

## SECTION 10 – 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:

“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 it’s 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 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 2.5 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 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 2006 (SI 2006 No 5) as amended
“Responsible Officer”	The Director or a person to whom the Director has given clear written delegated responsibility to exercise a function which these Contract Standing Orders identify may be performed by a Responsible Officer, to the extent of such delegation
“Supplies and Services Threshold”	£139,893, or any different figure that may be substituted by Statutory instrument 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 Works Threshold as the case may be
"Works Threshold"	£3,497,313 or any different figure that may be substituted by statutory instrument 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 or the execution of works whether to or 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.

## 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 dealing with procurement for their directorate are fully aware of these Standing Orders the Procurement Manual and any Council documents that are referred to in it 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 has a named officer with responsibility for it.
  - 2.3.9 To ensure that where a person who is not a council employee supervises a contract he or she complies with these Standing Orders as if he or she were an employee of the Council.
  - 2.3.10 To keep securely proper records of all purchase orders, contracts and copies of all relevant documentation so as to provide a full audit trail of actions taken.
  - 2.3.11 To comply with the Council's arrangements for the obtaining and opening of quotations and tenders.
  - 2.3.12 To ensure that the council's seal is affixed to any contract with a total contract value of £400,000 or more 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.
  - 2.3.13 To keep a record of any waivers of these Standing Orders.
  - 2.3.14 To keep a written record of any delegations they make of their powers under these Standing Orders.

2.3.15 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.

2.4 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 Steps to be taken in all procurements before inviting quotations or tenders.**

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.**

3.2 When it can reasonably be anticipated that the Total Contract Value might exceed £100,000 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 but less than the Threshold, a Procurement Plan must be prepared for the approval of the Director.

3.4 For all procurements of supplies and services over the Threshold a Project Initiation Document must be prepared by the Responsible Officer in consultation with Head Of Procurement.

3.5 For all contracts estimated to have a Total Contract Value of more than £400,000 the Responsible Officer shall not proceed to invite quotations or tenders without having first secured the written agreement of the Director and Executive Member having obtained any appropriate advice from the Borough Treasurer and the Borough Solicitor.

3.6 Contracts may not be artificially split to avoid the application of these Standing Orders or the Public Contracts Regulations or any other legislation.

### **4 Obtaining and accepting quotations and tenders**

4.1 Where any procurement of supplies or services has an estimated Total Contract Value of less than the Supplies and Services Threshold, the required number of quotations or tenders must be sought in accordance with the financial limits and procedures set out in Appendix 1. Where the estimated Total Contract Value of any procurement of supplies or services is for more than £100,000, invitations to tender must be issued in accordance with the procedures set out below and in the Procurement Manual.

- 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 When the estimated value of the Total Contract Value of any procurement is greater than the appropriate Threshold the requirements of the Public Contracts Regulations must be observed in full to the extent they apply to the procurement. If the Public Contract Regulations do not apply the procurement must be carried out in accordance with the procedures set out in the Procurement Manual.
- 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 Appendix 1 and Appendix 2 and must always be followed.
- 4.5 When required by the appendices the Responsible Officer must ensure that a specification is drafted. Guidance on the preparation of specifications is given in the Procurement Manual.
- 4.6 Every request for written tenders shall state that tenders must be received in a plain envelope which shall bear the word "Tender" followed by the subject to which it relates, and the date and time for opening. The envelope must not bear any name or mark identifying the sender.
- 4.7 All tenders or quotations are to be received and opened in accordance with the procedures set out in the Procurement Manual.

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

<b>Total Value</b>	<b>Method of Completion</b>	<b>Signed By</b>
Up to and including £5,000	Oral or Council's official written order	Responsible Officer
£5,000 to £100,000	Council's official written order	Responsible Officer
£100,000 - £139,893	Signed contract and Council's official written order	Responsible Officer
£139,893 - £400,000	Signed Contract or Deed as advised by the Borough Solicitor	Director or in accordance with the requirements for sealing of contracts

Over £400,000	Deed executed under seal	Borough Solicitor and Mayor
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5.3 All contracts must be signed or sealed before the supply, service or construction work begins.

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

(1)

- (a) the total value exceeds the Threshold,
- (b) Leasing arrangements are involved,
- (c) 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.

## 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 or the Borough Solicitor.

6.3 Where the estimated Total Contract Value is more than £100,000 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 Director may accept a tender or quotation for **works, supplies or services** (or delegate in writing to another officer the power to accept a quotation) where the quotation together with all associated fees and costs is not more than £400,000. Where the tender is above £100,000, 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 quotation or tender price together with all associated fees and costs is more than £400,000 and less than £1,000,000 without securing the written agreement of the Executive Member.

