

## **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:

“Concession”	Where the Council entrusts the provision and management of the services to a contractor where the main benefit for the contractor is the right to commercially exploit the services.
“Concession Services Threshold”	£4,447,447,50 as at 1 January 2022 or any different figure that may be substituted by applicable legislation from time to time. Note that this figure has been calculated on the basis that VAT will apply to the procurement at a rate of 20% (see also paragraph 6.2 of these Contract Standing Orders)
“Corporate Contract”	A contract relating to the procurement of supplies, works or services that has been tendered and managed by the Council
“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 delegated responsibility for that function
“Executive 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
“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
“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 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 or the Concession Contracts Regulations 2016 as amended
“Responsible Officer”	The Executive Director or a person to whom the Executive Director has given clear written delegated responsibility to exercise a function which these Contract Standing Orders identify
“Social and Other Specific Services Threshold”	<b>£552,950</b> as at 1 January 2022 or any different figure that may be substituted by applicable legislation from time to time. Note that this figure has been calculated on the basis that VAT will apply to the procurement at a rate of 20% (see also paragraph 6.2 of these Contract Standing Orders)

“Strategic Procurement Plan“	Means the Strategic Procurement Plan available from the Procurement pages on the Council’s intranet
“Supplies and Services Threshold”	<b>£177,897.50</b> as at 1 January 2022 or any different figure that may be substituted by applicable legislation from time to time. Note that this figure has been calculated on the basis that VAT will apply to the procurement at a rate of 20% (see also paragraph 6.2 of these Contract Standing Orders)
“Total Contract Value”	The whole of the estimated value which the Council expects to give under the contract, calculated according to the valuation principles within the Public Contract Regulations 2015 and applicable legislation
“Threshold”	Means the Supplies and Services Threshold or the Social and Other Specific Services Threshold or the Works Threshold (under the Public Contract Regulations 2015) or the Concession Services Threshold under the Concession Contracts Regulations 2016, as the case may be
“Works Threshold”	<b>£4,447,447.50</b> as at 1 January 2022 or any different figure that may be substituted by applicable legislation from time to time. Note that this figure has been calculated on the basis that VAT will apply to the procurement at a rate of 20% (see also paragraph 6.2 of these Contract Standing Orders)

## 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 and concessions) or the execution of works by the Council or on its behalf. Whether a grant falls within the scope of these Contract Standing Orders is to be decided according to the guidance given at paragraph 2.4 of the Contract Standing Orders.**

- 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 Corporate 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
  - Non procurement activity grants as defined in paragraph 2.4.1 of these Contract Standing Orders
  - Direct payments to individuals for social care services or services brokered on behalf of individuals in receipt of an individual budget.
  - Contracts for services or goods provided by the Council to schools within the Borough, provided the Total Contract Value is below the Threshold as defined in these Contract Standing Orders.

## 2. Roles and responsibilities

- 2.1 Executive 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 Executive 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 an Executive 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 legislation, seeking advice from the Borough Solicitor or the Head of Corporate 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 Executive Director of Resources.
  - 2.3.8 To ensure every contract over 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 an Executive 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.

- 2.4.1 Grant allocations by the Council which are a procurement activity, i.e *funds given to procure services on behalf of the Council*, referred to hereon as “procurement activity grants” irrespective of whether this involves expenditure of external funding, shall be subject to the principles detailed at paragraph 2.4.2. Grants given to or applied for by the Council which are for internal use only or grants given by the Council to a voluntary organisation which has bid for funds and is providing services *directly to individuals as part of their charitable work rather than carrying out a service on behalf of the Council* (referred to hereon as “non procurement activity grants”) are outside the scope of these Contract Standing Orders. However for non procurement activity grants it is still recommended that all usual due diligence and principles of good practice are followed (with legal advice sought where required).
- 2.4.2 Procurement activity grants, as defined in paragraph 2.4.1, shall be subject to the same requirements for advertising and authorisation as any other type of procurement, as per the relevant appendix of these Contract Standing Orders. The relevant Appendix within the Standing Orders to be followed shall depend upon the nature of the grant (i.e if a grant for services which are not covered by the “Light Touch Regime” then Appendix 1 shall be followed and if a grant for works then Appendix 2 shall be applicable).

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

- 3.1 Officers must take advice from the Head of Corporate 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 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 the Supplies and Services Threshold the Executive 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 inclusive of Value Added Tax.
- 3.3 For all procurements of supplies and services with an estimated Total Contract Value in excess of the Supplies and Services Threshold, and procurement of works with an estimated Total Contract Value in excess of £400,000, a Strategic Procurement Plan in the form set out in the Procurement Manual and incorporating comments from the Executive Director of Resources, Borough Solicitor and Head of Corporate Procurement, must be prepared for the approval of the Executive Director and, if appropriate, the Executive Member or the Executive (see Appendices 1, 2,3 and 4). In all cases the Strategic 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 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 applicable Appendices of these Standing Orders..
- (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 Executive Director in consultation with the Executive Member with the advice of the Executive Director of Resources, the Borough Solicitor and the Head of Corporate Procurement and published in the Procurement Manual
- 4.2 Where advertising is preferred, but not required by these Contract Standing Orders, officers choosing not to advertise must record the reasons for their decisions.
- 4.3 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.
- 4.4 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, 2,3 and 4 and must always be followed.

