

## **PROPOSED AMENDMENTS TO CONTRACT STANDING ORDERS**

### **SECTION 11 – CONTRACT STANDING ORDERS**

These Contract Standing Orders are made under section 135 of the Local Government Act 1972.

Guidance regarding the use of these Standing Orders and further explanation as to how they operate can be found in the Procurement Manual.

#### **DEFINITIONS**

In these Standing Orders, the following expressions have the following meanings:

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| “Category Manager”         | The officer of the Council to whom the Corporate Management Team has allocated responsibility for the delivery and management of a Category Strategy for a defined category of works, goods or services  |
| “Category Strategy”        | The written strategy for a defined Category, which has been formally approved by the Executive in accordance with these Standing Orders.   |
| “Corporate Contract”       | A contract relating to the procurement of supplies, works or services that has been tendered and managed by the Council  |
| “Corporate Finance System” | Agresso or its replacement   |
| “Director”                 | The Chief Executive or the most senior officer in a department of the Council or the Governing Body of a school with delegated responsibilities under the Local Management of Schools Regulations  |
| “Executive Member”         | Means the Member of the Executive with responsibility for the service for which a procurement is being carried out   |
| “Executive”                | Means a meeting to which the Leader and all those Members that are serving as Executive Members have been invited, or in the case of non-executive functions references to “the Executive” are deemed to be references to the Council or the committee or sub-committee to which the Council has |

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|                                 | delegated responsibility for that function   |
| “Framework Agreement”           | Means an agreement or other arrangement between one or more contracting authorities and one or more suppliers which establishes the terms (in particular as to price and, where appropriate, quantity) under which suppliers will enter into one or more contracts with the Council in the period during which the framework agreement applies   |
| “Grant”                         | Means a grant as defined and described in paragraph 2.4 of these Contract Standing Orders  |
| “Non Commercial Considerations” | <ol style="list-style-type: none"> <li>1. whether contractors employ self-employed individuals,</li> <li>2. any involvement of the business activities or interests of the contractor with irrelevant fields of Government policy,</li> <li>3. the conduct of the contractor in industrial disputes,</li> <li>4. the country of origin or location of suppliers,</li> <li>5. any political, industrial or sectarian interest of the contractor,</li> <li>6. financial support or lack of financial support by the contractor for any institution,</li> <li>7. use or non use by a contractor of technical or professional services provided by the Council under the Building Act 1984.</li> </ol> |
| “Procurement Plan“              | Means the Procurement Plan available from the Procurement pages on the Council’s intranet  |
| “Procurement Manual”            | The manual containing guidance and mandatory rules on the procurement of all supplies services and works and any further matters referred to in these Contract Standing Orders   |
| “Public Contracts Regulations”  | The Public Contracts Regulations 2015 (SI 2015 No 102) as amended <a href="#">or the Concession Contracts Regulations 2016 (SI 2016 No 273) as amended.</a>  |
| “Responsible Officer”           | The Director or a person to whom the Director has given clear written delegated responsibility to exercise a   |

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|  | function which these Contract Standing Orders identify  |
| "Social and Other Specific Services Threshold" | <b>£589,148,615,278</b> ( <del>€750,000</del> ) as at 1 <sup>st</sup> January 201 <u>8</u> 6 or any different figure that may be substituted by European Commission Regulations from time to time     |
| "Supplies and Services Threshold"              | <b>£181,302,164,176</b> ( <del>€209,000</del> ) as at 1 January 201 <u>8</u> 6 or any different figure that may be substituted by European Commission Regulations from time to time                   |
| "Total Contract Value"                         | The whole of the estimated value net of value added tax which the Council expects to give under the contract, calculated according to the valuation rules set out in the Procurement Manual           |
| "Threshold"                                    | Means the Supplies and Services Threshold or the Social and Other Specific Services Threshold or the Works Threshold as the case may be   |
| "Works Threshold"                              | <b>£4,551,413,104,394</b> ( <del>€5,225,000</del> ) as at 1 <sup>st</sup> January 201 <u>8</u> 6 or any different figure that may be substituted by European Commission Regulations from time to time |

## 1. Introduction and application of Standing Orders

These Contract Standing Orders set out the framework for the procurement of supplies, works and services. They are an essential set of rules and compliance with them will ensure that officers both seek and obtain good value for money and that public money is properly spent and accounted for. **These Standing Orders apply to all contracts for the procurement of supplies, the provision of services (including adults and children's care services) or the execution of works by the Council or on its behalf.**

- 1.1 In any procurement where quotations or tenders are required no matter what the value may be, officers must always apply procedures that allow a fair and non-discriminatory competitive process, and equal treatment of all potential suppliers and contractors.
- 1.2 Contracts must not be artificially split to avoid the application of the key thresholds contained in these Standing Orders.
- 1.3 Officers dealing with the procurement of standard or repetitive supplies and services should always consider the use of Framework Agreements and corporate contracts and should seek guidance from the Head of Procurement or from the Borough Solicitor.
- 1.4 These Contract Standing Orders do not apply to the following:
  - A contract for service for the employment of staff by the Council
  - The engagement of Counsel
  - The acquisition disposal or transfer of land or an interest in land and property
  - Hire of premises
  - Grants made by the Council
  - Direct payments to individuals for social care services or services brokered on behalf of individuals in receipt of an individual budget.

