without amendment or withdrawing the Tender; or
 - 17.1.2 Amending the Tender to correct genuine arithmetic error(s) provided that in this case, apart from these genuine arithmetic errors, no other adjustment, revision or qualification is permitted.
- 17.2 A written record must be kept of all such amendments.

18 Post Tender and Quotation Negotiations

- 18.1 In the interests of ensuring an open, fair and transparent process, negotiation following receipt of tenders is only permissible in limited circumstances.
- 18.2 No negotiation is permitted following **receipt of final tenders** where the Tender is above the EU Threshold.
- 18.3 Where the procurement is below the EU Threshold, the Authorised Officer may, after consulting with the Chief Financial Officer, and where it is intended to obtain better value for money, authorise negotiations with one or more bidders

or Quotation providers where s/he considers that none of the Tenders or Quotations are acceptable and it is in the Council's interests to do so.

- 18.4 Negotiation on behalf of the Council should be conducted by two or more Authorised Officers and a written record kept of the negotiation.

19 Approval and Acceptance of Tenders and Quotations

- 19.1 For every Contract, Framework Agreement or DPS over the relevant EU Threshold or £2 million and above in value (whichever is lower) a tender evaluation report must be produced which includes details of:

- the winning bid,
- the suppliers involved,
- results of any selection process,
- the value and subject matter of the Contract,
- justification for using any negotiated type procedure,
- any decision not to award,
- reasons for not using electronic communications,
- any conflict of interest,
- reasons for rejecting abnormally low bids.

- 19.2 The tender evaluation report must be approved by an Appropriate Officer and the Head of Procurement prior to notification letters referred to at CSO 19.4 being issued.

- 19.3 The Authorised Officer can only accept the most economically advantageous Tender or Quotation and must record the reasons for acceptance.

- 19.4 All suppliers who submit a Tender or Quotation should be notified in writing of their success or failure in a timely manner using the standard documents. All notifications should be signed by the relevant Appropriate Officer.

- 19.5 For procurements concerning Contracts with values above the relevant EU Thresholds it is essential that all unsuccessful letters contain the following;

- The award criteria used;
- The score the bidder obtained against those award criteria;
- The score the winning bidder obtained;
- The name of the winning bidder;
- The characteristics and relative advantages of the winning tender; and
- Precise details of the standstill period.

- 19.6 For all tenders covered by the Procurement Legislation, the minimum statutory standstill period is required between notification of the award decision and final Contract award.

- 19.7 Whilst the standstill period referred to above is not a legal requirement for below threshold procurements, above threshold procurements under the light touch regime or Call-Offs under Framework Agreements or DPS, it is normal practice

to apply a voluntary standstill period to allow an opportunity for unsuccessful aggrieved bidders to challenge / complain and for the Council to satisfactorily deal with such instances before entering in Contract.

19.8 Before entering into any Contract, the Authorised Officer must

19.8.1 be sure that they have the necessary authority to enter into the Contract and that these Contract Standing Orders, the Council's Financial Regulations and procurement advice have been complied with, and that the proposed Contract represents Best Value for Money

19.8.2 be satisfied about the technical capability of such proposed Supplier; and

19.8.3 where a significant supply risk has been identified (in accordance with CSO 7.2.5 and for all Contracts of £189,329 pa and above, or £189,329 (if the Contract is for less than 1 year) for works, goods or services consult with the Chief Financial Officer to agree appropriate checks on the financial and resource capacity of the Supplier to perform the Contract and to agree what, if any, security should be provided for performing the Contract. Forms of security include such as: parent company guarantee, Director's guarantee and performance bonds.

19.9 All Contracts awarded of £5,000 and above must be recorded on the YORTender system and all Contracts valued at £25,000 and above must also be published on Contracts Finder. All Contracts above the EU Threshold must also be published in OJEU / Find a Tender.

19.10 For all Contracts and extensions valued at £100,000 and above a briefing note for the Leader of the Council must be produced.