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

- 5.1 The provisions of any Statute or Regulation 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 It is preferred for the Council's standard conditions of contract to be employed unless,
- (1a) Leasing arrangements are involved, or
- (1b) the requirement is particularly complex or 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 Corporate Procurement. It has been assumed for the purposes of setting out the different Thresholds within the definitions section of these Contract Standing Orders that VAT will apply to the procurement, due to VAT being included in the calculation of the Threshold. If however Finance have confirmed within a Strategic Procurement Plan that VAT will not apply to the procurement then the figures within the definitions section of these Contract Standing Orders may be disapplied and the figures referred to in "Procurement Policy Note – New Thresholds Values and Inclusion of VAT in Contract Estimates" (dated December 2021 and published by the Cabinet Office), as updated from time to time, may be used instead for the purposes of establishing whether the planned procurement is above Threshold.
- 6.3 Where the estimated Total Contract Value is more than the Supplies and Services Threshold and only one tender is received the Executive Director must take advice from the Head of Corporate 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 the Supplies and Services Threshold, a report should be submitted by officers to the Executive Director, but if an Executive Director has not delegated power to a Responsible Officer to accept a quotation the Executive Director must prepare a report on the acceptance of the tender or quotation and keep it available for auditing.
- 6.5 (a) The Executive Director shall not accept tenders for supplies, services or works where the Total Contract Value is more than £400,000 without securing the written agreement of the Executive Member (through a report to the Executive Member).
- (b) Executive Director written approval (through a summary report to the Executive Director) shall be required for a contract award which has an associated cost of below £400,000, unless another individual is authorised to approve under a scheme of delegation. However for a contract award which has an associated cost of below £5,000 then the written approval of the Executive Director (or other individual authorised under a scheme of delegation) without a summary report, will be sufficient.
- 6.6 Where a procurement above £1,000,000 has been the subject of an approved Strategic Procurement Plan, further approval *by the Executive* at contract award stage is only required:
- a) where cost as defined in the Strategic Procurement Plan has been significantly exceeded or scope significantly altered;
  - b) the Strategic Procurement Plan as approved specifically states that the award is to be approved by the Executive – for complex or sensitive matters.

The result should be recorded and communicated to the Executive Director and Executive Member. Where the cost and scope for a procurement above £1,000,000 does not exceed that outlined within the Strategic Procurement Plan, then a report to the Executive Member from the Executive Director shall still be required.



- 6.7 Where the Executive 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 apply, the Executive 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 (however note separate requirements which apply to works contracts as set out in Appendix 2).

<b>Total Value</b>	<b>Method of Completion</b>	<b>Signed By</b>
Up to and including £5,000	Purchase order or oral	Responsible Officer
£5,000 to the Supplies and Services Threshold	Purchase order or contract	Executive Director or Responsible Officer as delegated
Over the Supplies and Services Threshold	Signed contract or execution under seal if required to give the contract legal efficacy or to reflect established industry practice	Executive Director or Responsible Officer as delegated 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 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 the relevant Threshold (as defined in these Contract Standing Orders), not to exceed £400,000, to be calculated according to total contract value inclusive of any previous extension or variation, the Executive Director may approve.
  2. for contracts in excess of the relevant Threshold (as defined in these Contract Standing Orders) or above £400,000, to be calculated according to total contract value inclusive of any previous extension or variation, the Borough Solicitor and the Executive Director (taking advice from the Head of Corporate Procurement) may approve. A waiver in respect of a direct award alone will not remove the requirement to follow any aspect of the internal authorisation process for expenditure relevant to the procurement (set out in the Appendices of these Standing Orders) unless this is specifically included as part of the waiver (noting that a waiver to not follow such processes will only be granted in exceptional circumstances).
- 7.2 The standard Waiver form is to be used.

7.3 The Executive Director must ensure that a record of all cases where Contract Standing Orders have been waived is sent to the Head of Corporate Procurement, recording the reasons for waiver and the approvals obtained. The Head of Corporate Procurement shall maintain a full record, sequentially numbered, of all Waivers granted.

## **8. Contract extensions and variations (see also flowchart at Appendix 5)**

8.1 Where an extension or variation (including any change in requirement) 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 under the PCR 2015, advice must be taken from the Borough Solicitor.

### ***Circumstances where the variation or extension falls within approved contract value authorised in Contract Award Report***

8.2 Subject to paragraph 8.1, extensions or variations below £400,000 (inclusive of total contract value) can be approved by the Executive Director.

8.3 Subject to paragraph 8.1, if the sum for the variation or extension of the contract falls within the approved contract value in the relevant Contract Award Report but exceeds £400,000, then for the extension or variation, *Executive Director and Borough Solicitor* written approval shall be required.

### ***Circumstances where the variation or extension does not fall within approved contract value authorised in Contract Award Report***

8.4 If the variation or extension of the contract does not fall within the approved contract value authorised in the relevant Contract Award Report then officers should proceed as in the case of a *new procurement* and follow the procedure within the relevant appendix of these Contract Standing Orders, as determined by the total contract value inclusive of the extension or variation.

8.6 If a variation or extension takes the Total Contract Value above £400k then this will need to be recorded as a Key Decision unless advised otherwise by the Borough Solicitor or Democratic Services.

## **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 and the relevant framework guidance.