## 2. Roles and responsibilities

- 2.1 Directors are responsible for ensuring that chief officers and all staff with procurement responsibilities within their directorates fully understand and comply with these Standing Orders.
- 2.2 Directors are responsible for all purchase orders and contracts tendered and let by their directorates, are accountable to the Executive for the performance of their duties in relation to contract letting and management and must ensure that all council officers comply with these Standing Orders. The duties set out in paragraph 2.3 also apply to a Responsible Officer (except for paragraphs 2.3.5, and paragraphs 2.3.13 to .15 which are duties to be complied with by a Director personally)
- 2.3 Their duties are as follows:
  - 2.3.1 To seek and obtain value for money and secure continuous improvement in all procurements.
  - 2.3.2 To ensure no contract is entered into by their Directorate without there being adequate and agreed budget provision.

- 2.3.3 To ensure compliance with all applicable UK and EU legislation, seeking advice from the Borough Solicitor or the Head of Procurement at an early stage in the process whenever appropriate.
- 2.3.4 To ensure that Non Commercial Considerations do not influence any decision to seek quotations or tenders or to enter into any contract.
- 2.3.5 To ensure all staff (including any agents or consultants acting on their behalf) dealing with procurement for their directorate are fully aware of and comply with these Standing Orders and those parts of the Procurement Manual which are stated therein as compulsory in accordance with these Standing Orders and to arrange adequate training on their operation.
- 2.3.6 To declare to the council any pecuniary interest whether direct or indirect they personally have in any contract to be let, and to make that declaration in writing to the Borough Solicitor.
- 2.3.7 In the event of any breach of these Standing Orders to take immediate action and report it to the Borough Solicitor and/or the Borough Treasurer.
- 2.3.8 To ensure every contract over ~~£100,000~~ [the Supplies and Services threshold](#) has a named officer with responsibility for it.
- 2.3.9 To keep securely proper records of all purchase orders, signed contracts and copies of all relevant documentation so as to provide a full audit trail of actions taken.
- 2.3.10 To comply with the Council's arrangements for the obtaining and opening of quotations and tenders as set out in the Procurement Manual.
- 2.3.11 To ensure that the council's seal is affixed to any contract where this is required to give the contract legal efficacy or to reflect established industry practice and to ensure that all other contracts are signed by a Director or by a person authorised under delegated powers to act on his or her behalf or placed through the Corporate Finance System.
- 2.3.12 To keep a record of any waivers of these Standing Orders.
- 2.3.13 To keep a written record of any delegations they make of their powers under these Standing Orders and ensure these are published on the Council's Intranet.
- 2.3.14 To ensure that records are kept in a manner that ensures reviews of contracts are undertaken in good time ideally at least one year in advance of termination dates and that appropriate action is taken.
- 2.3.15 To make arrangements for the publication of tenders and of contracts awarded as the Council may require from time to time.
- 2.3.16 To assist and support Category Managers in the preparation of Category Strategies and to comply with the provisions of Category Strategies approved by the Executive in accordance with these Contract Standing Orders
- 2.3.17 To ensure that all reports recommending the award of a contract for the procurement of works, supplies or services within a category, which are the subject of an approved Category Strategy, contain the comments of the relevant Category Manager.

- 2.4 These Standing Orders do not apply to grants awarded by the Council. A grant is an arrangement where money is given for the benefit of all or for a section of the local community for a stated purpose other than for the procurement of services whether the services are to be given to the Council or to third parties. An arrangement where payments are made to secure the provision of services whether to the Council or to some third party is a contract for services to which these Contract Standing Orders apply.