20 Exceptions

20.1 Subject to the statutory requirements for procurement processes above EU Thresholds no competitive procurement process is required where one or more of the following exceptions apply:

20.1.1 the purchase of proprietary or patented goods or materials or services which, are obtainable only from one supplier, and where no reasonably satisfactory alternative is available;

20.1.2 the execution of works or the supply of goods or services are controlled by a statutory body

20.1.3 the execution of works or supply of goods or services are of a specialised nature which, are carried out by only one supplier, and where no reasonably satisfactory alternative is available;

20.1.4 the execution of works or supply of goods or services for which it can be demonstrated that no genuine competition can be obtained;

- 20.1.5 the purchase of a named product required to be compatible with an existing installation;
- 20.1.6 special education, health or social care Contracts, if, it is considered in the Council's interests and to meet its obligations under relevant legislation;
- 20.1.7 the execution of works or the supply of goods and services that are required so urgently as not to permit compliance with the requirements of competition.
- 20.1.8 carrying out, with the approval of the Chief Financial Officer, security works where the publication of documents or details in the tendering process could prejudice the security of the works to be done.
- 20.1.9 The procurement is a unique work or art or artistic performance
- 20.1.10 To allow for the continuation of a contractual arrangement with a Supplier beyond the terms of a Contract, in exceptional circumstances and where the duration of the continued Contractual arrangements is determined in accordance with the timescales required to complete a re-procurement or the decommissioning of the provision
- 20.1.11 The selection of a supplier upon the instruction of a third party, providing all the funding is met by a third party.
- 20.2 All exceptions with a total value of £25,000 and above require the support of the Chief Financial Officer, who is ultimately responsible for procurement within the Council, as well as the relevant Appropriate Officer.
- 20.3 An exception request form must be completed for every instance of an exception of £25,000 and above. The Authorised Officer must ensure that the market for a proposed Contract has been investigated, and that the Authorised Officer can demonstrate that departure from these Contract Standing Orders is justifiable and provides overall value for money.
- 20.4 The Authorised Officer must retain written reasons justifying the decision to use CSO 20 and be able to demonstrate that Best Value for Money has been obtained.
- 20.5 Any Contract valued at £25,000 and above awarded using an exception shall be notified to the Chief Financial Officer who will record the Contract in the "Exceptions Log".

21 Contract Extensions, Variations, Novation or Termination

Extensions

- 21.1 The Authorised Officer can extend a Contract subject to the extension being permitted within the scope and terms of the original procurement and Contract and before the expiry date.

- 21.2 An options appraisal must be undertaken to determine if it represents Best Value for Money to extend the Contract and any approval required must be sought in a timely manner.
- 21.3 The Authorised Officer must make every effort to negotiate improved terms, at the point of extending the Contract, with regard to the cost and quality of the goods or services.
- 21.4 No extension shall be made until funding has been secured in accordance with the Council's Financial Regulations or any other similar requirement.

Variations

- 21.5 All Contract variations must be carried out within the scope of the original Contract and must not materially affect or change the Contract.
- 21.6 There are significant limitations upon the Council being able to make such modifications, especially where the Procurement Legislation applies.
- 21.7 When considering a variation or modification of an existing Contract, advice must be sought in advance from the Head of Procurement and the City Solicitor.
- 21.8 Such variations must be approved by:
 - 21.8.1 the Assistant Director of the Service if the value of the variation is less than 25%, or the revised, total Contract Value is less than £100k,
 - 21.8.2 the Strategic Director of the Department if the value of the variation is greater than 25%, or the revised total Contract Value is £100k or above, or
 - 21.8.3 the Chief Financial Officer if the value of the variation is greater than 50% and the total value of the Contract is £100k or above.
- 21.9 Works Contracts variations, subject to CSO 21.6 and 21.7, must be managed in accordance with the relevant works Contract clause(s), and by no later than the next periodic valuation of the works reported in accordance with 21.8.1 to 21.8.3 above
- 21.10 Following the approval of any variation the relevant notices described at CSO19.9 must be updated and any further notifications required to comply with Procurement Legislation published.