6.6 For all contracts where the tender price 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 applies, the Director shall report the values of all tenders received and the reasons for selecting the preferred tender.

## **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 £35000, the Director may approve.
2. for contracts in excess of £35,000 but less than £400,000 the Borough Solicitor and the Chief Executive (taking advice as they may feel appropriate from the Borough Treasurer or the Head of Procurement) may approve.
3. for contracts over £400,000 a report must be made to the Executive 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 A standard exemption form is to be used 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 or suspended is sent to the Head of Procurement, recording the reasons for waiver and the approvals obtained.

## **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 Where a contract does provide for an extension, the extension may be implemented, subject to the prior written approval of the Director being given.

- 8.3 If a contract has already been extended under a provision for extension it contains, it may not be extended further under 8.1 above.

- 8.4 If a contract has been extended in accordance with 8.1 or 8.2 above any further request for an extension must be made in a report to the Executive Member.

### **8.5 Contract variations**

- 8.6 A contract variation can be only be approved where the proposed variation does not materially alter the terms of the contract. 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 may only be used in accordance with the requirements set out in the Procurement Manual.

# Appendix 1

## SUPPLIES AND SERVICES

## Minimum Requirements

✓ = Mandatory

	Total Contract Value	Up to £5K	>£5K to £10K	>£10K to £35K	>£35K to £100K	>£100K to £400K	>£400K to £1m	>£1m	External Framework
Procurement Plan	Director to approve, with advice from Head of Procurement				Optional	✓	✓	✓	Optional
	Executive Member to approve						✓	✓	
Format	Request for Quotation (RFQ)	✓ oral	✓	✓	✓				✓
	Invitation to Tender (ITT)				Optional	✓	✓	✓	
Specification		✓ oral	✓ outline	✓ outline	✓	✓	✓	✓	✓
Terms	BFC terms and conditions	Preferred	Preferred	Preferred	✓				
	Special terms - contact Legal Services				Optional	✓	✓	✓	✓
Competition	Minimum 1 quote	✓ oral	✓						✓ mini competition of all suppliers
	Minimum 3 quotes			✓	Advertise	Advertise	Advertise	Advertise	
Advertising	Local and/or national press			Optional	Optional	Optional	Optional	Optional	
	Regional website (SECE)			Optional	Optional	Optional	✓	✓	
	European website (TED)					✓	✓	✓	
Contract SO Waiver	Director to record reasons on file	.	✓	✓					
	Chief Executive and Borough Solicitor to approve				✓	✓	.	.	
	The Executive to approve						✓	✓	
Contract Award	Director (by approval of purchase order)	✓	✓	✓	✓				
	Report to Director for approval				Optional	✓			Optional
	Report to Director and Executive Member for approval						✓		
	Report to the Executive for approval							✓	
Contract Award Notice	Regional website (SECE)			Optional	✓	✓	✓	✓	
	European website (TED)					✓	✓	✓	
Form of Contract	Purchase Order	✓ oral	✓	✓	✓				✓ in accordance with total contract value
	Contract signed by Director				Where used	✓			
	Deed signed under seal by Mayor and Borough Solicitor						✓	✓	

## Appendix 2

### Minimum Requirements

#### WORKS

✓ = Mandatory

	Total Contract Value	<£400K	>£400K to £1m	>£1m	External Framework
Procurement Plan	Director to approve, with advice from Head of Procurement	.	✓	✓	Optional
	Executive Member to approve		✓	✓	
Format	Request for Quotation (RFQ)	✓			✓
	Invitation to Tender (ITT)		✓	✓	
Specification (or equivalent)		✓	✓	✓	✓
Terms	BFC terms and conditions	Approved standard terms and amendments to the employed			
	Special terms - contact Legal Services, if any are required	✓	✓	✓	✓
Competition	Minimum 3 quotes	✓			✓ mini competition of all contractors
Invitation to tender	Minimum 5 tenders to be sought	.	✓	✓	.
Advertising	Local and/or national press	Optional	Optional	Optional	
	Regional website (SECE)	Optional	✓	✓	
	European website (TED)		Optional	✓	
	Chief Executive and Borough Solicitor to approve	✓			
	The Executive to approve		✓	✓	
Contract Award	Director (by approval of purchase order)	✓			
	Report to Director for approval	Optional			Optional
	Report to Director and Executive Member for approval		✓		
	Report to the Executive for approval			✓	
Form of Contract	Contract signed by Director	✓			✓ in accordance with total contract value
	Deed signed under seal by Mayor and Borough Solicitor		✓	✓	