### **3. Consultation and approvals prior to advertising a procurement**

- 3.1 Officers must take advice from the Head of Procurement or the Borough Solicitor on the relevance of the Public Contract Regulations for any procurement where the Total Contract Value is estimated to be more than ~~£100,000~~[the Supplies and Services Threshold](#), including advice on the classification of a procurement as Supplies and Services, Works or Social and Other Specific Services [or as a concession](#).
- 3.2 When it can reasonably be anticipated that the Total Contract Value might exceed ~~£100,000~~[the Supplies and Services Threshold](#) the Director must ensure that an estimate of the anticipated Total Contract Value is prepared and recorded in writing. The estimate should not be more than twelve months old when tenders or quotations are invited and is to be exclusive of Value Added Tax.
- 3.3 For all procurements of supplies and services with an estimated Total Contract Value in excess of ~~£100,000~~[the Supplies and Services Threshold](#), and procurement of works with an estimated Total Contract Value in excess of £400,000, a Procurement Plan in the form set out in the Procurement Manual and incorporating comments from the Borough Treasurer, Borough Solicitor and Head of Procurement, must be prepared for the approval of the Director and, if appropriate, the Executive Member [or the Executive](#) (see Appendices 1, 2 and 3). In all cases the Procurement Plan must be approved before the contract is advertised.
- [3.4 The Council's Constitution defines Executive Decisions and Key Decisions and the procedure for making these, for example publication for 28 days before decision and call-in for 5 days afterwards. Planning of a procurement must take into account these procedures in consultation with Democratic Services.](#)

### **4. Obtaining quotations and tenders**

- 4.1 (a) Subject to paragraph 4.1(b) below, for any procurement of supplies or services the required number of quotations or tenders must be sought in accordance with the financial limits and procedures set out in the Procurement Manual and Appendix 1 or Appendix 3 as the case may be.
- (b) Procurements of residential care placements, care and or support provided in the person's home or for the special educational or other needs of younger people (including fostering) shall be carried out in accordance with procedures authorised by the relevant Director in consultation with the Executive Member with the advice of the Borough Treasurer, the Borough Solicitor and the Head of Procurement and published in the Procurement Manual

[4.X Where advertising is preferred, but not required by these Contract Standing Orders, officers choosing not to advertise must record the reasons for their decision.](#)

- 4.2 Where any works contract is to be let the required number of quotations or tenders must be sought in accordance with the financial limits and procedures set out in Appendix 2.
- 4.3 The Responsible Officer must ensure that the selection of suppliers from whom tenders or quotations are sought is carried out openly, fairly and transparently. The requirements for advertising, which are made to ensure compliance with legal requirements for transparency and freedom from discrimination, are set out in Appendices, 1, 2 and 3 and must always be followed.

## **5. Contract documentation and standard contract conditions**

- 5.1 The provisions of any Statute, Regulation, ~~Treaty or Directive of the European Union~~ take precedence over anything said in these Standing Orders, and all contracts entered into by the Council must comply with all of those requirements.

- 5.2 The Council's standard conditions of contract shall always be employed unless,

- (1a) Leasing arrangements are involved, or
- (1b) the requirement is particularly complex and the use of the standard conditions is inappropriate

AND in each such case the formal advice of the Borough Solicitor has been given, or

- (2) the supplier requires the Council to contract on terms supplied by it, and the total value is no more than £35,000.

In all cases where the Total Contract Value is expected to exceed the Threshold, the advice of the Borough Solicitor must be sought on any appropriate additions to the Council's standard terms.

## **6. Approval and acceptance of quotations and tenders**

- 6.1 All requests for quotations and tenders for works, services or supplies must be carried out according to the procedures set out in the Procurement Manual.
- 6.2 The evaluation of written quotations and tenders and any pre-qualification of bidders must be carried out according to the procedures set out in the Procurement Manual, clearly documented and, if above the Threshold, advice must be sought from the Head of Procurement.
- 6.3 Where the estimated Total Contract Value is more than ~~£100,000~~ [the Supplies and Services Threshold](#) and only one tender is received the Director must take advice from the Head of Procurement and the Borough Solicitor on the appropriate action.
- 6.4 The Responsible Officer may accept a tender or quotation for **works, supplies or services** where the Total Contract Value is not more than £400,000. Where the tender is above ~~£100,000~~ [the Supplies and Services Threshold](#), a report should be submitted by officers to the Director, but if a Director has not delegated power to a Responsible Officer to accept a quotation the Director must prepare a report on the acceptance of the tender or quotation -and keep it available for auditing.

6.5 The Director shall not accept tenders for supplies, services or works where the Total Contract Value is more than £400,000 ~~and less than £1,000,000~~ without securing the written agreement of the Executive Member.

6.X Where a procurement has been the subject of an approved procurement plan, further approval at contract award stage is only required

- a) where cost as defined in the procurement plan has been significantly exceeded or scope significantly altered,
- b) the procurement plan as approved specifically states that the award is to be approved by the Executive – for complex or sensitive matters

Except in these circumstances, no further approval is required, clause 6.5 does not apply, and the Responsible Officer may accept a tender or quotation. The result should be recorded and communicated to the Director and Executive Member.