Novations

- 21.11 In the event that a novation is required because a Supplier ceases to provide the work, goods or services whether as a result of insolvency, company restructuring, company purchase, termination of the Contract or any other

reason then the Authorised Officer must consult with the Chief Financial Officer and City Solicitor before novating or assigning the Contract to a new Supplier.

Termination

- 21.12 Before commencing a process of terminating a Contract with a Supplier for a breach of Contract the Authorised Officer must consult the Chief Financial Officer and City Solicitor.

22 Written Contracts

- 22.1 The Authorised Officer must ensure every Contract is in writing.
- 22.2 Every Contract with a Contract Value of £2 million or above must be executed under seal as a Deed with the common seal of the Council by the City Solicitor.
- 22.3 Every Contract with a Contract Value of less than £2 million should be executed under seal as a Deed with the common seal of the Council by the City Solicitor in the following circumstances:
- the Council wishes to enforce the Contract for more than 6 years after its end (e.g. for land or works); or
 - it is required by parties to the Contract; or
 - the price paid or received under the Contract is a nominal price and does not reflect the value of the goods/services; or
- 22.3 Otherwise the following rules for signature apply:
- where the total Contract Value is below £100,000 an Authorised Officer can sign within the limits specified by an Appropriate Officer as per Contract standing order 2.5.
 - any Contract with a total value between £100,000 and £2 million must be signed by a Assistant Director or above
- 22.4 All Contracts with the exception of one-off purchases below £5,000 must be recorded on the Contracts and Grant Register.

23 Professional Services, Consultants and Intermediary Employment

- 23.1 An Authorised Officer may only appoint external consultants providing professional or consulting services if such services are not available within the Council or if Council Officers providing them do not have the resources to meet the needs of the Authorised Officer. Approval of the Consultancy and Contractor Procurement Process must be obtained before seeking quotes or tenders.
- 23.2 Inline with HMRC IR35 and CIS rules the Authorised Officer must consider guidance available on Bradnet and identify the employment status of the Supplier for tax purposes for the Contract entered into, and notify the Chief

Financial Officer. Although not a definitive list, Suppliers providing works or services in the following instances must be considered:

- Services delivered personally by the Supplier
- Consultancy work
- Self employed contractors or suppliers
- The engagement of a worker through a limited company or other body
- The use of a Personal Services Company
- The engagement of a CIS registered contractor

23.3 For Contracts identified as being within the scope of the IR35 payments can only be made in compliance with IR35 legislation.

23.4 The Authorised Officer must consult the Chief Financial Officer for all Construction Industry Scheme (CIS) Contractor appointments and payments.

24 Contract Conditions

24.1 The Council's standard terms and conditions should be entered for all Contracts. Any exception must be agreed in consultation with the City Solicitor and the Chief Financial Officer **before** entering in to Contract.

24.2 The above rule shall not apply to:

- UK government standard documentation or government sponsored schemes such as Academies and amendments may be made for Best Value for Money or project specific reasons.
- Construction and/or engineering Contracts where bespoke conditions based on accepted industry practice are used e.g. JCT, NEC or ICE
- Where Framework Agreements / DPS are being used.

25 Contract Management

25.1 The Authorised Officer is responsible for contractual spend over the duration of a Contract, and must scrutinise and challenge supplier performance, costs and progress, and must take appropriate measures and sanctions to improve supplier poor performance.

25.2 The Authorised Officer must ensure that Contract specifications contain suitable key performance indicators to incentivise appropriate service delivery and to highlight poor performance.

25.3 The Authorised Officer must undertake suitable due diligence checks of a Supplier's technical and organisational measures to fulfil their obligations as Data Processors under the General Data Protection Regulation.

26 Leases and Other Credit Agreements

- 26.1 The Authorised Officer must ensure that prior to entering into any lease or credit arrangement which has a capital cost, the cost must first be approved for inclusion in the Capital Investment Plan in accordance with Financial Regulations relating to capital expenditure.