~~6.6 For all contracts where the Total Contract Value is greater than £1,000,000 acceptance of the tender must be approved by the Executive upon a report by the Director.~~

6.7 Where the Director wishes to accept a tender other than the lowest acceptable tender, full supporting documentation must be kept to evidence why the lowest acceptable tender was not accepted. If the tender is one to which paragraphs 6.5 or 6.6-X applies, the Director shall report the values of all tenders received and the reasons for selecting the preferred tender.

6.8 All contracts entered into by the Council shall be completed (subject to delegated financial limits) in accordance with the following requirements.

| Total Value  | Method of Completion  | Signed By   |
|--|---|---|
| Up to and including £5,000   | <del>Council's official written order</del> <u>Purchase order or oral</u>   | Responsible Officer   |
| £5,000 to <del>£100,000</del> <u>the Supplies and Services Threshold</u> | <del>Acceptance Letter or Council's official order</del> <u>Purchase order or contract</u>  | Responsible Officer   |
| Over <del>£100,000</del> <u>the Supplies and Services Threshold</u>      | Signed contract or execution under seal if required to give the contract legal efficacy or to reflect established industry practice | Responsible Officer or executed under seal by Borough Solicitor |

6.9 It is advised that all contracts should as a matter of good practice be signed or sealed before the supply, service or ~~construction~~ work begins.

## 7. Waiver of Contract Standing Orders

7.1 If there are special circumstances to waive or suspend any section or sections of Contract Standing Orders, the following approvals must be obtained depending on contract value:

1. for all contracts up to ~~and including £35,000~~the relevant Threshold, the Director may approve.



2. for contracts in excess of ~~£35,000~~ the relevant Threshold ~~but up to and including contracts for £400,000~~ the Borough Solicitor and the ~~Chief Executive~~ Director (taking advice from the Head of Procurement) may approve.
3. ~~for contracts over £400,000 a report must be made to the Executive, incorporating advice from the Head of Procurement, for approval save that where the Borough Solicitor and Chief Executive have confirmed that there is genuine urgency and it is not possible to obtain approval from the Executive in time, the Leader may approve, but shall report his decision to the next meeting of the Executive for information~~

7.2 The standard Waiver form is to be used ~~unless reporting to the Executive in accordance with 7.1 above and the approval must be retained by the Director.~~

7.3 The Director must ensure that a record of all cases where Contract Standing Orders have been waived is sent to the Head of Procurement, ~~including those authorised under the Director's own delegated powers~~, recording the reasons for waiver and the approvals obtained. The Head of Procurement shall maintain a full record, sequentially numbered, of all Waivers granted.

## 8. **Contract extensions and variations**

8.1 ~~Where a contract, which was not required to be advertised by the Public Contracts Regulations or any preceding Regulations, does not have any provision for an extension, one extension, where similar terms and conditions will apply, may be agreed for a maximum period of one year, but the written approval of the Director, who must consult with the Borough Solicitor and the Treasurer, must be given.~~

8.2 ~~Any extension specifically provided for in the contract may be implemented, subject to the prior written approval of the Director being given.~~

8.3 ~~If a contract has been extended in accordance with 8.1 or 8.2 above any further request for an extension must be approved by the Executive Member on a written report, with advice from the Borough Solicitor and the Treasurer.~~

~~Any contract may be extended or varied by the prior written approval of the Director.~~

~~Where an extension or variation is not clearly provided for in the original contract and, once the extension or variation is included, the contract has a total contract value which exceeds the relevant Threshold, advice must be taken from the Borough Solicitor.~~

~~Subject to the above, any contract may be extended or varied by the prior written approval of the Director.~~

### **Contract variations**

8.4 ~~A contract variation can be only be approved where the proposed variation does not materially alter the terms of the contract. Guidance on what constitutes a material alteration is given in the Procurement manual. The Director must obtain advice from the Borough Solicitor before proceeding to agree to a variation and must ensure there is an adequate budget for the variation.~~

## **9. Framework Agreements**

- 9.1 Framework Agreements let by other contracting authorities may only be used in accordance with the requirements set out in the Procurement Manual.

## **10. Category Management**

- 10.1 The Council has adopted the principles of category management in order to provide a more strategic approach to procurement and to help increase efficiencies and value for money through better coordination and aggregation of requirements across the Council.
- 10.2 A Category Manager shall be responsible for the preparation of a Category Strategy for the commissioning and procurement of any works, supplies or services relevant to the category in consultation with any Director who holds a budget that will be affected by the Category Strategy.
- 10.3 A Category Strategy shall identify responsibility for contract awards for contracts of up to £1 million that are in compliance with the strategy, but if no responsibility for such contract award is allocated, the Director to whom the Category Manager usually reports shall be responsible for making the decision. Corporate Contracts which are not within a Category Strategy shall be the responsibility of the Director of Resources.