27 Grants

- 27.1 The Authorised Officer must follow the principles, processes and template documents of these Contract Standing Orders as appropriate for awarding grants prior to entering into any grant arrangements.
- 27.2 Grant funding arrangements should be considered carefully to decide whether they are in fact a procurement for the purposes of these Contracts Standing Orders. A genuine Grant funding arrangement is not a procurement. However, Officers should consider whether the purpose that the grant is being provided for could be achieved through a procurement.
- 27.2 Before awarding any grant with an estimated value of £100,000 and above, the Authorised Officer must consult the Chief Financial Officer.
- 27.3 All grant agreements shall be recorded in the Contracts and Grant Register.

28 Payment Outside of Standard Procure to Pay Procedures

- 28.1 The Chief Financial Officer will make payments on account only on certificates (or other forms approved by the Chief Financial Officer) which have been issued by the Authorised Officer, or the architect/engineer/supervising officer appointed to deal with a particular Contract.
- 28.2 An Authorised Officer may where there has been written agreement with the Chief Financial Officer (setting out the parameters) make purchases and payments via a purchasing card. Purchasing cards must only be used in accordance with the Council's Purchasing Card Compliance Policy, any exception to the Policy must be agreed in advance with the Chief Financial Officer.
- 28.3 The Chief Financial Officer will withdraw the use of purchasing cards should the above not be complied with. Instances of non-compliance can result in disciplinary action in accordance with CSO 2.1.
- 28.4 Payment for goods, works and services are not to be made in advance of delivery other than in a low Contract Value and low risk situation or where it is industry practice to do so that has been agreed in writing with the Appropriate Officer.

29 Claims

- 29.1 The Authorised Officer must inform the City Solicitor of all claims by or against suppliers which are the subject of formal dispute resolution or litigation between the Council and the supplier.

30 Contracts Where Members Have an Interest

- 30.1 Members shall ensure that all procurement activity which is undertaken has regard to high standards of probity and in a manner which avoids any conflict of interest. The Members' Code of Conduct must be followed at all times.

TABLE 1

Value Band	Total Contract Value	Procurement Options	Additional procedures
1	£0 - £24,999	CSO Section 10 <ul style="list-style-type: none"> • Must demonstrate value for money • Must use in-house or Corporate Contract • Must use Local Supplier if available • Consider using purchasing card for low value, low risk purchases 	<ul style="list-style-type: none"> • All quotes in writing • Contracts of £5,000 and above must be recorded on YORtender • All Contracts of £5,000 and above to be entered in the Contracts & Grant Register
2	£25,000 – EU Threshold for Goods and Services	CSO Section 11 <ul style="list-style-type: none"> • Must use in-house or Corporate Contract • Consider availability of an existing suitable Framework Agreement or DPS • seek minimum of four quotes inviting local suppliers if available or • Open tender process 	<ul style="list-style-type: none"> • Consider all pre-procurement requirements • All quotes in writing • Use YORtender for quotes or formal tender • £100k and above Complete briefing note for Contract award • All Contracts to be entered in the Contract & Grant Register
3	Light Touch Regime Contracts, Concession Contracts and Works Contracts 189,330 to relevant EU Threshold	CSO Section 12 <ul style="list-style-type: none"> • Must use in-house or Corporate Contract • Consider availability of an existing suitable Framework Agreement or DPS • Open tender process or process agreed by the Head of Procurement. 	<ul style="list-style-type: none"> • Consider all pre-procurement requirements • Use YORtender for quotes or formal tender • Complete briefing note for Contract award • All Contracts to be entered in the Contracts & Grants Register
4	Above relevant EU Threshold	CSO Section 13 <ul style="list-style-type: none"> • Must use in-house or Corporate Contract • Consider availability of an existing suitable Framework Agreement or DPS (call-off) • Formal tender process • Full EU tender process with advert published in OJEU / Find a Tender in accordance with EU Thresholds 	<ul style="list-style-type: none"> • All proposed Contracts must be referred to Procurement Services • Consider all pre-procurement requirements • Use YORtender for formal tender • Complete briefing note for Contract award • All Contracts to be entered in the Contract & Grant Register • Report to Overview & Scrutiny for Contracts of £2million and above prior to publishing tender